

Date: 4/15/2009

Clearfield County Court of Common Pleas

User: LMILLER

Time: 03:13 PM

ROA Report

Page 1 of 3

Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, et alvs. Barry M. Neff

Civil Other-COUNT

Date		Judge
4/16/2007	New Case Filed. Filing: Complaint in Civil Action Paid by: Olsavick, Gregory S. (attorney for Nelson, Elizabeth L.) Receipt number: 1918583 Dated: 04/16/2007 Amount: \$85.00 (Check) 1CC shff.	No Judge No Judge
5/1/2007	Praecipe For Entry of Appearance, filed on behalf of Defendant, Enter appearance of Stephen L. Dugas, Esquire. No CC	No Judge
5/2/2007	Motion For Entry Upon Property of a Non-Party For a Site Inspection, filed b s/ Gregory S. Olsavick, Esquire. 1CC Sheriff	No Judge
5/3/2007	Rule, NOW, this 3rd day of May, 2007, it is Ordered that Daniel and Lisa Oswald are directed to show cause, if any they have, as to why the Motion for entry Upon Property of Non-Party for a Site Inspection should not be granted. Heaing to be held on the 30th of May, 2007 at 1:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty., 1CC to Shff.	Fredric Joseph Ammerman
5/8/2007	Sheriff Return, May 7, 2007 at 8:40 am Served the within Motion for Entry upon Property/Rule Returnable on Daniel & Lisa Oswald. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Snyder \$33.82	Fredric Joseph Ammerman
5/14/2007	Answer, filed by s/ Stephen L. Dugas, Esquire. No CC Notice of Service of Interrogatories & First Request for Production of Documents, on the 11th day of May, 2007 by First Class mail served upon Gregory S. Olsavick, Esquire. filed by s/ Stephen L. Dugas, Esquire.	Fredric Joseph Ammerman Fredric Joseph Ammerman
5/29/2007	Motion For Entry Upon Property of Non-Party, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
5/30/2007	Order, this 30th day of May, 2007, Plaintiffs' Motion for Entry Upon Property of a Nonparty for a Site Inspection is granted. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Court For Distribution	Fredric Joseph Ammerman
7/9/2007	Notice of Service of Plaintiffs' Answer to Defendant's Interrogatories and Request for Production of Documents Directed to Plaintiffs on the 6th day of July 2007 to Stephen L. Dugas Esq., filed by s/ Gregory S. Olsavick Esq. No CC. Notice of Service of Interrogatories and Request for Production of Documen upon Defendant on this 6th day of July 2007 to Stephen L. Dugas Esq., filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman Fredric Joseph Ammerman
7/27/2007	Notice of Service of Deposition of Barry Neff, filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
8/6/2007	Notice of Deposition, filed by s/ Stephen L. Dugas Esq. No CC. Notice of Answers to Interrogatories & Request for Production of Document: filed by s/ Stephen L. Dugas, Esquire. No CC	Paul E. Cherry Fredric Joseph Ammerman
9/24/2007	Sheriff Return, April 24, 2007 at 1:29 pm Served the within Complaint on Barry M. Neff. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamr Shff Hawkins costs pd by Edgar Snyder \$30.00	Fredric Joseph Ammerman
10/1/2007	Certificate of Readiness for Jury Trial, filed by s/ Gregory S. Olsavick, Esquire. No CC	Fredric Joseph Ammerman
10/15/2007	Motion For Summary Judgment, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman

APOTHAKE & ASSOCIATES, P.C.

ATTORNEYS AT LAW

2/10/2009

PROTHONOTARY
CLEARFIELD COUNTY
230 E. MARKET STREET
CLEARFIELD, PA 16830

RE: LVNV FUNDING, LLC v. JASON MUTH
DOCKET NO.: 07-1751-CD
OUR FILE NO.: 94946

Dear Clerk:

Enclosed herein please find a Praecipe to Enter Default Judgment along with our check in the amount of \$20.00. Kindly file same and return a copy to this office in the enclosed self-addressed stamped envelope provided for your convenience.

Thank you for your anticipated cooperation, I remain

Very truly yours,

APOTHAKE & ASSOCIATES, P.C.



David J. Apothaker

DJA/DM
Enclosure

520 Fellowship Road C306, Mt. Laurel, NJ 08054
800 672.0215 800 757.4928f
856 780.1000 856 780.1020f
215 634.8920 215 634.8421f

Elizabeth L. Nelson, et alvs. Barry M. Neff

Civil Other-COUNT

Date		Judge
10/15/2007	Praecipe to File Deposition Transcripts, Please file the transcripts of the depositions of Plaintiff Elizabeth L. Nelson and Defendant Barry M. Neff. These transcripts are being filed in connection with Defendant's Motion for Summary Judgment. (copies attached). Filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
	Order, this 15th day of Oct., 2007, it is Ordered that a pre-trial conference has been scheduled for Dec. 11, 2007 at 10:00 am. in Judges Chambers. By The Court, /s/ Paul E. cherry, Judge. 1CC Attys: Olsavick, Dugas	Paul E. Cherry
10/16/2007	Order, this 15th day of Oct., 2007, oral argument is scheduled on Defendant's Motion for Summary Judgment for 1:30 p.m. on the 19th day of Nov., 2007, in Courtroom 2. By The court, /s/ Paul E. Cherry, Judge. 1CC Atty. Dugas	Paul E. Cherry
11/2/2007	Motion For Continuance, filed by s/Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry
11/8/2007	Order, this 8th day of Nov., 2007, upon consideration of the within Motion, it is Ordered that the above matter be continued to the 11th day of Dec., 2007 at 10:30 a.m. By the court, /s/ Paul E. Cherry, Judge. 1CC Atty. Olsavick	Paul E. Cherry
11/15/2007	Notice of Service, on the 13th day of Nov., 2007, the Original Supplemental Response to Defendant's Interrogatories and Request for Production of Documents Directed to Defendants, and 1 copy of this Notice of Service were mailed by first Class Mail to Stephen L. Dugas, Esquire. Filed by s/ Gregory S. Olsavick, Esquire.	Paul E. Cherry
	Plaintiffs' Response to Defendant's Motion for Summary Judgment, filed by Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry
12/11/2007	Order, Jury Selection is scheduled for Jan. 3, 2008, at 9:00 a.m. in Courtroom 2. Trial is scheduled for Feb. 19, 20, 2008 at 9:00 a.m. in Courtroom 2. (see original) By The court, /s/ Paul E. Cherry, Judge. 1CC Attys: Olsavick, Dugas; 1CC Judge Reilly (without memo)	Paul E. Cherry
1/17/2008	Opinion and Order, this 2nd day of Jan., 2008, Defendant's Motion for Summary Judgment is granted and Summary Judgment entered in favor of the Defendant and against Plaintiffs. By the Court, /s/ John K. Reilly, Jr., Senior Judge. 2CC Attys: Olsavick, Dugas; 1CC D. Mikesell and Law Library (without memo)	John K. Reilly Jr.
2/19/2008	Filing: Appeal to High Court Paid by: Edgar Snyder & Associates Receipt number: 1922737 Dated: 2/19/2008 Amount: \$50.00 (Check)	Paul E. Cherry
	Notice of Appeal, filed by s/ Gregory S. Olsavick Esq. 1CC & check to Superior Court and 5CC to Atty.	Paul E. Cherry
	Request for Transcript filed by s/ Gregory S. Olsavick Esq. 1CC to Superior Court and 5CC Atty.	Paul E. Cherry
2/22/2008	Order, this 22nd day of Feb., 2008, it is Ordered that Appellant shall, within 14 days from date hereof, file a concise statement of matters complained of on appeal in accordance with Pennsylvania Rule of Appellate Procedures 1925(b). By The Court, /s/ John K. Reilly, Jr., Senior Judge. 2CC Attys: Olsavick, Dugas	John K. Reilly Jr.
2/28/2008	Appeal Docket Sheet, 350 WDA 2008, filed. No CC	Paul E. Cherry
3/6/2008	Application for Enlargement of Time, filed by Atty. Olsavick 2 Cert. to Atty.	Paul E. Cherry
3/10/2008	Order of Court, upon consideration of Appellants/Plaintiffs Application for Enlargement of Time, Order that Appellants shall file a concise statement no later than March 28, 2008. BY THE COURT: /s/John K. Reilly, Jr., S.J., Specially Presiding Two CC Attorney	Paul E. Cherry

APOTHAKE & ASSOCIATES, P.C.

ATTORNEYS AT LAW

2/10/2009

PROTHONOTARY
CLEARFIELD COUNTY
230 E. MARKET STREET
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APOTHAKE & ASSOCIATES, P.C.



David J. Apothaker

DJA/DM
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Page 3 of 3

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00583-CD

Current Judge: Paul E. Cherry

User: LMILLER

Elizabeth L. Nelson, et alvs. Barry M. Neff

Civil Other-COUNT

Date		Judge
3/31/2008	Statement of Matters Complained of on Appeal, filed by s/ Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry
4/11/2008	April 11, 2008, Mailed Appeal to Superior Court. April 11, 2008, Letters, Re: Notification of mailing appeal mailed to Gregory S. Olsavick, Esq. and Stephen L. Dugas, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Paul E. Cherry
4/17/2008	X Letter to Superior Court, Re: Appeal mailed April 11, 2008. X Certificate of Contents, record sent to Superior Court April 11, 2008, receive by Superior Court on april 14, 2008. No CC	Paul E. Cherry
1/16/2009	X Order, this 16th day of Jan., 2009, it is Ordered that Pre-Trial conference is scheduled for Feb. 17, 2009 at 2:30 p.m. in Judges Chambers. Jury Selection is scheduled for April 2, 2009 at 9:00 a.m. in Courtroom 1. By The Court, /s/ Paul E. cherry, Judge. 1CC Attys; Olsavick, Dugas	Paul E. Cherry
1/21/2009	X Certificate of Contents of Remanded Record and Notice of Remand, filed copy to S/C X Memorandum and Order from Superior Court, filed. X Order reversed. Case remanded for the proceedings consistent with this memorandum, Jurisdiction relinquished. s/ Eleanor R. Valecko.	Paul E. Cherry
2/17/2009	X Praecipe For Appearance of Co - Counsel, on behalf of Plaintiffs enter appearance of Christopher M. Miller, Esquire. Filed by s/Christopher M. Miller, Esquire. No CC	Paul E. Cherry
2/18/2009	X Order, this 17th day of Jan, 2009, following Pre-Trial Conference, it is Ordered: Jury Selection is scheduled for April 2, 2009 at 9:00 a.m. in Courtroom 2. Trial in this matter is scheduled for May 7, 8, 2009 at 9:00 a.m. in Courtroom 2. (see original). By The Court, /s/ Paul E. Cherry, Judge 2CC attys; Olsavick, Dugas	Paul E. Cherry
2/19/2009	X Amended Order, this 19th day of Feb., 2009, this Court's Order dated Feb. 17, 2009 is Amended as follows: Trial in this matter is scheduled for May 6, 7, 2009 at 9:00 a.m. in Courtroom 2. (see original) By The Court, /s/ Paul E. Cherry, Judge. CC to Attys: Olsavick, C. Miller & S. Dugas	Paul E. Cherry
3/5/2009	X Notice of Videotape Deposition of Roldofo S. Polintan MD, filed by s/ Gregory S. Olsavick Esq. No CC.	Paul E. Cherry
4/6/2009	X Motion In Limine, filed by s/ Stephen L. Dugas, Esquire. no CC	Paul E. Cherry
4/8/2009	X Plaintiffs' Motions In Limine, filed by s/ Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry

5-1-09 order, dated 5-1-09

5-11-09 verdict + members of Jury

APOTHAKE & ASSOCIATES, P.C.

ATTORNEYS AT LAW

2/10/2009

PROTHONOTARY
CLEARFIELD COUNTY
230 E. MARKET STREET
CLEARFIELD, PA 16830

RE: LVNV FUNDING, LLC v. BARRY RODKEY
DOCKET NO.: 08-361-CD
OUR FILE NO.: 121874

Dear Clerk:

Enclosed herein please find a Praeipce to Enter Default Judgment along with our check in the amount of \$20.00. Kindly file same and return a copy to this office in the enclosed self-addressed stamped envelope provided for your convenience.

Thank you for your anticipated cooperation, I remain

Very truly yours,

APOTHAKE & ASSOCIATES, P.C.



David J. Apothaker

DJA/DM
Enclosure

520 Fellowship Road C306, Mt. Laurel, NJ 08054
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856 780.1000 856 780.1020f
215 634.8920 215 634.8421f

Appeal Docket Sheet

Docket Number: 350 WDA 2008

Page 1 of 3

February 26, 2008

Superior Court of Pennsylvania



Elizabeth L Nelson and Kenneth A. Nelson, Appellants

v.

Barry M Neff

07-583-CD

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: February 26, 2008

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType:

Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

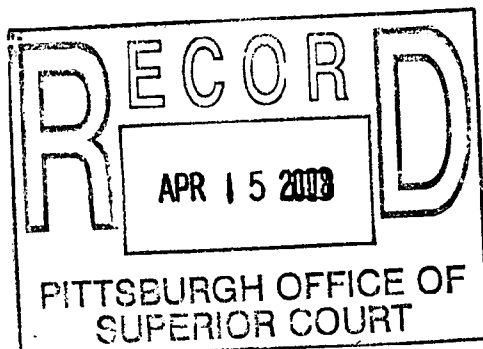
Next Event Due Date: March 11, 2008

Next Event Type: Original Record Received

Next Event Due Date: April 21, 2008

350 WDA 2008

Record - 2 depositions



FILED
M 12:49 PM
FEB 28 2008
no cc
60

William A. Shaw
Prothonotary/Clerk of Courts



320 MBV 9008

Record - 5 969021 + 1042

APR 1 1994

Appeal Docket Sheet

Docket Number: 350 WDA 2008

Page 2 of 3

February 26, 2008

Superior Court of Pennsylvania



COUNSEL INFORMATION

Appellant Nelson, Kenneth

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Olsavick, Gregory S.

Bar No.: 34620 Law Firm: Edgar Snyder & Associates, L.L.C.

Address: 2900 Old Route 220 Suite 201
Altoona, PA 16601

Phone No.: (814)942-3699 Fax No.: (814)942-9337

Receive Mail: No

E-Mail Address: golsavick@edgarsnyder.com

Receive E-Mail: No

Appellant Nelson, Elizabeth L

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Olsavick, Gregory S.

Bar No.: 34620 Law Firm: Edgar Snyder & Associates, L.L.C.

Address: 2900 Old Route 220 Suite 201
Altoona, PA 16601

Phone No.: (814)942-3699 Fax No.: (814)942-9337

Receive Mail: Yes

E-Mail Address: golsavick@edgarsnyder.com

Receive E-Mail: No

Appellee Neff, Barry M

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Dugas, Stephen L.

Bar No.: 21351 Law Firm: Margolis Edelstein

Address: PO Box 628
Hollidaysburg, PA 16648

Phone No.: (814)695-5064 Fax No.: (814)695-5066

Receive Mail: Yes

E-Mail Address: sdugas@margolisedelstein.com

Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
2/19/08	Notice of Appeal	60.00	60.00	2008SPRWD000193

Appeal Docket Sheet**Docket Number: 350 WDA 2008****Page 3 of 3****February 26, 2008****Superior Court of Pennsylvania****TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of Order Appealed From: January 2, 2008

Date Documents Received: February 26, 2008

Order Type: Order

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: February 19, 2008

OTN:

Judge: Reilly, Jr., John K.
Senior Judge

Lower Court Docket No.: No. 07-583-CD

ORIGINAL RECORD CONTENTS

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
February 26, 2008	Notice of Appeal Filed		
		Appellant	Nelson, Elizabeth L
February 26, 2008	Docketing Statement Exited (Civil)		
			Western District Filing Office

FILED

FEB 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

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

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

07-583-CD

Elizabeth L. Nelson and Kenneth A. Nelson

VS.

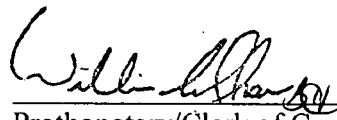
Barry M. Neff

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

The documents comprising the record have been numbered from **No. 1 to No. 31**, and attached hereto is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

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

April 11, 2008.


Prothonotary/Clerk of Courts

(seal)

Date: 4/11/2008

Time: 10:37 AM

Page 1 of 3

Clearing County Court of Common Pleas



ROA Report



User: BHUDSON

Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

Civil Other-COUNT

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Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

Civil Other-COUNT

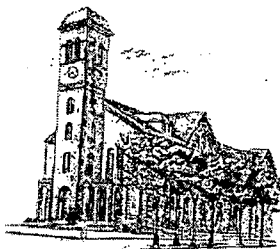
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I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

APR 11 2008

Attest.

William A. Brown
Prothonotary/
Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

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

April 11, 2008

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

Re: Elizabeth L. Nelson and Kenneth A. Nelson
Vs.
Barry M. Neff
No. 07-583-CD
Superior Court No. 350 WDA 2008

Dear Prothonotary:

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

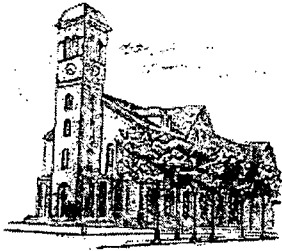
Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**No. 07-583-CD
Elizabeth L. Nelson and Kenneth A. Nelson
VS.
Barry M. Neff**

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	04/16/2007	Complaint in Civil Action	11
02	05/01/2007	Praecipe for Entry of Appearance	02
03	05/02/2007	Motion for Entry Upon Property of a Non-Party for a Site Inspection with Rule filed May 3, 2007, scheduling hearing	24
04	05/08/2007	Sheriff Return	01
05	05/14/2007	Answer	05
06	05/14/2007	Notice of Service of Interrogatories and First Request for Production of Documents	02
07	05/29/2007	Motion for Entry Upon Property of Non-Party	06
08	05/30/2007	Order, Re: Plaintiff's Motion for Entry Upon Property of a Non Party for a Site Inspection Granted	01
09	07/09/2007	Notice of Service of Plaintiffs' Answer to Defendant's Interrogatories and Request for Production of Documents Directed to Plaintiffs	02
10	07/09/2007	Notice of Service of Interrogatories and Request for Production of Documents	02
11	07/27/2007	Notice of Service of Deposition of Barry Neff	03
12	08/06/2007	Notice of Deposition	03
13	08/06/2007	Notice of Answers to Interrogatories and Request for Production of Documents	02
14	09/24/2007	Sheriff Return	01
15	10/01/2007	Certificate of Readiness for Jury Trial	02
16	10/15/2007	Motion for Summary Judgment	10
17	10/15/2007	Praecipe to File Deposition Transcripts, Re: depositions of Elizabeth Nelson and Barry M. Neff	Separate Cover
18	10/15/2007	Order, Re: Pre-trial conference scheduled	01
19	10/16/2007	Order, Re: oral argument is scheduled on Defendant's Motion for Summary Judgment	01
20	11/02/2007	Motion for Continuance and Order granting continuance filed November 8, 2007	01
21	11/15/2007	Notice of Service, Re: Original Supplemental Response to Defendant's Interrogatories and Request for Production of Documents Directed to Defendants	02
22	11/15/2007	Plaintiffs' Response to Defendant's Motion for Summary Judgment	18
23	12/11/2007	Order, Re: Jury Selection and Trial scheduled	01
24	01/17/2008	Opinion and Order, Defendant's Motion for Summary Judgment Granted	03
25	02/19/2008	Notice of Appeal to High Court	06
26	02/19/2008	Request for Transcript	04
27	02/22/2008	Order, Re: concise statement to be filed	01
28	02/28/2008	Appeal Docket Sheet, 350 WDA 2008	03
29	03/06/2008	Application for Enlargement of Time with Order filed March 10, 2008, granting Application	05
30	03/31/08	Statement of Matters Complained of on Appeal	04
31	04/11/08	Letters, Re: Notification of mailing appeal mailed to Gregory S. Olsavick, Esq. and Stephen L. Dugas, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	05



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

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

John K. Reilly, Jr., Senior Judge Sp. Presiding
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Gregory S. Olsavick, Esq.
Regency Square
2900 Old Route 220, Ste. 201
Altoona, PA 16601

Stephen L. Dugas, Esq.
PO Box 628
Hollidaysburg, PA 16648

Elizabeth L. Nelson and Kenneth A. Nelson
Vs.
Barry M. Neff

Court No. 07-583-CD; Superior Court No. 350 WDA 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on April 11, 2008.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED

APR 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

31

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-583-CD
Elizabeth L. Nelson and Kenneth A. Nelson
VS.
Barry M. Neff

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
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07	05/29/2007	Motion for Entry Upon Property of Non-Party	06
08	05/30/2007	Order, Re: Plaintiff's Motion for Entry Upon Property of a Non Party for a Site Inspection Granted	01
09	07/09/2007	Notice of Service of Plaintiffs' Answer to Defendant's Interrogatories and Request for Production of Documents Directed to Plaintiffs	02
10	07/09/2007	Notice of Service of Interrogatories and Request for Production of Documents	02
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18	10/15/2007	Order, Re: Pre-trial conference scheduled	01
19	10/16/2007	Order, Re: oral argument is scheduled on Defendant's Motion for Summary Judgment	01
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22	11/15/2007	Plaintiffs' Response to Defendant's Motion for Summary Judgment	18
23	12/11/2007	Order, Re: Jury Selection and Trial scheduled	01
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25	02/19/2008	Notice of Appeal to High Court	06
26	02/19/2008	Request for Transcript	04
27	02/22/2008	Order, Re: concise statement to be filed	01
28	02/28/2008	Appeal Docket Sheet, 350 WDA 2008	03
29	03/06/2008	Application for Enlargement of Time with Order filed March 10, 2008, granting Application	05
30	03/31/08	Statement of Matters Complained of on Appeal	04

Date: -4/11/2008

Time: 10:14 AM

Page 1 of 3

Clear Creek County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

Civil Other-COUNT

Date		Judge
4/16/2007	New Case Filed.	No Judge
	Filing: Complaint in Civil Action Paid by: Olsavick, Gregory S. (attorney for Nelson, Elizabeth L.) Receipt number: 1918583 Dated: 04/16/2007 Amount: \$85.00 (Check) 1CC shff.	No Judge
5/1/2007	Praeipce For Entry of Appearance, filed on behalf of Defendant, Enter appearance of Stephen L. Dugas, Esquire. No CC	No Judge
5/2/2007	Motion For Entry Upon Property of a Non-Party For a Site Inspection, filed by s/ Gregory S. Olsavick, Esquire. 1CC Sheriff	No Judge
5/3/2007	Rule, NOW, this 3rd day of May, 2007, it is Ordered that Daniel and Lisa Oswald are directed to show cause, if any they have, as to why the Motion for entry Upon Property of Non-Party for a Site Inspection should not be granted. Heaing to be held on the 30th of May, 2007 at 1:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty., 1CC to Shff.	Fredric Joseph Ammerman
5/8/2007	Sheriff Return, May 7, 2007 at 8:40 am Served the within Motion for Entry upon Property/Rule Returnable on Daniel & Lisa Oswald. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Snyder \$33.82	Fredric Joseph Ammerman
5/14/2007	Answer, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
	Notice of Service of Interrogatories & First Request for Production of Documents, on the 11th day of May, 2007 by First Class mail served upon Gregory S. Olsavick, Esquire. filed by s/ Stephen L. Dugas, Esquire.	Fredric Joseph Ammerman
5/29/2007	Motion For Entry Upon Property of Non-Party, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
5/30/2007	Order, this 30th day of May, 2007, Plaintiffs' Motion for Entry Upon Property of a Nonparty for a Site Inspection is granted. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Court For Distribution	Fredric Joseph Ammerman
7/9/2007	Notice of Service of Plaintiffs' Answer to Defendant's Interrogatories and Request for Production of Documents Directed to Plaintiffs on the 6th day of July 2007 to Stephen L. Dugas Esq., filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
	Notice of Service of Interrogatories and Request for Production of Documents upon Defendant on this 6th day of July 2007 to Stephen L. Dugas Esq., filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
7/27/2007	Notice of Service of Deposition of Barry Neff, filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
8/6/2007	Notice of Depostion, filed by s/ Stephen L. Dugas Esq. No CC.	Paul E. Cherry
	Notice of Answers to Interrogatories & Request for Production of Documents, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
9/24/2007	Sheriff Return, April 24, 2007 at 1:29 pm Served the within Complaint on Barry M. Neff. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamrr Shff Hawkins costs pd by Edgar Snyder \$30.00	Fredric Joseph Ammerman
10/1/2007	Certificate of Readiness for Jury Trial, filed by s/ Gregory S. Olsavick, Esquire. No CC	Fredric Joseph Ammerman
10/15/2007	Motion For Summary Judgment, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman

Date: 4/11/2008

Time: 10:14 AM

Page 2 of 3

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

User: BHUDSON

Civil Other-COUNT

Date		Judge
10/15/2007	Praecipe to File Deposition Transcripts, Please file the transcripts of the depositions of Plaintiff Elizabeth L. Nelson and Defendant Barry M. Neff. These transcripts are being filed in connection with Defendant's Motion for Summary Judgment. (copies attached). Filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
	Order, this 15th day of Oct., 2007, it is Ordered that a pre-trial conference has been scheduled for Dec. 11, 2007 at 10:00 am. in Judges Chambers. By The Court, /s/ Paul E. cherry, Judge. 1CC Attys: Olsavick, Dugas	Paul E. Cherry
10/16/2007	Order, this 15th day of Oct., 2007, oral argument is scheduled on Defendant's Motion for Summary Judgment for 1:30 p.m. on the 19th day of Nov., 2007, in Courtroom 2. By The court, /s/ Paul E. Cherry, Judge. 1CC Atty. Dugas	Paul E. Cherry
11/2/2007	Motion For Continuance, filed by s/Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry
11/8/2007	Order, this 8th day of Nov., 2007, upon consideration of the within Motion, it is Ordered that the above matter be continued to the 11th day of Dec., 2007 at 10:30 a.m. By the court, /s/ Paul E. Cherry, Judge. 1CC Atty. Olsavick	Paul E. Cherry
11/15/2007	Notice of Service, on the 13th day of Nov., 2007, the Original Supplemental Response to Defendant's Interrogatories and Request for Production of Documents Directed to Defendants, and 1 copy of this Notice of Service were mailed by first Class Mail to Stephen L. Dugas, Esquire. Filed by s/ Gregory S. Olsavick, Esquire.	Paul E. Cherry
	Plaintiffs' Response to Defendant's Motion for Summary Judgment, filed by s/ Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry
12/11/2007	Order, Jury Selection is scheduled for Jan. 3, 2008, at 9:00 a.m. in Courtroom 2. Trial is scheduled for Feb. 19, 20, 2008 at 9:00 a.m. in Courtroom 2. (see original) By The court, /s/ Paul E. Cherry, Judge. 1CC Attys: Olsavick, Dugas; 1CC Judge Reilly (without memo)	Paul E. Cherry
1/17/2008	Opinion and Order, this 2nd day of Jan., 2008, Defendant's Motion for Summary Judgment is granted and Summary Judgment entered in favor of the Defendant and against Plaintiffs. By the Court, /s/ John K. Reilly, Jr., Senior Judge. 2CC Attys: Olsavick, Dugas; 1CC D. Mikesell and Law Library (without memo)	John K. Reilly Jr.
2/19/2008	Filing: Appeal to High Court Paid by: Edgar Snyder & Associates Receipt number: 1922737 Dated: 2/19/2008 Amount: \$50.00 (Check)	Paul E. Cherry
	Notice of Appeal, filed by s/ Gregory S. Olsavick Esq. 1CC & check to Superior Court and 5CC to Atty.	Paul E. Cherry
	Request for Transcript filed by s/ Gregory S. Olsavick Esq. 1CC to Superior Court and 5CC Atty.	Paul E. Cherry
2/22/2008	Order, this 22nd day of Feb., 2008, it is Ordered that Appellant shall, within 14 days from date hereof, file a concise statement of matters complained of on appeal in accordance with Pennsylvania Rule of Appellate Procedures 1925(b). By The Court, /s/ John K. Reilly, Jr., Senior Judge. 2CC Attys: Olsavick, Dugas	John K. Reilly Jr.
2/28/2008	Appeal Docket Sheet, 350 WDA 2008, filed. No CC	Paul E. Cherry
3/6/2008	Application for Enlargement of Time, filed by Atty. Olsavick 2 Cert. to Atty.	Paul E. Cherry

Date: 4/11/2008

Cleaved County Court of Common Pleas

User: BHUDSON

Time: 10:14 AM

ROA Report

Page 3 of 3

Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

Civil Other-COUNT

Date		Judge
3/10/2008	Order of Court, upon consideration of Appellants/Plaintiffs Application for Enlargement of Time, Order that Appellants shall file a concise statement no later than March 28, 2008. BY THE COURT: /s/John K. Reilly, Jr., S.J., Specially Presiding Two CC Attorney	Paul E. Cherry
3/31/2008	Statement of Matters Complained of on Appeal, filed by s/ Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry

FILED

APR 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON

Plaintiffs,

vs.

BARRY M. NEFF

Defendant.

CIVIL DIVISION

No. 07-583-CD

STATEMENT OF MATTERS
COMPLAINED OF ON APPEAL

Filed on behalf of:

ELIZABETH L. NELSON and
KENNETH A. NELSON

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE
PA I.D. No. 34620

Email: golsavick@edgarsnyder.com

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
2900 Old Route 220
Altoona, PA 16601
(814)942-3699

JURY TRIAL DEMANDED

FILED ^{NO CC}
MAR 31 2008 ^{ER}

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No: 07-583-CD

Vs.

BARRY M. NEFF,
Defendant

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

AND NOW, come the Plaintiffs/Appellant, Elizabeth L. Nelson and Kenneth A. Nelson, by and through their attorneys Edgar Snyder & Associates LLC and Gregory S. Olsavick, Esquire, and file the within Statement of Matters Complained of on Appeal in accordance with Pennsylvania Rule of Appellate Procedure 1925 (b), averring as follows:

1. Did the Trial Court, by the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, err in granting summary judgment in favor of Defendant as to the issue of liability in this case involving a fall down by Plaintiff Elizabeth Nelson on interior steps at Defendant's residence?

2. Did the Trial Court, by the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, err in granting summary judgment in favor of Defendant, where the Court specifically acknowledged that there was sufficient evidence of negligence to proceed to a jury trial (specifically the expert report of Engineer Ron Eck), but concluded that there was no causation as a matter of law?

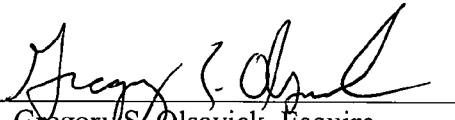
3. Did the Trial Court, by the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, err in granting summary judgment as to the issue of causation, in its failure to find and determine that a genuine issue of material fact existed with regard to the fall down incident.

a. Did the Trial Court, by the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, err in granting summary judgment as to the issue of causation, in reliance solely upon the Plaintiff, Elizabeth Nelson's deposition testimony?

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES LLC

By: _____


Gregory S. Olsavick, Esquire
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within pleading was served on all Counsel listed below, by First Class Mail, postage prepaid and telefax, on this 28th day of March 2008:

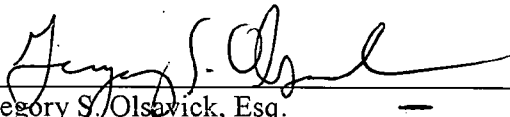
Court Administrator (765-7659)
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, PA 16830

Honorable John K. Reilly, Jr.
Senior Judge, Specially Presiding
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, PA 16830

BY First Class Mail, postage prepaid:

Stephen Dugas, Esq.
Margolis Edelstein
Allegheny Professional Center, Suite 303
1798 Old Route 220 North
PO Box 628
Hollidaysburg, PA 16648

EDGAR SNYDER & ASSOCIATES LLC



Gregory S. Olsavick, Esq.
Attorney for Plaintiffs

FILED

MAR 31 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and KENNETH
A. NELSON

Plaintiffs,

vs.

BARRY M. NEFF

Defendant

No. 07-583 CD

FILED

MAR 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

Filed on behalf of: Plaintiffs

2 cert to App

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE

PA I.D. No. 34620

EDGAR SNYDER & ASSOCIATES, LLC

Regency Square

2900 Old Route 220

Suite 201

Altoona, PA 16601

(814) 942-3699

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

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.: 07-583-CD

Vs.

BARRY M. NEFF,
Defendant

APPLICATION FOR ENLARGEMENT OF TIME

AND NOW, come the Plaintiffs/Appellants, Elizabeth L. Nelson and Kenneth A. Nelson, by and through their attorneys, Edgar Snyder & Associates, and Gregory S. Olsavick, Esquire, and file the within Application for Enlargement of Time to file a concise statement of matters complained of on appeal, averring as follows:

1. On February 19, 2008, Appellants/Plaintiffs filed a Notice of Appeal from the Order of Court filed on January 17, 2008, by the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding.

2. The Notice of Appeal has been docketed in the Superior Court of Pennsylvania, Western District to number 350-WDA 2008.

3. By Order dated and filed on February 22, 2008, Judge Reilly directed Appellants/Plaintiffs to file a precise statement of matters complained of on appeal in accordance with PA Rule of Appellate Procedure 1925(b), "within fourteen (14) days from date hereof, . . ."

4. PA Rule of Appellate Procedure 1925(b)(2) states in relevant part: "The Judge shall allow the Appellant at least twenty (21) days from the date of the Order's entry on the docket for the filing and service of the Statement." Further, Rule 1925(b)(2) goes on to state: "upon

application of the Appellant and for good cause shown, the Judge may enlarge the time period initially specified or permit an amended or supplemental Statement to be filed.”

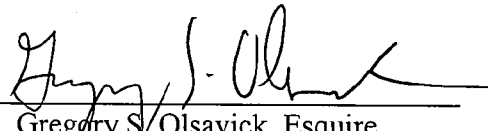
5. Pursuant to Rule 1925(b)(2), twenty-one (21) days from the date of entry of the subject Order would be March 14, 2008.

6. Thus, Appellant/Plaintiffs respectfully request that the Court’s Order be modified to provide for a minimum period of twenty-one (21) days from the February 22, 2008 Order for the purpose of the filing of the concise statement of the matters complained of on Appeal.

WHEREFORE, Appellant/Plaintiff, Elizabeth L. Nelson and Kenneth A. Nelson, respectfully requests this Honorable Court to modify its prior Order of February 22, 2008 for the purpose of filing of the concise statement of the matters complained of on Appeal.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES LLC

By: 
Gregory S. Olsavick, Esquire
Attorney for Plaintiffs

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

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.: 07-583-CD

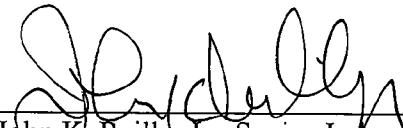
Vs.

BARRY M. NEFF,
Defendant

ORDER OF COURT

AND NOW this 8 day of March, 2008, upon consideration of Appellants/Plaintiffs
Application for Enlargement of Time, it is the Order of this Court that Appellants/Plaintiffs shall
file a concise statement of matters complained of on Appeal in accordance with Pennsylvania
Rule of Appellate Procedure 1925(b), no later than March 28, 2008.

BY THE COURT:


John K. Reilly, Jr., Senior Judge,
Specially Presiding

FILED.

MAR 10 2008

6/8-45/4
William A. Shaw

Prothonotary/Clerk of Courts

2 C.F.R. 10 A.P.R.

DATE: 3-10-08

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

FILED
MAR 10 2008
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

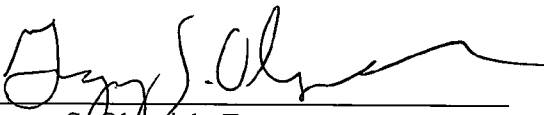
I hereby certify that a true and correct copy of the within Application for Enlargement of Time was served on all Counsel listed below, by First Class Mail, postage prepaid, on this 5th day of March 2008:

Stephen Dugas, Esq.
Margolis Edelstein
Allegheny Professional Center, Suite 303
1798 Old Route 220 North
PO Box 628
Hollidaysburg, PA 16648

Honorable John K. Reilly, Jr.
Senior Judge, Specially Presiding
Court of Common Pleas of Clearfield Co.
230 E. Market Street
Clearfield, PA 16830

Court Administrator
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, PA 16830

EDGAR SNYDER & ASSOCIATES LLC



Gregory S. Olavick, Esq.
Attorney for Plaintiffs

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 350 WDA 2008

Page 1 of 3

February 26, 2008



Elizabeth L Nelson and Kenneth A. Nelson, Appellants

v.

Barry M Neff

07-583-CD

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: February 26, 2008

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType:

Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: March 11, 2008

Next Event Type: Original Record Received

Next Event Due Date: April 21, 2008

FILED
MAY 12 4 49 PM '08
FEB 28 2008
no cc
60

William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 350 WDA 2008

Page 2 of 3

February 26, 2008



COUNSEL INFORMATION

Appellant Nelson, Kenneth

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Olsavick, Gregory S.

Bar No.: 34620 Law Firm: Edgar Snyder & Associates, L.L.C.

Address: 2900 Old Route 220 Suite 201
Altoona, PA 16601

Phone No.: (814)942-3699 Fax No.: (814)942-9337

Receive Mail: No

E-Mail Address: golsavick@edgarsnyder.com

Receive E-Mail: No

Appellant Nelson, Elizabeth L

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Olsavick, Gregory S.

Bar No.: 34620 Law Firm: Edgar Snyder & Associates, L.L.C.

Address: 2900 Old Route 220 Suite 201
Altoona, PA 16601

Phone No.: (814)942-3699 Fax No.: (814)942-9337

Receive Mail: Yes

E-Mail Address: golsavick@edgarsnyder.com

Receive E-Mail: No

Appellee Neff, Barry M

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Dugas, Stephen L.

Bar No.: 21351 Law Firm: Margolis Edelstein

Address: PO Box 628
Hollidaysburg, PA 16648

Phone No.: (814)695-5064 Fax No.: (814)695-5066

Receive Mail: Yes

E-Mail Address: sdugas@margolisedelstein.com

Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
2/19/08	Notice of Appeal	60.00	60.00	2008SPRWD000193

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 350 WDA 2008

Page 3 of 3

February 26, 2008



TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: January 2, 2008

Judicial District: 46

Date Documents Received: February 26, 2008

Date Notice of Appeal Filed: February 19, 2008

Order Type: Order

OTN:

Judge: Reilly, Jr., John K.
Senior Judge

Lower Court Docket No.: No. 07-583-CD

ORIGINAL RECORD CONTENTS

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
February 26, 2008	Notice of Appeal Filed	Appellant	Nelson, Elizabeth L
February 26, 2008	Docketing Statement Exited (Civil)		Western District Filing Office

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ELIZABETH L. NELSON and

:

KENNETH A. NELSON

:

VS.

:

NO. 07-583-CD

BARRY M. NEFF

:

O R D E R

AND NOW, this 22nd day of February, 2008, it is the ORDER of this Court that Appellant shall, within fourteen (14) days from date hereof, file a concise statement of matters complained of on appeal in accordance with Pennsylvania Rule of Appellate Procedures 1925(b).

BY THE COURT,



John K. Reilly, Jr.
Senior Judge
Specially Presiding

FILED ^{2cc/Arts:}
014:00/BN
FEB 22 2008
Olsavick
Dugas

William A. Shaw
Prothonotary/Clerk of Courts



FILED

FEB 22 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/22/08

____ You are responsible for serving all appropriate parties.

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

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

____ Defendant(s) ☒ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON

Plaintiffs,

vs.

BARRY M. NEFF

Defendant.

CIVIL DIVISION

No. 07-583-CD

REQUEST FOR TRANSCRIPT

Filed on behalf of:
ELIZABETH L. NELSON
and
KENNETH A. NELSON

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE
PA I.D. No. 34620

Email: golsavick@edgarsnyder.com

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
2900 Old Route 220
Altoona, PA 16601
(814)942-3699

JURY TRIAL DEMANDED

FILED SCL to AAY
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FEB 19 2008 ICC to Higher Court

William A. Shaw
Prothonotary/Clerk of Courts

1126

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON

Plaintiffs,

vs.

BARRY M. NEFF

Defendant.

) CIVIL DIVISION

)

) No. 07-583-CD

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REQUEST FOR TRANSCRIPT

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

Respectfully submitted:

EDGAR SNYDER & ASSOCIATES, LLC

By: 

Gregory S. Olsavick, Esquire

Attorney for Plaintiffs

Pa. I.D. 34620

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON

Plaintiffs,

vs.

BARRY M. NEFF

Defendant.

) CIVIL DIVISION

)

) No. 07-583-CD

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PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and
in the manner indicated below which service satisfies the requirements of Pa. R.A.P. 121:

Service by first-class mail:

Steven Dugas, Esquire
Margolis Edelstein
Allegheny Professional Center, Suite 303
1798 Old Route 220 North
P.O. Box 628
Hollidaysburg, PA 16648

Honorable John K. Reilly, Jr.
Senior Judge, Specially Presiding
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, PA 16830

Official Court Reporter
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, PA 16830

Court Administrator
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, PA 16830

Respectfully submitted:
EDGAR SNYDER & ASSOCIATES, LLC

By: 

Gregory S. Olsavick, Esquire
Attorney for Plaintiffs
Pa. I.D. 34620

FILED

FEB 19 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON

Plaintiffs,

vs.

BARRY M. NEFF

Defendant.

CIVIL DIVISION

No. 07-583-CD

NOTICE OF APPEAL

Filed on behalf of:
ELIZABETH L. NELSON
and
KENNETH A. NELSON

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE
PA I.D. No. 34620

Email: golsavick@edgarsnyder.com

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
2900 Old Route 220
Altoona, PA 16601
(814)942-3699

JURY TRIAL DEMANDED

FILED pd \$ 50.00
0/2:50um 1cc + check for
FEB 19 2008 \$60.00 to
Higher court
William A. Shaw
Prothonotary/Clerk of Courts 5cc to Atty.
#25

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON

Plaintiffs,

vs.

BARRY M. NEFF

Defendant.

) CIVIL DIVISION

)

) No. 07-583-CD

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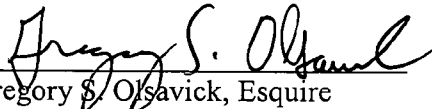
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NOTICE OF APPEAL

Notice is hereby given that Elizabeth L. Nelson and Kenneth a. Nelson, Plaintiffs above-named, hereby appeal to the Superior Court of Pennsylvania from the Order entered in this matter on the 17th day of January, 2008. This Order has been entered in the docket as evidence by the attached copy of the docket entry.

Respectfully submitted:

EDGAR SNYDER & ASSOCIATES, LLC

By: 

Gregory S. Olsavick, Esquire

Attorney for Plaintiffs

Pa. I.D. 34620

Date: 2/19/2008

Clerkfield County Court of Common Pleas

User: LMILLER

Time: 02:48 PM

ROA Report

Page 1 of 2

Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

Civil Other

Date		Judge
4/16/2007	New Case Filed. Filing: Complaint in Civil Action Paid by: Olsavick, Gregory S. (attorney for Nelson, Elizabeth L.) Receipt number: 1918583 Dated: 04/16/2007 Amount: \$85.00 (Check) 1CC shff.	No Judge No Judge
5/1/2007	Praecipe For Entry of Appearance, filed on behalf of Defendant, Enter appearance of Stephen L. Dugas, Esquire. No CC	No Judge
5/2/2007	Motion For Entry Upon Property of a Non-Party For a Site Inspection, filed by s/ Gregory S. Olsavick, Esquire. 1CC Sheriff	No Judge
5/3/2007	Rule, NOW, this 3rd day of May, 2007, it is Ordered that Daniel and Lisa Oswald are directed to show cause, if any they have, as to why the Motion for entry Upon Property of Non-Party for a Site Inspection should not be granted. Hearing to be held on the 30th of May, 2007 at 1:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty., 1CC to Shff.	Fredric Joseph Ammerman
5/8/2007	Sheriff Return, May 7, 2007 at 8:40 am Served the within Motion for Entry upon Property/Rule Returnable on Daniel & Lisa Oswald. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Snyder \$33.82	Fredric Joseph Ammerman
5/14/2007	Answer, filed by s/ Stephen L. Dugas, Esquire. No CC Notice of Service of Interrogatories & First Request for Production of Documents, on the 11th day of May, 2007 by First Class mail served upon Gregory S. Olsavick, Esquire. filed by s/ Stephen L. Dugas, Esquire.	Fredric Joseph Ammerman Fredric Joseph Ammerman
5/29/2007	Motion For Entry Upon Property of Non-Party, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
5/30/2007	Order, this 30th day of May, 2007, Plaintiffs' Motion for Entry Upon Property of a Nonparty for a Site Inspection is granted. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Court For Distribution	Fredric Joseph Ammerman
7/9/2007	Notice of Service of Plaintiffs' Answer to Defendant's Interrogatories and Request for Production of Documents Directed to Plaintiffs on the 6th day of July 2007 to Stephen L. Dugas Esq., filed by s/ Gregory S. Olsavick Esq. No CC. Notice of Service of Interrogatories and Request for Production of Documents upon Defendant on this 6th day of July 2007 to Stephen L. Dugas Esq., filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman Fredric Joseph Ammerman
7/27/2007	Notice of Service of Deposition of Barry Neff, filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
8/6/2007	Notice of Deposition, filed by s/ Stephen L. Dugas Esq. No CC.	Paul E. Cherry
8/7/2007	Notice of Answers to Interrogatories & Request for Production of Documents, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
9/24/2007	Sheriff Return, April 24, 2007 at 1:29 pm Served the within Complaint on Barry M. Neff. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamr Shff Hawkins costs pd by Edgar Snyder \$30.00	Fredric Joseph Ammerman
10/1/2007	Certificate of Readiness for Jury Trial, filed by s/ Gregory S. Olsavick, Esquire. No CC	Fredric Joseph Ammerman
10/15/2007	Motion For Summary Judgment, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman

Date: 2/19/2008

Time: 02:48 PM

Page 2 of 2

Clerk of Court
Clerkfield County Court of Common Pleas

ROA Report

Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

User: LMILLER

Civil Other

Date		Judge
10/15/2007	Praecipe to File Deposition Transcripts, Please file the transcripts of the depositions of Plaintiff Elizabeth L. Nelson and Defendant Barry M. Neff. These transcripts are being filed in connection with Defendant's Motion for Summary Judgment. (copies attached). Filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
	Order, this 15th day of Oct., 2007, it is Ordered that a pre-trial conference has been scheduled for Dec. 11, 2007 at 10:00 am. in Judges Chambers. By The Court, /s/ Paul E. cherry, Judge. 1CC Attys: Olsavick, Dugas	Paul E. Cherry
10/16/2007	Order, this 15th day of Oct., 2007, oral argument is scheduled on Defendant's Motion for summary Judgment for 1:30 p.m. on the 19th day of Nov., 2007, in Courtroom 2. By The court, /s/ Paul E. Cherry, Judge. 1CC Atty. Dugas	Paul E. Cherry
11/2/2007	Motion For Continuance, filed by s/Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry
11/8/2007	Order, this 8th day of Nov., 2007, upon consideration of the within Motion, it is Ordered that the above matter be continued to the 11th day of Dec., 2007 at 10:30 a.m. By the court, /s/ Paul E. Cherry, Judge. 1CC Atty. Olsavick	Paul E. Cherry
11/15/2007	Notice of Service, on the 13th day of Nov., 2007, the Original Supplemental Response to Defendant's Interrogatories and Request for Production of Documents Directed to Defendants, and 1 copy of this Notice of Service were mailed by first Class Mail to Stephen L. Dugas, Esquire. Filed by s/ Gregory S. Olsavick, Esquire.	Paul E. Cherry
	Plaintiffs' Response to Defendant's Motion for Summary Judgment, filed by s/ Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry
12/11/2007	Order, Jury Selection is scheduled for Jan. 3, 2008, at 9:00 a.m. in Courtroom 2. Trial is scheduled for Feb. 19, 20, 2008 at 9:00 a.m. in Courtroom 2. (see original) By The court, /s/ Paul E. Cherry, Judge. 1CC Attys: Olsavick, Dugas; 1CC Judge Reilly (without memo)	Paul E. Cherry
1/17/2008	Opinion and Order, this 2nd day of Jan., 2008, Defendant's Motion for Summary Judgment is granted and Summary Judgment entered in favor of the Defendant and against Plaintiffs. By the Court, /s/ John K. Reilly, Jr., Senior Judge. 2CC Attys: Olsavick, Dugas; 1CC D. Mikesell and Law Library (without memo)	John K. Reilly Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON

Plaintiffs,

vs.

BARRY M. NEFF

Defendant.

) CIVIL DIVISION

)

) No. 07-583-CD

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PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and
in the manner indicated below which service satisfies the requirements of Pa. R.A.P. 121:

Service by first-class mail:

Steven Dugas, Esquire
Margolis Edelstein
Allegheny Professional Center, Suite 303
1798 Old Route 220 North
P.O. Box 628
Hollidaysburg, PA 16648

Honorable John K. Reilly, Jr.
Senior Judge, Specially Presiding
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, PA 16830

Official Court Reporter
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, PA 16830

Court Administrator
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, PA 16830

Respectfully submitted:
EDGAR SNYDER & ASSOCIATES, LLC

By: 

Gregory S. Olsavick, Esquire
Attorney for Plaintiffs
Pa. I.D. 34620

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED

010:37/BL
JAN 17 2008

(R)

William A. Shaw
Prothonotary/Clerk of Courts

2cc Atty's: Olsavick

Dugas

icc: D. M. Vesell and
Law Library
(without memo)

ELIZABETH L. NELSON and :
KENNETH A. NELSON :
VS. : NO. 07-583-CD
BARRY M. NEFF :

OPINION AND ORDER

On January 15, 2007, Plaintiff Elizabeth L. Nelson fell down a flight of stairs located in a residence owned by Defendant, Barry M. Neff. At the time, Plaintiff/Nelson, a Realtor, was preparing to show the premises for sale to a perspective buyer. As a result of the fall, she alleges she sustained certain injuries and she and her husband have commenced this action in negligence against the Defendant.

At the close of discovery, Defendant has moved for summary judgment, alleging that Plaintiffs have failed to sustain their burden of proving causation.

It is clear that, in order to sustain an action for negligence, Plaintiffs must allege and prove three elements: Specifically, negligence on the part of the Defendant; causation; and, damages. Plaintiffs have submitted a report of their expert, Ronald W. Eck, P.E., Ph.D., containing various

defects found on the premises which, if accepted by the jury, would constitute negligence on the part of the Defendant. The Court also notes that damages is not an issue in this motion but would, of course, have to be proved by Plaintiff at trial. The problem here rests in the element of causation, as Plaintiffs must prove that the negligence of the Defendant resulted in Plaintiff's fall and subsequent injuries. The Court finds that Plaintiffs have not alleged, nor can they prove, such causation.

Briefly referring to Plaintiff Elizabeth Nelson's testimony, taken by Defendant on August 21, 2007, the Court notes the following: That Plaintiff climbed the subject steps initially to examine the second floor of the residence, and it was following turning to descend the steps that she fell. She testified that lighting was not a problem; that nothing prevented her seeing the steps; and that there was nothing to distract her attention (see N.T. 21, 22, 38); she had no hesitation to climb the stairway, and it was not particularly dark (see N.T. 24, 38); she does not recall her feet slipping or tripping (see N.T. 32, 33, 34, 37); and that she doesn't recall where her feet were immediately before the fall (see N.T. 37). In this, she was very emphatic (see N.T. 37, 44-45, 48, 64-65).

From the above, it is clear that based on Dr. Eck's report there is sufficient evidence and testimony of negligence to submit to the jury, but there is absolutely no proof in the form of testimony or evidence that this negligence, in any way,

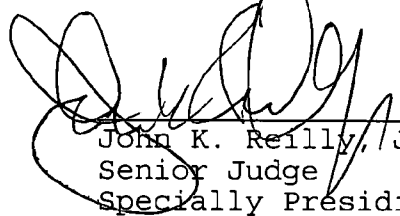
was the legal or proximate cause of Plaintiff's fall.

Therefore, based on the foregoing, and Keller v. Wilkinsburg Joint Water Authority, 140 A.2d 439 (Pa., 1958); Cuthbert v. Philadelphia, 209 A.2d 261 (Pa., 1965); and, Watkins v. Sharon Aerie No. 327, 223 A.2d 742 (Pa., 1966), the Court enters the following

O R D E R

NOW this 2nd day of January, 2008, upon consideration of Defendant's Motion for Summary Judgment and argument and briefs thereon, it is the ORDER of this Court that said Motion is hereby granted and Summary Judgment entered in favor of the Defendant, Barry M. Neff, and against Plaintiffs, Elizabeth L. Nelson and Kenneth A. Nelson.

BY THE COURT,


John K. Reilly, Jr.
Senior Judge
Specially Presiding

FILED

JAN 17 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/17/08

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

1A

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

ELIZABETH L. NELSON and
KENNETH A. NELSON

NO. 07-583-CD

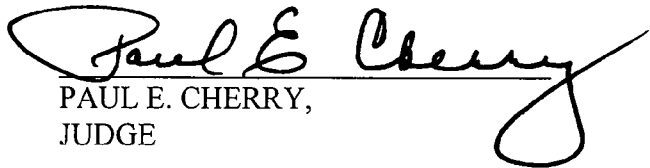
V.

BARRY M. NEFF

ORDER

1. Jury Selection in this matter is scheduled for January 3, 2008, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Trial in this matter is scheduled for February 19, 20, 2008, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania, before the Honorable John K. Reilly, Jr., Senior Judge, specially presiding.
3. The deadline for providing any and all outstanding discovery shall be by and no later than thirty (30) days prior to the commencement of trial.
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. Points for Charge shall be submitted to the Court by and no later than fifteen (15) days prior to the commencement of trial.
6. Proposed Verdict Slip shall be submitted to the Court by and no later than fifteen (15) days prior to the commencement of trial.
7. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
DEC 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty's:
Olson
Dugas

ICC Judge Reilly
(without memo)

GP

#23

FILED

DEC 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/11/07

___ 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

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

vs.

BARRY M. NEFF,
Defendant

No. 2007 CD 583

CIVIL ACTION - LAW

PLAINTIFFS' RESPONSE TO
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

Filed on behalf of:
Plaintiffs

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE
PA I.D. No. 34620

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

FILED *no cc*
m 112:4747
NOV 15 2007 *GA*

William A. Shaw
Prothonotary/Clerk of Courts

#27

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

Vs.

No.: 07-583 CD

BARRY M. NEFF,
Defendant

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

NOW come the Plaintiffs, Elizabeth L. Nelson and Kenneth A. Nelson, by and through their attorneys, Edgar Snyder & Associates LLC, and Gregory S. Olsavick, Esquire and file the within response to Defendant's Motion for Summary Judgment, as follows:

1. Admitted.
2. Admitted.
3. Admitted. By way of further response Plaintiff Elizabeth L. Nelson, (hereinafter "Plaintiff") was accordingly permitted to enter the subject premises and to examine and inspect the same, in her capacity as a licensed real estate agent, and in order that she become familiar with the physical layout of the residence, to assist in her showing it to prospective buyers. As such, Plaintiff was under the circumstances, an invitee and/or business invitee at Defendant's premises and residence.
4. Admitted. By way of further response, as Plaintiff was carefully proceeding, suddenly and without warning, she was caused to slip and fall on the subject stairs and her body was caused to tumble down the stairway, with specific impacts to her left shoulder and side.
5. Denied. To the contrary, the Plaintiff averred that there were various conditions of the stairs and stairway which were dangerous and unsafe, and which were the direct and proximate

result of Plaintiff's fall and injuries. By way of further response, the subject stairs were wooden with no skid resistant material on the treads, and the risers were of different and varying heights. There was no handrail on the subject stairway at any point between the first – ground floor, and the upstairs bedroom. In addition, a sharp right angle turn on the stairway near the top had to be negotiated descending the stairway. Defendant failed to recognize that these conditions of the stairs and stairway were dangerous and unsafe, and constituted a serious fall hazard; and failed to take any actions to correct the dangerous and unsafe conditions, including the installation of a handrail, placement of skid-resistant materials on the treads and/or markings on the stairs, or other corrective actions.

6. Admitted. By way of further response, see the following paragraphs of Plaintiffs' Complaint: 13-19.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Denied. On the contrary, at the time of the initial responses/answers to Interrogatories and Request for Production of Documents, the Plaintiffs' liability expert witness report had not been prepared. At the present time, and as confirmed by supplemental responses to Defendant's Interrogatories and Request for Production of Documents, the expert report of Ronald W. Eck, PE, Ph.D. has been provided to defense counsel.

Further, in pertinent part, the conclusions of Dr. Eck can be summarized as follows:

"I conclude that since there was a single step between the door threshold and the landing at the top of the stairs and since lighting was poor and the edges of treads and nosings could not be accurately detected, after she closed the door to the bedroom, Mrs. Nelson stepped toward the stairway (as pedestrian expectancy

would suggest). Instead of encountering a 7 inch riser height, she encountered a 14 inch riser height. Since when stepping in this direction, the first tread is significantly lower than the single step above, it is foreseeable that pedestrians will put their foot down wrongly due to the misperception of depth when the walking surface is unexpectedly lower. Consequently, it is foreseeable that falls will occur. The weight of the body moves forward and the person falls forward. In my opinion, this is exactly what happened in Mrs. Nelson's fall as she lost her balance and fell forward. In the absence of a handrail, she had no opportunity to stop her fall. Thus, the defective condition of the stairs was the cause of her fall and the injuries she sustained. . . In this case, a short section of railing should have been placed between the threshold and the top landing to clearly delineate the step down to the landing and also to serve as a barrier to prevent pedestrians from inadvertently walking off the side of the step. . . At the very least, since the house was being shown to potential buyers who would be unfamiliar with its layout, warning signs should have been installed to call user attention to the dangerous conditions at the top of the stairs. Furthermore, since it was foreseeable that pedestrians would fall on the stairs at this location, it was particularly important that a secure, graspable and reachable handrail be available for pedestrians to grab. Failure to take any of these actions is not consistent with reasonable and prudent property maintenance and inspection."

A true and correct copy of the expert report of Ronald W. Eck, PE. Ph.D. is attached as Exhibit A.

12. Admitted. By way of further response, the reference to expert depositions would be include both Ronald W. Eck, the liability expert, as well as medical expert testimony.

13. Admitted as to certain portions of Plaintiffs' testimony being summarized by Defendant's attorney, but it is denied that all such summaries are accurate and represent the full sum and substance of Plaintiffs' testimony. Further in this regard, the full content of Plaintiff's deposition can only be considered by reference to the entire transcript.

14. . Admitted as to certain portions of Defendant's testimony being summarized by Defendant's attorney, but it is denied that all such summaries are accurate and represent the full sum and substance of Defendant's testimony. Further in this regard, the full content of Defendant's deposition can only be considered by reference to the entire transcript.

15. Admitted in that Defendant's attorney is referencing by way of summary the relevant Pennsylvania Rule of Civil Procedure respecting summary judgment.

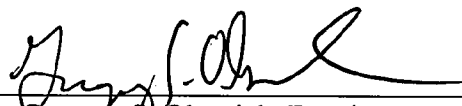
16. Admitted in that Defendant's Attorney is referencing by way of summary the relevant Pennsylvania Rule of Civil Procedure respecting summary judgment. By way of further response, Plaintiffs aver that the pleadings, depositions and discovery, including the expert report of Dr. Eck, establish various genuine issues of material fact, which would preclude the grant of Defendant's Motion for Summary Judgment. This is particularly so where the record must be viewed in a light most favorable to the non-moving party, and all doubt as to the existence of genuine issues of material fact must be resolved against the moving party. In addition, summary judgment may only be entered where the right is clear and free from doubt.

17. Admitted in that Defendant's Attorney is referencing by way of summary the relevant Pennsylvania Rule of Civil Procedure respecting summary judgment. By way of further response, Plaintiffs aver that the pleadings, depositions and discovery, including the expert report of Dr. Eck, establish various genuine issues of material fact, which would preclude the grant of Defendant's Motion for Summary Judgment. This is particularly so where the record must be viewed in a light most favorable to the non-moving party, and all doubt as to the existence of genuine issues of material fact must be resolved against the moving party. In addition, summary judgment may only be entered where the right is clear and free from doubt. By way of further response, Plaintiffs will set forth in it brief in opposition to the summary judgment motion, all material facts establishing negligence and carelessness, as well as proximate causation on the part of the Defendant herein.

WHEREFORE, Plaintiffs respectfully request that Defendant's Motion for Summary Judgment be denied and dismissed.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES LLC

By: 
Gregory S. Olsavick, Esquire
Attorney for Plaintiffs

609 Valley View Street
Morgantown, WV 26505-2412
July 27, 2007

Mr. Gregory S. Olsavick
Edgar Snyder & Associates
Regency Square
2900 Old Route 220, Suite 201
Altoona, Pennsylvania 16601

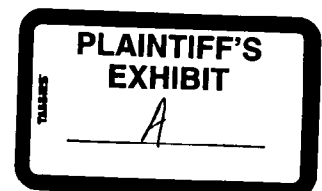
Dear Mr. Olsavick:

RE: Elizabeth Nelson
Your File No.: 410147

At your request, I have reviewed the circumstances associated with a pedestrian fall accident which occurred on January 13, 2007 on a stairway in the residence at 1742 Windy Hill Road near Curwensville, Clearfield County, Pennsylvania. In making this assessment of the stairway in question, I reviewed photographs of the stairs and technical literature on stair safety and relevant codes and standards. In addition, on June 4, 2007, I spoke with Ms. Nelson and inspected the accident site. This report presents my findings and conclusions to date. All opinions presented are within a reasonable degree of engineering certainty.

The details of the accident are brief. Elizabeth Nelson, a 77-year old female working as a realtor, was preparing to show the home at 1742 Windy Hill Road to potential buyers. She arrived at the home prior to the arrival of the potential buyers and was examining the interior of the home. It was the first time she had been in the home. She went up the stairs to the second floor to look at the large bedroom there. She was not carrying anything and was wearing New Balance running shoes with rubber soles. When she got to the top of the stairs, she opened the door and looked in. After looking in, she backed out, closing the door, and then turned to go back down the stairs. As she went to take the first step, she lost her balance and fell down the stairs. She sustained a fractured shoulder and injured elbow in the fall.

The National Bureau of Standards "Guidelines for Stair Safety" (Archea, Collins and Stahl, 1979) notes several categories that relate to stair safety. These include physical attributes of stair surfaces, appearance, handrails, and dimensional integrity and structural quality of stairs. Stairs should be designed so that their physical characteristics safely accommodate the user's desire to change levels.



Archea, Collins and Stahl (1979) note that among the chief concerns in the design, construction or renovation of stairs are the provision of a proper foot-to-stair interface. "This requires a stable walking plane and adequate traction. Among the critical elements of a stable walking plane are adequacy of the dimensions of both risers and treads, as well as the uniformity of all steps. Traction is defined as the resistance provided between a walking surface and the human foot or shoe; it is a relationship established by two materials interfacing at a slip-plane. All contact surfaces must afford the user appropriate resistance to slipping for the existing configurational, climatic, and traffic conditions of the stair."

Relative to riser/tread dimensions, Archea, Collins and Stahl (1979) state that if the riser and tread dimensions are outside the limits of 4 to 7 inches and 11 to 14 inches, respectively, or if the tread depth causes the user to miss a step or take a partial step or if a stair is too narrow to accommodate simultaneous ascent and descent then either redesign (and/or rebuild) the stairs or provide signing and lighting to make the user aware of the potential hazard. They report on research which found that of all stair-related accidents identified, about 22 percent were attributed to steep stairway and/or narrow tread design. They cite researchers who indicate that the sum of the height of a riser and the length of a run should not be less than 17, or more than 18 inches. The overhang should be 1 to 1½ inches. On steeper stairs, people were found to make more missteps in descent. English (1989) also points out the importance of adequate tread width. Increasing tread depth was found to have more effect on stair safety than reducing riser heights.

Relative to appearance, Archea, Collins and Stahl (1979) point out that proper and safe use of stairs requires that users be able to adjust their behavior to meet changing demands. The ability to make rapid and adaptive adjustments depends, in turn, upon the quality of the users' perception of key stair components. A critical issue concerns the correspondence between the apparent and actual characteristics of the stair components, and their relationship to one another. "An objective should be to provide the user with all the cues necessary to correctly detect the prevailing condition of the stair at the time of its use. The human error associated with detection is the 'failure to identify' a hazardous characteristic of the stair. The environmental defect associated with detection is a 'deception' that is built into a stair in a manner that increases the user's susceptibility to misreading the characteristics of the stair. Since people will generally be able to compensate for unusual or hazardous conditions of which they are aware, ensuring the detection of the hazard is important."

"The tread surfaces themselves provide many important cues. Accordingly, care should be taken when designing their appearance. It is essential that: (1) a complete, correct, and consistent pattern of cues that emphasizes and corresponds to the conditions actually prevailing on the stair be available to the user; (2) all colors, edges, lines, alignments, plane patterns, and textures interact to produce a 'true' representation of stair surface conditions; and (3) stair surfaces should be free from permanent design features and transitory qualities that could serve to confuse the user."

With respect to visibility of tread edges, Archea, Collins and Stahl (1979) state that if any users are unable to clearly distinguish the edges of each tread when the flight is viewed from the top landing under normal use conditions, then replace or refinish the tread surfaces and nosings, and place an illumination source so that a clear visual distinction is provided between planes representing each stair tread including the top tread or landing when seen from above. "A critical requirement for successful stair negotiation is that the user's metatarsal arch must be thoroughly supported by the tread. In order to assure that the foot will be adequately supported, the user must be able to detect the precise location of the tread edge prior to stepping upon the tread. This requires reliable cues which facilitate the visual detection of the edge of each tread."

Archea, Collins and Stahl (1979) indicate that the dimensional and structural quality of a stairway is assessed in terms of the ability of a stair to maintain its strength and stability under loading, and in addition, to provide a continuous and regular walking surface. They note that non-uniformity of step dimensions may affect the balance and timing of persons using stairways to cause them to misstep, overbalance, stumble or fall with the subsequent possibility of serious injury. "Uniformity of step dimensions is not only important in a single stair flight but should be observed on all stairways"

Another important element of a stair is the handrail. Once a misstep has occurred, a person may stop the fall only by grabbing for and holding onto a handrail. English (1989) notes that handrails serve three fundamental purposes:

- To provide the approaching pedestrian with a visual cue as to the change in elevation and the presence of the stairs.
- To provide a support to the stair user, especially the elderly and others who may be motor-impaired.
- To offer the victim of slipping or tripping incidents a chance to arrest an incipient fall by grasping the rail.

Mr. Gregory S. Olsavick
July 27, 2007
Page 4

English (1989) goes on to say that because railings must also serve as support to those who are fearful of falling and those who have begun to fall, careful consideration should be given to their graspability by the intended user population. The best diameter for gripping is between 1.375 and 1.75 inches, and in order to facilitate emergency use, handrails should be a minimum of 2.25 inches away from a wall or other obstruction.

Archea, Collins and Stahl (1979) indicate that the design and provision of adequate handrails are key tasks in any program of reducing stairway accidents. "Secure handrails should be available to the user at every point throughout his use of a stair . . . and should be graspable at any point on the stair or landing." "If a handrail cannot be grasped by a typical user such that his thumb or index finger form a shape similar to the letter 'C', . . . then install or replace the railing in a manner that will permit a comfortable and secure grasp under all conditions."

Archea, Collins and Stahl (1979) go on to point out that during an accident, the primary purpose of the rail is to provide a point of anchorage. Consequently, the handrail should be available at all points throughout the flight, placed at a height within the user's reach, and structurally capable of supporting the user's weight under impact.

Archea, Collins and Stahl (1979) indicate that if there are stairs within the dwelling unit in which the upper landing (or top tread) is obscured by a door which is normally in a closed position, or if there are flights of stairs within the dwelling unit which descend from areas that are normally used for sleeping, then provide a luminous cue within the stairwell which is clearly visible from a point on the user's approach to the stair, prior to his having reached the top nosing, and which clearly indicates the drop in floor level. They suggest one way to accomplish this, i.e., provide a night light on the side wall of the stairway which is in line with the user's approach to the stair, and which is at least one riser-depth below the level of the upper landing.

Archea, Collins and Stahl (1979) discuss two common types of residential stair accidents: a) when people proceed through a door, only to find themselves falling down an unexpected flight of stairs or b) when someone awakens in the middle of the night, inadvertently turns the wrong way, and falls down the flight of stairs. "Both types of accidents are common among people who are unaccustomed to the layout of an unfamiliar home." To counteract this problem some type of warning signal must be provided that can command the attention of the user and elicit the most effective reaction. Although less conspicuous than a luminous signal, high color contrast between the treads could be used as a cue. "By placing the cue below the level of the upper landing, a sense of depth can be conveyed which will alert the oncoming user to the possibility of falling."

Archea, Collins and Stahl (1979) point out that "The stair treads and handrails should be the most conspicuous objects in the user's visual field." The visible slope of the handrail and the series of tread nosings are the most reliable cues which indicate to the user that there are stairs in the pathway. "Once the user is aware of the stair, he must know the position and condition of the tread surfaces and the handrail, in order to use the stair successfully. In addition, the user should know about any related surrounding features which might precipitate an accident." "Anything that makes treads and handrails stand out against their background, will consequently, contribute to the successful use of a flight of stairs."

English (1989) states that "to the extent possible, changes in direction of the stairs should be avoided." These are very confusing to the stair user and are so hazardous as to be prohibited under OSHA regulations.

The importance placed on the dimensional aspects of stairs is illustrated in the various building codes adopted around the county. For example, the International Residential Code (2003) Section R311.5.6—Handrails states that handrails shall be provided on at least one side of each continuous run of treads of flight with four or more risers.

Figure 1 presents a view of the area at the top of the stairs. A portion of the door to the aforementioned bedroom is shown in the upper left. Note that there is a non-standard arrangement of steps. The top landing is not as wide as the approach stairs since a single step has been installed between the door threshold and the landing. This represents a violation of Section R311.5.4 of the International Residential Code which states that the width of each landing shall not be less than the stairway served.

Given the non-standard stair arrangement, it is particularly important that unfamiliar users, such as Ms. Nelson, be able to clearly see the tread nosings and the landing. In this instance, the lighting was insufficient to allow users to clearly see the arrangement of stair elements, especially given the dark brown and black color of the wood comprising the stairs. Note that all of the photographs included herein were taken with a flash unit so that details could be clearly seen. However, in the absence of artificial light, the stairwell is rather dark, even during daytime. It is my understanding that the light above the landing was not on at the time of the fall. As shown in Figure 2, there is a small window above the landing. During the afternoon (when this accident occurred) some natural light would enter through the window; the amount would depend on sun angle, sky conditions, presence of vegetation and related factors. In any event, the

Mr. Gregory S. Olsavick
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Page 6

window is too far above the landing to illuminate the stairs. In fact, due to issues of glare and shadows, the light coming through the window may make the stair configuration more difficult to see.

As shown in Figure 3, viewed from the threshold of the doorway to the bedroom, even under "flash" lighting, it is difficult to detect the tread nosings and to distinguish the landing from the treads. Similarly, the magnitude and nature of the single step below the threshold cannot be determined from this perspective. The lack of visual contrast between the stair tread of the single step and the main landing and between the stair treads themselves is deceptive to users. In my opinion, this arrangement creates a serious fall hazard since pedestrians can step in two directions as they descend. Straight ahead is a "normal" 7-inch riser to the landing below. However, proceeding in the direction of the stairs, the riser height is essentially 14 inches, which exceeds the allowable riser height permitted by the International Residential Code (2003) and represents a serious hazard since a drop of this nature is not expected by users. Therefore, I conclude that the non-standard stair geometry at the top of the main stairs is inherently dangerous.

My site inspection confirmed that there were no handrails on the stairway in question. This is a violation of Section R311.5.6 of the International Residential Code (2003) which requires a handrail on at least one side of the stairs. Thus, the stairs do not comply with building code requirements due to absence of a handrail. In her conversation with me, Mrs. Nelson indicated that she might have been able to grab the handrail, had one been present, to arrest her fall. Thus, I consider the lack of a handrail to be a contributing factor in her fall and in the severity of the injuries she sustained.

It has been shown that this stairway does not comply with the International Residential Code requirements or with accepted stair safety practice. Since the stairway is non-compliant, non-conventional and deceptive, in my opinion, it is defective. The stairway represents a hazardous condition for users. Under the circumstances, it was foreseeable that falls would occur, particularly at or near the top as users are beginning to descend the stairs. The situation was deceptive in that stair users could not discern the defects. Thus, it was foreseeable that an unsuspecting user would misstep and fall near the top of the stairs. The hazard created was particularly severe because, given the poor lighting and the dark color of the stairs, it could not be readily discerned by reasonable users of the stairs.

The owner failed to provide adequate lighting and to adequately delineate the stair treads. Similarly, there was a failure to warn unfamiliar users about the dangers posed by the defective stairs.

Mr. Gregory S. Olsavick
July 27, 2007
Page 7

I conclude that since there was a single step between the door threshold and the landing at the top of the stairs and since lighting was poor and the edges of treads and nosings could not be accurately detected, after she closed the door to the bedroom, Mrs. Nelson stepped toward the stairway (as pedestrian expectancy would suggest). Instead of encountering a 7 inch riser height, she encountered a 14 inch riser height. Since when stepping in this direction, the first tread is significantly lower than the single step above, it is foreseeable that pedestrians will put their foot down wrongly due to the misperception of depth when the walking surface is unexpectedly lower. Consequently, it is foreseeable that falls will occur. The weight of the body moves forward and the person falls forward. In my opinion, this is exactly what happened in Mrs. Nelson's fall as she lost her balance and fell forward. In the absence of a handrail, she had no opportunity to stop her fall. Thus, the defective condition of the stairs was the cause of her fall and the injuries she sustained.

Given the circumstances presented, the stairs constituted a high accident risk situation such that falls of the type which occurred were foreseeable. The condition violated several provisions of the International Residential Code and violated accepted safety principles. In combination, these defects interfered with Mrs. Nelson's ability to monitor the relationship between her foot movement and the walking surface. Thus, the fall in question was a direct result of improper stair design, construction and maintenance.

In this case, a short section of railing should have been placed between the threshold and the top landing to clearly delineate the step down to the landing and also to serve as a barrier to prevent pedestrians from inadvertently walking off the side of the step. This could be designed to be removable such that access would not be hindered in the event furniture or other large objects needed to be moved in/out of the bedroom. If this was not possible, there were a number of remedial measures that could have and should have been implemented relatively quickly. A painted stripe or line should have been placed at the nosing of the treads and at the edge of the landing to more clearly delineate these edges. At the very least, since the house was being shown to potential buyers who would be unfamiliar with its layout, warning signs should have been installed to call user attention to the dangerous conditions at the top of this stairs. Furthermore, since it was foreseeable that pedestrians would fall on the stairs at this location, it was particularly important that a secure, graspable and reachable handrail be available for pedestrians to grab. Failure to take any of these actions is not consistent with reasonable and prudent property maintenance and inspection.

Mr. Gregory S. Olsavick

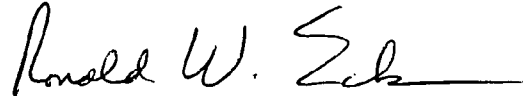
July 27, 2007

Page 8

Because the stair in question was used by unfamiliar pedestrians who were exposed to serious safety hazards, it is my opinion that the owner of the home was negligent in failing to use reasonable care and follow prudent practices relative to the design, construction, inspection and maintenance of the stairs in question. Mrs. Nelson's fall was a direct result of this lack of adequate design, construction, inspection and maintenance in contravention of accepted safety standards and practices.

In combination, these defects interfered with Mrs. Nelson's ability to monitor the relationship between her feet and the edges of the stair treads and with the ability to catch herself as he fell. Had a compliant handrail been in place, she would have had the opportunity to arrest her fall by grabbing the handrail.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald W. Eck", with a long horizontal flourish extending to the right.

Ronald W. Eck, P.E., Ph.D.

References

Archea, J., Collins, B.L., and Stahl, F.I., "Guidelines for Stair Safety," NBS Building Science Series 120, Center for Building Technology, National Bureau of Standards, Washington, DC, May 1979.

English, W., Slips, Trips and Falls: Safety Engineering Guidelines for the Prevention of Slip, Trip and Fall Occurrences, Hanrow Press, Del Mar, CA, 1989.

International Code Council, International Residential Code 2003, Country Club Hills, IL, 2003.

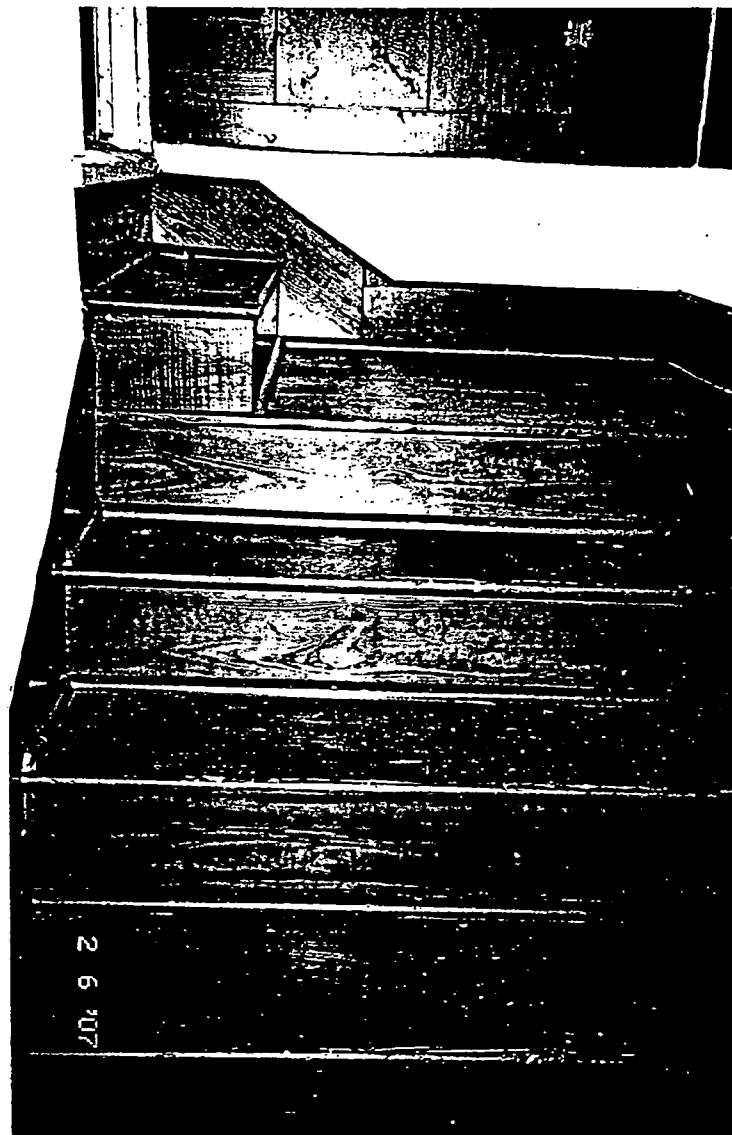


Figure 1. Area at Top of Stairs at 1742 Windy Hill Road.

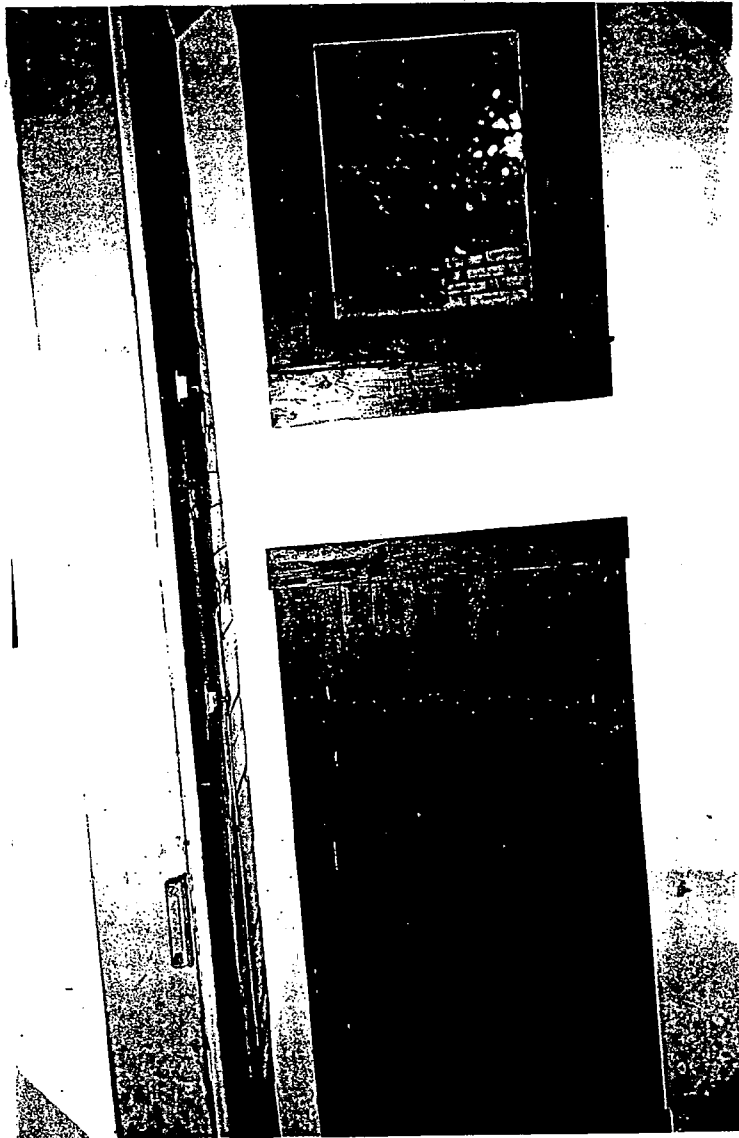


Figure 2. Small Window Above Landing in Question.

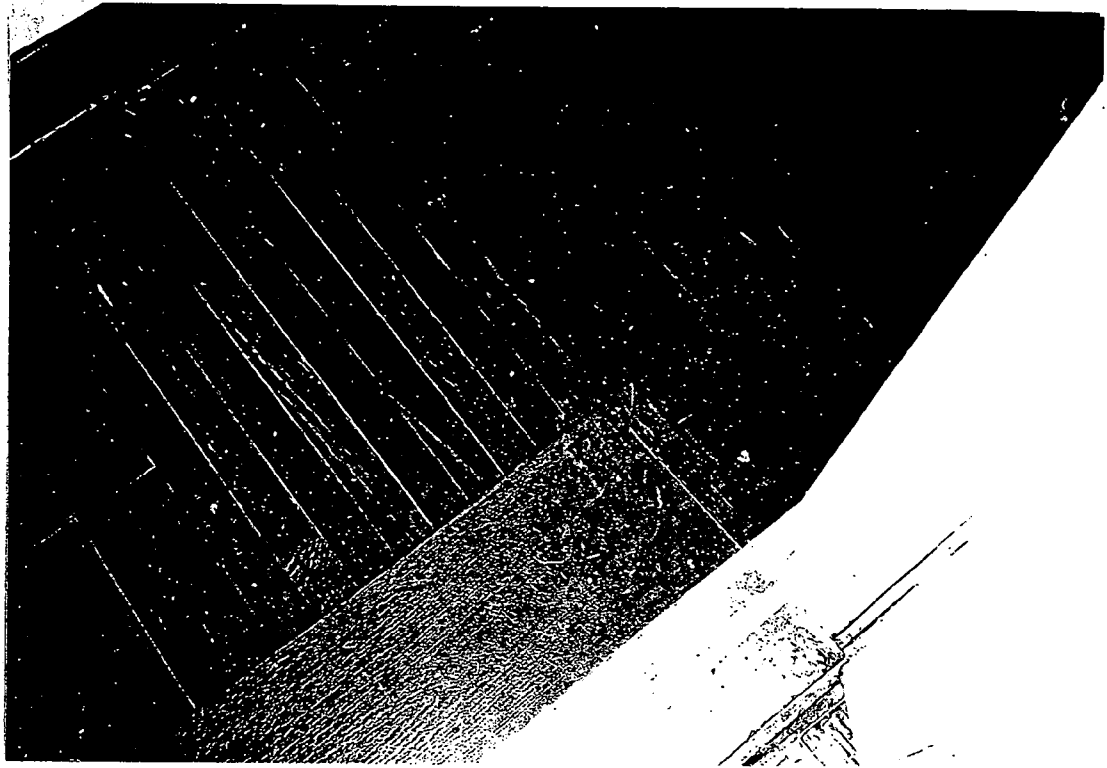


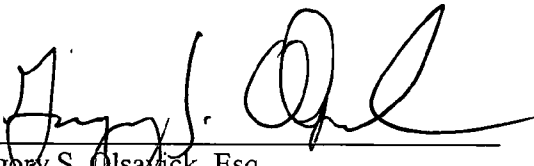
Figure 3 Landing and Single Step as Viewed from Threshold.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Response to Defendant's Motion for Summary Judgment was served on all Counsel listed below, by First Class Mail, postage prepaid, on this 13th day of November 2007:

Stephen L. Dugas, Esq.
Margolis Edelstein
PO Box 628
Hollidaysburg, PA 16648

EDGAR SNYDER & ASSOCIATES LLC



Gregory S. Olsawick, Esq.
Attorney for Plaintiffs

FILED

NOV 15 2007

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs,

vs.

BARRY M. NEFF,
Defendant.

No. 2007 CD 583

NOTICE OF SERVICE OF
SUPPLEMENTAL RESPONSE TO
DEFENDANT'S DISCOVERY DIRECTED
TO PLAINTIFF

FILED

NOV 15 2007

M 1:06/4

William A. Shaw
Prothonotary/Clerk of Courts

610

Filed on behalf of:
Plaintiffs

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE

PA I.D. No. 34620

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.:

CIVIL ACTION - LAW

Vs.

BARRY M. NEFF,
Defendant

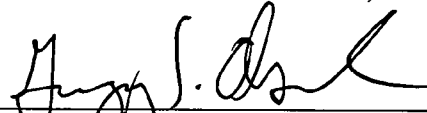
**NOTICE OF SERVICE OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT[S]**

I hereby certify that on this 13th day of November, 2007, the original SUPPLEMENTAL RESPONSE TO DEFENDANT'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT[S], and one (1) copy of this NOTICE OF SERVICE were mailed by First Class Mail, postage prepaid, to counsel for Defendant[s] at the following address[es]:

Stephen L. Dugas, Esq.
Margolis Edelstein
PO Box 628
Hollidaysburg, PA 16648

EDGAR SNYDER & ASSOCIATES, LLC

By



Gregory S. Olsavick, Esq.
Attorney for Plaintiffs

FILED

NOV 15 2007

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

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

Vs.

No.: 07-583 CD

BARRY M. NEFF,
Defendant

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11/10/35/81
NOV 02 2007 (GR)

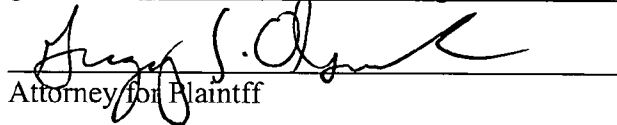
MOTION FOR CONTINUANCE

William A. Shaw
Prothonotary/Clerk of Courts

1. This action was instituted on April 16, 2007.
2. This matter is presently scheduled for Oral argument on Defendant's Motion for Summary Judgment on November 19, 2007 at 1:30 p.m. and a Pre-Trial Conference on December 11, 2007 at 1:30 p.m.
3. This matter has previously been continued there have been no prior continuances.
4. Counsel for Plaintiff requests that the above captioned matter be continued.

The reasons for this requested continuance are as follows: Counsel for Plaintiff has depositions scheduled in Blair County on November 19, 2007.

All parties or their attorneys have been made aware of the presentation of this Motion and have responded as follows: Stephen L. Dugas, counsel for the Defendant is agreeable to the continuance.

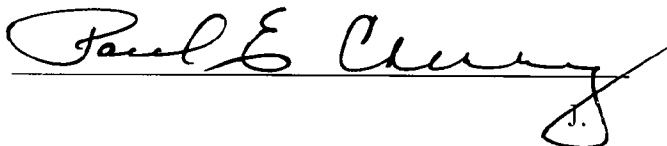

Attorney for Plaintiff

cc: Stephen L. Dugas, Esq.

ORDER OF COURT

AND NOW, this 8th day of November, 2007, upon consideration of the within Motion, it is hereby ORDERED AND DECREED that the above captioned matter be continued to the 11th day of December, 2007 at 10:30 o'clock A M.

BY THE COURT:


J.

FILED ^{icc}
014100304 Atty Olsavick
NOV 08 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

#20

FILED

NOV 08 2007

William A. Shaw
Prothonotary/Clerk of Courts

FILED

NOV 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/8/07

☒ 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:

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

CIVIL ACTION - LAW

No: 2007 CD 583

JURY TRIAL DEMANDED

ORDER

AND NOW this 15th day of October, 2007, oral argument is hereby scheduled on Defendant's Motion for Summary Judgment for 1:30 o'clock P.m., on the 19th day of November, 2007, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, Pennsylvania. Brief in support of the Motion is due on the _____ day of _____, 2007. Brief in opposition to the Motion is due on the _____ day of _____, 2007.

BY THE COURT,

Paul E. Cherry

FILED 100
OCT 16 2007
Atty
Dugas

William A. Shaw
Prothonotary/Clerk of Courts

#19

FILED

OCT 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/16/07

X You are responsible for serving all appropriate parties.

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

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

___ Defendant(s) ___ Defendant(s) / Attorney

___ Special Instructions:

LA

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

ELIZABETH L. NELSON and
KENNETH A. NELSON

vs.

BARRY M. NEFF

:
:
:
: No. 07-583-CD
:
:

ORDER

AND NOW, this 15th day of October, 2007, it is the Order of
the Court that a pre-trial conference in the above-captioned matter has been
scheduled for Tuesday, December 11, 2007 at 10:00 A.M. in Judges Chambers,
Clearfield County Courthouse, Clearfield, PA. Additionally, Jury Selection in this
matter will be held on January 3, 2008.

BY THE COURT:

FILED
012:30/201
OCT 15 2007

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty's: Olsavick
Sugas

GR


PAUL E. CHERRY
Judge

#19

FILED

OCT 15 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/15/07

___ 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:

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW

:
: No: 2007 CD 583

:
: **ISSUE: Motion for Summary Judgment**

:
: Filed on Behalf of Defendant

:
: Counsel of Record for this Defendant:

:
: MARGOLIS EDELSTEIN

: Stephen L. Dugas, Esquire

: PA. I.D. # 21351

: PO Box 628

: Hollidaysburg, PA 16648

: (814) 695-5064

: Fax: (814) 695-5066

I hereby certify that a true and correct
copy of the within was mailed to all
counsel this 12th day of October, 2007

Attorney for Defendant

FILED ^{NO} ^{CC}
OCT 15 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW

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No: 2007 CD 583

JURY TRIAL DEMANDED

MOTION FOR SUMMARY JUDGMENT

NOW COMES Barry N. Neff, Defendant, and by his attorneys, Margolis Edelstein, files this Motion for Summary Judgment, whereof the following is a statement:

1. This matter was commenced by Complaint filed on or about April 16, 2007.
2. In their Complaint, Plaintiffs alleged that Plaintiff Elizabeth L. Nelson ("Plaintiff") received bodily injuries on January 15, 2007, when she fell on stairs in the residence of Defendant located in Curwensville, Clearfield County, Pennsylvania.
3. At the time of the said accident, Plaintiff was on the premises intending to "show" the premises to prospective purchasers, inasmuch as Defendant has placed the premises for sale with a local realtor.
4. Plaintiff alleged that she entered the premises, ascended the stairs to the second floor, opened the door, stood in the doorway and looked into the room, closed the door, intending to return by descending the same stairs she had ascended, all of which transpired uneventfully.
5. Plaintiff avers that she was somehow caused to slip and fall from the top of the stairs, receiving bodily injuries in the process.

6. Plaintiff alleges that Defendant was negligent in that the staircase was dangerous, unsafe and hazardous, a fact which Defendant allegedly knew or should have known about prior to the accident.

7. The specific averments of negligence levied against Defendant are found in Paragraph 21 of the Complaint, as follows:

- a. In causing and/or permitting dangerous, hazardous, unsafe and slippery conditions to exist on the subject stairs/stairway.
- b. In causing and/or permitting dangerous, hazardous, unsafe and slippery conditions to exist on stairs/stairway being utilized by invitees and/or business invitees.
- c. In failing to warn and/or notify the plaintiff of the dangerous, hazardous, unsafe and slippery conditions of the subject stairs/stairway prior to the incident;
- d. In failing to warn Plaintiff of the dangerous, hazardous and slippery conditions of the subject stairs/stairway, and advise Plaintiff to exercise a high degree of caution in descending the stairs/stairway;
- e. In failing to take any steps, actions, or adequate precautions to correct the dangerous, hazardous, and slippery conditions for the subject stairs/stairway;
- f. In failing to adequately inspect the subject stairs/stairway prior to the incident, when Defendant knew or reasonably should have known that dangerous, hazardous and slippery conditions existed on the stairs/stairway under the circumstances;
- g. In failing to properly inspect for dangerous, unsafe and slippery conditions of the subject stairs/stairway, including the failure to recognize that there did not exist any handrail anywhere on the subject stairway, notwithstanding the subject stairs did not have any slip-resistant materials on the tread;

- h. In failing to properly inspect for dangerous, unsafe and slippery conditions of the subject stairs/stairway, including the sharp right angle turn at the top of the stairway, which had to be negotiated by individuals descending the stairway;
- i. In failing to properly inspect for dangerous, unsafe, and slippery conditions of the subject stairs/stairway including the failure to recognize that the individual might step through the first stair below the threshold onto the stair located at a right degree angle below the landing where the raiser was of extreme height;
- j. In causing and/or permitting the threshold of the door at the top of the stairway to be uneven and not level, and in a deteriorated condition such that it sloped downward from the door of the upstairs bedroom;
- k. In causing and/or permitting the threshold of the door at the top of the stairway to be worn, deteriorated, irregular and slippery prior to the incident;
- l. In causing and/or permitting the landing at the top of the stairway descending from the threshold to be of a shorter width compared to the stairs themselves which creates a serious fall hazard;
- m. In causing and/or permitting the conditions of the subject stairs/stairway, as aforesaid, which were inherently dangerous as they violated pedestrian expectancy and created a serious fall hazard; including that an individual could step from the upper stair down at a right degree angle where there exists an excessively riser;
- n. In failing to take any steps, actions, or adequate precautions to remedy the said dangerous, hazardous and unsafe conditions of the subject stairs/stairway, as aforesaid, resulting in a situation where it was reasonably foreseeable that falls would occur at or near the top of the stairway;
- o. In failing to have adequate lighting and/or illumination in the subject stairway which was utilized by invitees and/or business invitees, as of the time of the incident.

8. Plaintiff Kenneth A. Nelson has joined in this suit, alleging that he has suffered a loss of consortium as a consequence of his wife's injuries.

9. Defendant filed a timely Answer to the Complaint, admitting ownership of the subject premises but otherwise effectively denying all averments of negligence levied against him in the Complaint.

10. Discovery has been undertaken, including Interrogatories and Requests for Production of Documents and Answers thereto, depositions of Plaintiffs and Defendant and a court-ordered inspection of the premises occurring on or about June 4, 2007, upon Motion filed by Plaintiff, whereat Plaintiff's counsel and Plaintiff's alleged expert were provided with an opportunity to inspect, measure and photograph the subject premises.

11. Defendant served Plaintiffs with "expert Interrogatories", consistent with Pa. R.C.P., Rule 4005, to which Plaintiffs responded by failing to identify their expert for use at trial or provide any opinions or reports.

12. On or about September 28, Plaintiff's counsel filed a Certificate of Readiness certifying that all discovery had been completed and the case was ready for trial except for "expert depositions".

13. The deposition of Plaintiff Elizabeth L. Nelson was taken on August 21, 2007. In her deposition she testified as follows:

- a. At the time of the subject accident she was employed as a real estate salesperson for CP Realty. (p. 11);
- b. She had an appointment to show Defendant's house to prospective purchasers at 1 o'clock in the afternoon of the date of the accident. (p. 12-13);

- c. The weather outside that day was a typical winter day, and there may have been some snow on the ground. (p. 13);
- d. She arrived at the subject residence and gained entrance by using a key inside a lockbox on the premises to enter the backdoor. (p. 14-15);
- e. She arrived at the premises approximately 15 minutes before her clients were scheduled to arrive and "looked through the house", looking through the living room, the study, two bedrooms and the bath downstairs initially. During that inspection she did not recall whether she turned on the interior electric lights or not, but she did not have any difficulty observing her surroundings. (p. 16-17);
- f. She ascended the staircase, opened the door and looked in the room, observing batts of fiberglass insulation on the floor, and therefore did not enter. (p. 18);
- g. Plaintiff did not believe that the ambient lighting presented any difficulty in observing the steps or her surroundings. (p. 22);
- h. Plaintiff had no difficulty ascending the steps, nor did she think they were unsafe, believing only that they were "odd, but I don't know why I thought that." (p. 24);
- i. Plaintiff was not sure where her feet were positioned as she opened the door at the top of the stairs, and could not remember whether she had stepped onto the threshold or remained on the landing immediately below it. (p. 28-29);
- j. Plaintiff had no difficulty with her footing as she stood in front of the door or while closing the door. (p. 29-20);
- k. After closing the door Plaintiff turned, but again could not remember where her feet were positioned, except to say that she put one foot "down", followed by the other foot "and then that's the last I remember." (p. 31);
- l. Contrary to the allegations in her Complaint, Plaintiff specifically did not recall either of her feet slipping, and in fact indicated that she "tried to tell them that I couldn't remember of any slipping." (p. 32-33);

- m. At the time of the accident Plaintiff was wearing rubber-soled walking/running shoes which she said gave her pretty good traction, were not worn out, and which she could not recall ever slipping or sliding while wearing them previously. (p. 34);
- n. After reiterating that she did not know how her feet were positioned before she began to fall, except to state that she was not on the "landing", but "probably" standing either with one foot on the landing and one foot on the step, she specifically said that she had "no idea" what had caused her to fall, but did not remember catching her foot on anything, nor being distracted from her surroundings or otherwise being subject to circumstances which would have prevented her from being observant and aware of her surroundings at the time. (p. 37-38);
- o. When asked yet again whether she knew what had caused her to fall, Plaintiff specifically said "I don't know that.", but she did know that the steps had been "cleaned off", and there was nothing on the steps that might have caused her to trip or fall. (p. 45);
- p. Plaintiff admitted that she saw nothing particularly different about the house or the stairway where the accident happened, although she initially "thought it had low risers, but when they measured them afterwards, they didn't." (p. 45-46). Plaintiff testified that nothing on the staircase cracked or broke or gave way to cause her to fall. (p. 48).

14. The deposition of Defendant Barry N. Neff was taken on August 21, 2007. In his deposition, Defendant testified as follows:

- a. He had owned the subject premises for over 23 years, and resided there continuously except for a nine-month period between August 1991 and June 1992, when he was absent while volunteering to teach at school Malaysia. (p. 28);
- b. During his nine-month absence, a couple had resided there as caretakers, but other than occasional guests, Defendant resided in the premises by himself. (p. 29);

- c. No one had ever fallen down the stairs involved in this litigation at any time, other than Plaintiff, nor had anyone ever given him any complaints about the condition of the stairs. (p. 30);
- d. He described the configuration of the house as including a door off the kitchen leading to a few stairs, to the lower landing above which there was a window, then a right-hand turn with more steps to the middle landing, following by another right-hand turn and additional stairs to the top landing where there was another window, across from which was the door to the former bedroom. (p. 31);
- e. The windows above the lower and upper landing were approximately two feet wide, two feet high and approximately five feet above the floor, without any windows, draperies or other coverings. (p. 31);
- f. Approximately 10 days prior to the date of the accident, Defendant cleaned the subject stairway by mopping with water, and removing everything off the steps themselves, plus painted the walls and cleaned the windows on either side of the staircase. (p. 35);
- g. In addition to cleaning and painting, Defendant also replaced one burned out light bulb, following which both electric lights were fully operational, being located in the center of the ceiling above the top landing and a similar arrangement in the ceiling above the bottom landing, each with 100 watt, uncovered bulbs. The switches for those lights were at the bottom landing near the door from the kitchen that entered the stairway. (p. 36-37);
- h. Defendant had placed the subject property for sale with Burleigh Real Estate, which began showing the premises on January 2, 2007, prior to which he recalled there being two inspections of the property, one being a bank inspector for mortgage purposes and another being an insurance inspector, neither of which inspections resulted in any awareness on his part that a hazardous condition existed. (p. 39-40);
- i. In addition, the owner of Burleigh Real Estate also

personally inspected and photographed the premises while being given a tour by Defendant, including walking up the subject stairway to show the upstairs room. (Page 41-42);

- j. The Defendant indicated that the stairs were made of wood that was "of a very non-skid type (with) nothing on the wood that had any slippery nature to it." Moreover, he had never placed any kind of substance, chemical or wax of any sort on the stairs at any time. (p. 43);
- k. Defendant was not present at the time of Plaintiff's accident, having left in anticipation of a showing by a realtor and when he returned later that evening, he observed nothing unusual or out of the ordinary with respect to the condition of his residence. (p. 45);
- l. Defendant continued to be unaware of Plaintiff's accident until after he moved from the premises on or about February 12, 2007, due to its sale to the subsequent owners. (p. 47).

15. Under Pa. R.C.P. Rule 1035.1 et seq., after the pleadings are closed, and at such time as to not delay trial, any party may move for summary judgment based upon the pleadings, depositions, Answers to Interrogatories and affidavits.

16. Under Pa. R.C.P. Rule 1035.2, summary judgment is properly granted to a defendant when there is no issue as to a material fact and the record fails to establish the existence of a prima facie case by the Plaintiff, which, in a jury trial, would result in entry of a compulsory non-suit.

17. The record in this case establishes no more than the fact that the Plaintiff fell and injured herself. The record is devoid of any material fact constituting causal negligence on the part of Defendant.

WHEREFORE, Defendant files this Motion for Summary Judgment, seeking an Order that the Plaintiffs' Complaint against him be dismissed, with prejudice.

MARGOLIS EDELSTEIN

By: _____

Stephen L. Dugas, Esquire
Attorney for Defendant
PA. I.D.#21351
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695 5066

FILED

OCT 15 2007

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.: 07-583-CD

Vs.

CIVIL ACTION - LAW

BARRY M. NEFF,
Defendant

FILED
OCT 01 2007
m712 3481
NO CC
60

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF READINESS

Filed on behalf of Elizabeth L. Nelson and Kenneth A. Nelson
(Name of Party)

1. Type of Case: Simple ☒ Complex ☐ Companion Case ☐
2. Type of Trial: Jury ☒ Nonjury ☐ Arbitration ☐

3. Estimated Trial Time 2-3 day(s) _____ hours _____ minutes
Estimated Arbitration _____ day(s) _____ hours _____ minutes

4. Trial Counsel: (List name, address and telephone number for each party and name, address and telephone number of person responsible for each unrepresented party.)

Counsel for Plaintiffs: Gregory S. Olsavick, Esq., Edgar Snyder & Associates, 2900
Old Route 220, Suite 201, Altoona, PA 16601 (814) 942-3699

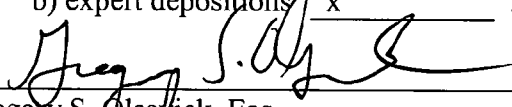
Counsel for Defendants: Steven Dugas, Esq., Margolis Edelstein, PO Box 628,
Hollidaysburg, PA 16648 (814) 695-5064

I Certify on behalf of Elizabeth and Kenneth Nelson

That the pleadings are complete, that all preliminary motions have been resolved, that all discovery has been completed and that the case is in all respects ready for trial except:

- a) motions in limine _____ ; b) expert depositions ☒

DATE: September 28, 2007



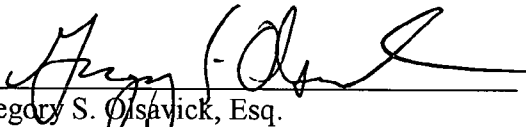
Gregory S. Olsavick, Esq.
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Certificate of Readiness was served on all Counsel listed below, by First Class Mail, postage prepaid, on this 28 day of Sept. 2007:

Stephen Dugas, Esq.
Allegheny Professional Center
Suite 303
1798 Old Route 220 North
PO Box 628
Hollidaysburg, PA 16648

EDGAR SNYDER & ASSOCIATES LLC



Gregory S. Olsavick, Esq.
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102700
NO: 07-583-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: ELIZABETH L NELSON & KENETH A NELSON
vs.
DEFENDANT: BARRY M. NEFF

FILED
07/21/2007
SEP 24 2007

William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF RETURN

NOW, April 24, 2007 AT 1:29 PM SERVED THE WITHIN COMPLAINT ON BARRY M. NEFF DEFENDANT AT 306 S.W. THIRD AVE, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO BARRY M. NEFF, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

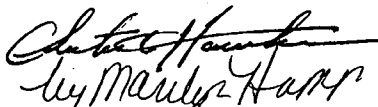
SERVED BY: HUNTER /

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	EDGAR SNYDER	2997	10.00
SHERIFF HAWKINS	EDGAR SNYDER	2997	20.00

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,


Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW

: No: 2007 CD 583

: **ISSUE: Notice of Answers to Interrogatories**
: **& Request for Production of Documents**

: Filed on Behalf of Defendant

: Counsel of Record for this Defendant:

: MARGOLIS EDELSTEIN

: Stephen L. Dugas, Esquire

: PA. I.D. # 21351

: PO Box 628

: Hollidaysburg, PA 16648

: (814) 695-5064

: Fax: (814) 695-5066

I hereby certify that a true and correct
copy of the within was mailed to
counsel this 3rd day of August, 2007

Attorney for Defendant

FILED ^{NO CC}
AUG 06 2007 ^{3/11/29/04} ^{EW}

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

CIVIL ACTION - LAW

No: 2007 CD 583

JURY TRIAL DEMANDED

NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO PROTHONOTARY:

You are hereby Notified that on the 3rd day of August, 2007, Defendant, Barry M. Neff served Answers to Plaintiffs' Interrogatories and Request for Production of Documents by mailing a copy of the same by First Class U.S. Mail, postage prepaid, addressed to the following:

Gregory S. Olsavick, Esquire
Regency Square
2900 Old Route 220, Suite 201
Altoona, PA 16601

MARGOLIS EDELSTEIN

By: _____

Stephen L. Dugas, Esquire
Attorney for Defendant
PA. I.D. # 21351
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695-5066

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW

:
:
:
: No: 2007 CD 583

:
:
: ISSUE: Notice of Deposition

:
:
: Filed on Behalf of Defendant

:
:
: Counsel of Record for this Defendant:

:
: MARGOLIS EDELSTEIN

: Stephen L. Dugas, Esquire

: PA. I.D. # 21351

: PO Box 628

: Hollidaysburg, PA 16648

: (814) 695-5064

: Fax: (814) 695-5066

I hereby certify that a true and correct
copy of the within was mailed to
counsel this 3rd day of August, 2007.

Attorney for Defendant.

FILED NO CC
m/11/24/07
AUG 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

(#12)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW
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: No: 2007 CD 583
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: JURY TRIAL DEMANDED
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NOTICE OF DEPOSITION

TO: Elizabeth L. Nelson and
Kenneth A. Nelson c/o
Gregory S. Olsavick, Esquire
Regency Square
2900 Old Route 220, Suite 201
Altoona, PA 16601

Sargent's Court Reporting Service
210 Main Street
Johnstown, PA 15901

Please take Notice that one the **21st** day of **August, 2007** at **11:00 o'clock a.m.** the depositions of **Elizabeth L. Nelson and Kenneth A. Nelson** shall be taken upon oral examination by an official court reporter under the provisions of Rule 403 of Rules of Civil Procedure of the Commonwealth of Pennsylvania.

The depositions will take place at the offices of **Sargent's Court Reporting, 106 North Second Street, Clearfield, Pennsylvania.**

The scope of said depositions will include inquiry into all facts concerning the happening of the incident complained of and all other matters relevant to the issues raised in the

case. You are invited to attend and participate.

NOTICE TO CLAIMANT OR WITNESS: You may object to this deposition by mailing or delivering a letter listing your objections to the undersigned at P.O. Box 628, Hollidaysburg, Pennsylvania 16648.

MARGOLIS EDELSTEIN

By: 

Attorney for Defendant
Stephen L. Dugas, Esquire
PA. I.D. # 21351
P.O. Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695-5066

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON, and
KENNETH A. NELSON,
Plaintiffs,

vs.

BARRY M. NEFF
Defendant

No. 07-583 CD

NOTICE OF SERVICE OF NOTICE OF
DEPOSITION

Filed on behalf of: Plaintiffs, Elizabeth L.
Nelson and Kenneth A. Nelson

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE

PA I.D. No. 34620

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

FILED *no cc*
m10:43/201
JUL 27 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.: 07-583-CD

Vs.

CIVIL ACTION - LAW

BARRY M. NEFF,
Defendant

NOTICE OF DEPOSITION

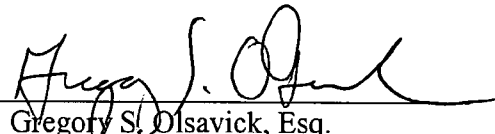
To: Barry Neff
c/o Stephen Dugas
Allegheny Professional Center
Suite 303
1798 Old Route 220 North
PO Box 628
Hollidaysburg, PA 16648

PLEASE TAKE NOTICE that the Plaintiff(s) Elizabeth and Kenneth Nelson, by their Attorneys, EDGAR SNYDER & ASSOCIATES, LLC, will take the deposition of Barry Neff, pursuant to Rule 4007, et seq., of the Pennsylvania Rules of Civil Procedure, as amended, before a court reporter duly authorized to administer oaths, on Tuesday, August 21, 2007, at 10:00 a.m., at the offices of Sargent's Court Reporting, 106 N. Second Street, Clearfield, PA, at which time and place you are invited to appear and take such part as shall be fitting and proper.

The deposition shall be taken before a Notary Public employed by Sargent's Court Reporting.

EDGAR SNYDER & ASSOCIATES, LLC

By


Gregory S. Olsavick, Esq.
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above **NOTICE OF DEPOSITION** was served on all Counsel of Record by First Class Mail, postage prepaid, on this 25th day of July, 2007.

Stephen Dugas, Esq.
1798 Old Route 220 North
Suite 303
PO Box 628
Hollidaysburg, PA 16648

EDGAR SNYDER & ASSOCIATES, LLC

By Gregory Olsavick/lrw
Gregory S. Olsavick, Esq.
Attorney for Plaintiffs

FILED

JUL 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON, and
KENNETH A. NELSON,
Plaintiffs,

vs.

BARRY M. NEFF
Defendant

No. 07-583 CD

NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS UPON
DEFENDANT

Filed on behalf of: Plaintiffs, Elizabeth L.
Nelson and Kenneth A. Nelson

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE

PA I.D. No. 34620

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

FILED No CC.
m/ll: 25 cm
JUL 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.: 07-583-CD

Vs.

BARRY M. NEFF,
Defendant

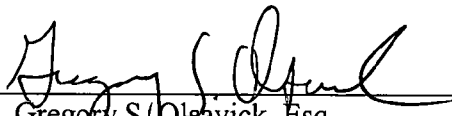
**NOTICE OF SERVICE OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT**

I hereby certify that on this ^{July}~~6~~ day of ~~June~~, 2007, the original INTERROGATORIES DIRECTED TO DEFENDANT, and the original REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT, and one (1) copy of NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS were mailed by First Class Mail, postage prepaid, to counsel for Defendant at the following address[es]:

Stephen L. Dugas, Esq.
Allegheny Professional Center
Suite 303
1798 Old Route 220 North
PO Box 628
Hollidaysburg, PA 16648

EDGAR SNYDER & ASSOCIATES, LLC

By


Gregory S. Olsavick, Esq.
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

CIVIL ACTION - LAW

No: 2007 CD 583

Notice of Service of Plaintiffs' Answers
to Interrogatories and Responses to First
Request for Production of Documents
directed to Plaintiffs by Defendant

Filed on behalf of Plaintiffs:
Elizabeth L. Nelson and Kenneth A. Nelson

By: Gregory S. Olsavick, Esquire
Edgar Snyder & Associates
Pa. I.D. 34620
2900 Old Route 220, Suite 201
Altoona, PA 16601
(814) 942-3699

FILED No CC.
m/jl: 30 cm
JUL 09 2007 

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

CIVIL ACTION - LAW

No: 2007 CD 583

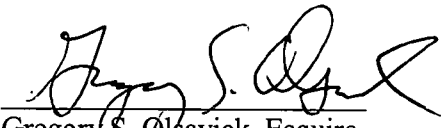
JURY TRIAL DEMANDED

NOTICE OF SERVICE OF PLAINTIFFS' ANSWERS TO DEFENDANT'S
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PLAINTIFFS

TO THE PROTHONOTARY:

You are hereby notified that on the 6th day of July, 2007, Plaintiffs, Elizabeth L. Nelson and Kenneth A. Nelson, served Plaintiffs' Answers to Interrogatories and Responses to First Request for Production of Documents Directed to Plaintiffs by mailing the same via First Class U.S. Mail, postage prepaid, addressed to the following:

Stephen L. Dugas, Esquire
Margolis Edelstein
P.O. Box 628
Hollidaysburg, PA 16648


Gregory S. Olavick, Esquire
Edgar Snyder & Associates
PA. I.D. 34620
2900 Old Route 220, Suite 201
Altoona, PA 16601
(814) 942-3699

FILED

JUL 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ELIZABETH L. NELSON AND :
KENNETH A. NELSON :
VS : NO. 07-583-CD
BARRY M. NEFF :

FILED

MAY 30 2007

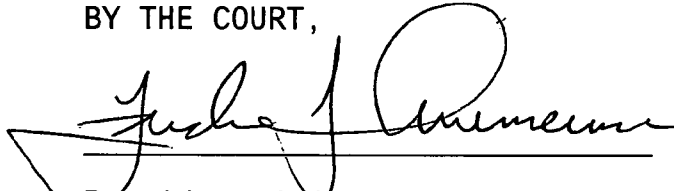
0/2:00/10
William A. Shaw
Prothonotary/Clerk of Courts

3 Cents to Court
for Distribution

ORDER

NOW, 30th day of May, 2007, this being the date set for argument relative the Plaintiffs' Motion for Entry Upon Property of a Nonparty for a Site Inspection, with the Respondents Mr. and Mrs. Daniel Oswald having failed to appear, it is the Order of this Court that the said Petition be and is hereby GRANTED. It is the Order of this Court that Plaintiffs' counsel and their expert, Ron Eck, shall be permitted to conduct a site visit of the subject residence, specifically, the interior subject stairs/stairway with the said site inspection to take place on Monday, June 4th, 2007 at 9:00 a.m. In addition, the Defendant, through counsel and a qualified expert, shall be allowed to participate in the site inspection ordered as set forth above.

BY THE COURT,



President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

CIVIL ACTION - LAW

No: 2007 CD 583

**ISSUE: Proposed Order, Motion, Proof of
Service**

Filed on Behalf of Defendant

Counsel of Record for this Defendant:

MARGOLIS EDELSTEIN

Stephen L. Dugas, Esquire

PA. I.D. # 21351

PO Box 628

Hollidaysburg, PA 16648

(814) 695-5064

Fax: (814) 695-5066

I hereby certify that a true and correct
copy of the within was mailed to all
counsel this 25th day of May, 2007

Attorney for Defendant

FILED *no cc*
3/11/2007
MAY 29 2007 *62*

William A. Shaw
Prothonotary/Clerk of Courts

#1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW

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No: 2007 CD 583

JURY TRIAL DEMANDED

IMPORTANT NOTICE

YOU HAVE PROPERTY WHICH THE PARTIES TO THE ABOVE LAWSUIT WISH TO ENTER FOR INSPECTION OR OTHER ACTIVITIES. THE MOTION ATTACHED TO THIS NOTICE ASKS THE COURT FOR AN ORDER ALLOWING THE ENTRY INTO YOUR PROPERTY. IF YOU CONSENT TO THIS ENTRY PLEASE FILL IN THE ATTACHED FORM. PLEASE CONTACT THE ATTORNEY LISTED BELOW:

Stephen L. Dugas, Esquire
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064

IF YOU DO NOT CONSENT TO THE ENTRY, YOU HAVE A RIGHT TO A HEARING ON THE MATTER. A DATE FOR PRESENTATION OF THE MOTION TO THE COURT WILL BE SET AND THE PARTY FILING THE MOTION WILL GIVE YOU 15 DAYS NOTICE OF THIS PRESENTATION. IF YOU DO NOT APPEAR AT THE PRESENTATION OF THE MOTION, THE COURT MAY ENTER AN ORDER ALLOWING ENTRY.

YOU MAY WISH TO TAKE THIS NOTICE TO A LAWYER WHO CAN ADVISE ME. IF YOU DO NOT HAVE A LAWYER AND WISH TO OBTAIN ONE, CONTACT THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

Court Administrator's Office
One North Second Street
Clearfield, PA 16830
(814) 765-2641 Extension 50

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW

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No: 2007 CD 583

JURY TRIAL DEMANDED

ORDER

AND NOW this _____ day of May, 2007, pursuant to the Motion for Entry Upon Property of a Non-Party, it is hereby Ordered that Defendant shall be allowed to participate in any inspection ordered pursuant to the Plaintiffs' Motion for Entry Upon Property of a Non-party, at the same time, date and place, through counsel and a qualified expert, as requested.

By the Court:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW

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No: 2007 CD 583

FILED

MAY 29 2007

William A. Shaw
Prothonotary/Clerk of Courts

JURY TRIAL DEMANDED

MOTION FOR ENTRY UPON PROPERTY OF NON-PARTY

AND NOW COMES Defendant, and through his attorneys, Margolis Edelstein, files this Motion for Entry Upon Property of a Non-party, pursuant to Pa.R.C.P., Rule 4009.33, whereof the following is a statement:

1. Counsel for Plaintiffs has previously filed and served upon Daniel R. Oswald and Lisa K. Oswald a Motion for Entry Upon Property of a Non-Party.
2. The subject matter of the requested inspection is the condition of premises located at 1742 Windy Hill Road, Curwensville, Clearfield County, Pennsylvania, where an accident allegedly occurred on January 13, 2007, resulting in filing of the above-captioned lawsuit.
3. The Plaintiff has obtained a Rule, returnable at 1:30 p.m. on May 30, 2007 before the Honorable Frederic J. Ammerman in Courtroom Number 1, Clearfield County Courthouse, Clearfield, PA, to show cause why the said inspection of the subject premises should not occur.
4. Defendant seeks to join in the Plaintiff's Motion, and to also participate through counsel and a qualified expert at the time, date and place presently scheduled for the said

inspection, Monday, June 4, 2007, at 9 a.m.

5. The granting of Defendant's Motion would not result in any prejudice to either Plaintiffs or the non-party owners of the subject premises. To the contrary, by allowing for the inspection at the same time and date, the potential inconvenience to the non-parties would be mitigated.

WHEREFORE, Defendant seeks an Order, in the form appended hereto.

MARGOLIS EDELSTEIN

By: _____

Stephen L. Dugas, Esquire
Attorney for Defendant
Attorney I.D. # 21351
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695-5066

PROOF OF SERVICE

I, Stephen L. Dugas, Esquire certify that a true and correct copy of the within Motion for Entry Upon Property for Inspection was served by regular United States Mail, First Class and postage pre-paid, addressed as follows:

Mr. & Mrs. Daniel R. Oswald
1742 Windy Hill Road
Curwensville, PA 16833

Gregory S. Olsavick, Esquire
Edgar Snyder & Associates
Regency Square
2900 Old Route 220, Suite 201
Altoona, PA 16601

MARGOLIS EDELSTEIN

By: _____

Stephen L. Dugas, Esquire
Attorney for Defendant
PA. I.D. # 21351
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695-5066

Date: May 25, 2007

FILED
MAY 29 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW

: No: 2007 CD 583

: **ISSUE: Notice of Service of Interrogatories**
: **& First Request for Production of**
: **Documents.**


: Filed on Behalf of Defendant: Barry Neff.

: Counsel of Record for this Defendant:

: MARGOLIS EDELSTEIN
: Stephen L. Dugas, Esquire
: PA. I.D. # 21351
: PO Box 628
: Hollidaysburg, PA 16648
: (814) 695-5064
: Fax: (814) 695-5066

FILED

MAY 14 2007

William A. Shaw 
Prothonotary/Clerk of Courts

I hereby certify that a true and correct
copy of the within was mailed to all
counsel this 11th day of May, 2007

Attorney for Defendant

FILED

MAY 14 2007

William A. Shaw
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

CIVIL ACTION - LAW

No: 2007 CD 583

JURY TRIAL DEMANDED

NOTICE OF SERVICE OF INTERROGATORIES AND FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS

TO PROTHONOTARY:

You are hereby notified that on the 11th day of May, 2007, Defendant, Barry M. Neff served Interrogatories and First Request for Production of Documents on the Plaintiffs by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

Gregory S. Olsavick, Esquire
Regency Square
2900 Old Route 220, Suite 201
Altoona, PA 16601

MARGOLIS EDELSTEIN

By: _____

Stephen L. Dugas, Esquire
Attorney for Defendant
PA. I.D. # 21351
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695-5066

FILED

MAY 14 2007

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

FILED

MAY 14 2007

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

CIVIL ACTION - LAW

No: 2007 CD 583

ISSUE: Answer

Filed on Behalf of Defendant

Counsel of Record for this Defendant:

MARGOLIS EDELSTEIN

Stephen L. Dugas, Esquire

PA. I.D. # 21351

PO Box 628

Hollidaysburg, PA 16648

(814) 695-5064

Fax: (814) 695-5066

I hereby certify that a true and correct
copy of the within was mailed to all
counsel this 11th day of May, 2007

Attorney for Defendant

FILED

MAY 14 2007

m/11:15/20

William A. Shaw
Prothonotary/Clerk of Courts

no C/C

(6K)

(#5)

1. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 1. Strict proof is demanded at time of Trial.
2. Admitted.
3. Denied as stated. It is admitted that Defendant was the owner of the premises with mailing address 1742 Windy Hill Road, Curwensville, Pennsylvania at various times in the past, including on January 13, 2007.
4. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 4. Strict proof is demanded at time of Trial.

5. Admitted, with the clarification set forth hereinabove.

6-11. All averments in Paragraphs 6 through 11 are denied, pursuant to Pa. R.C.P., Rule 1029(e) or because, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth thereof. Strict proof is demanded at time of Trial.

12. All averments in Paragraph 12 are denied as stated. It is admitted that there was a set of wooden stairs leading up from the first floor. The said stairs were in good condition and repair, and were uniform in terms of height and depth of tread. It is admitted there were not handrails, per-se, but there were sturdy walls on both sides of the stairwell, both of which could be touched at the same time by an individual of normal stature. The said stairway was not straight, but did, consistent with the constraints of the extant structure, consist of stairs, landings and turns, all of which were open, obvious, visible and provided with good and sufficient illumination.

13-20. All averments in Paragraphs 13 through 20 are denied as mere conclusions of law, or are denied pursuant to Pa. R.C.P. Rule 1029(e), or because, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth thereof. Strict proof is demanded at time of Trial.

21. All averments in Paragraph 21, including all sub-paragraphs therein are denied as mere conclusions of law, or are denied pursuant to Pa. R.C.P. Rule 1029(e), or because, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth thereof. Strict proof is demanded at time of Trial.

22. All averments in Paragraph 22, including all sub-paragraphs therein are denied as mere conclusions of law, or are denied pursuant to Pa. R.C.P. Rule 1029(e), or because, after

reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth thereof. Strict proof is demanded at time of Trial.

23. All averments in Paragraph 23, including all sub-paragraphs therein are denied as mere conclusions of law, or are denied pursuant to Pa. R.C.P. Rule 1029(e), or because, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth thereof. Strict proof is demanded at time of Trial.

24. All averments in Paragraph 24 therein are denied as mere conclusions of law, or are denied pursuant to Pa. R.C.P. Rule 1029(e), or because, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth thereof. Strict proof is demanded at time of Trial.

WHEREFORE, Defendant demands that Count I of Plaintiffs' Complaint be dismissed, with prejudice, together with costs of suit awarded.

COUNT II

25. Defendant hereby incorporates by reference all denials set forth in Paragraphs 1 through 24 above, as fully as though the same were set forth herein at length.

26. All averments in Paragraph 26 (erroneously numbered "22" in the Complaint) are denied as mere conclusions of law, or are denied pursuant to Pa. R. C. P. Rule 1029(e), or because, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth thereof. Strict proof is demanded at time of Trial.

WHEREFORE, Defendant demands that Count II of the Plaintiffs' Complaint against him be dismissed, with prejudice, together with costs of suit awarded.

MARGOLIS EDELSTEIN

By: _____

Stephen L. Dugas, Esquire
Attorney for Defendant
Attorney I.D. # 21351
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695-5066

VERIFICATION

I, Barry M. Neff hereby Verify that I reviewed the foregoing Answer and the facts stated therein are true and correct to the best of my knowledge, information and belief.

I understand that false statements are made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsification to authorities.

Date: 5-8-07

Barry M. Neff
Barry M. Neff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102756
NO: 07-583-CD
SERVICE # 1 OF 1
MOTION FOR ENTRY UPON PROPERTY/RULE

RETURNABLE

PLAINTIFF: ELIZABETH L. NELSON and KENNETH A. NELSON
vs.
DEFENDANT: BARRY M. NEFF
TO: DANIEL and LISA OSWALD

SHERIFF RETURN

NOW, May 07, 2007 AT 8:40 AM SERVED THE WITHIN MOTION FOR ENTRY UPON PROPERTY/RULE RETURNABLE ON DANIEL & LISA OSWALD DEFENDANT AT 1742 WINDY HILL ROAD, CURWENSVILLE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LISA OSWALD, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL MOTION FOR ENTRY UPON PROPERTY/RULE RETURNABLE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

FILED
07315/61
MAY 08 2007
William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	SNYDER	2999	10.00
SHERIFF HAWKINS	SNYDER	2999	23.82

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,

Chester A. Hawkins
by *Marilyn Harris*
Chester A. Hawkins
Sheriff

#4

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs,

vs.

BARRY M. NEFF,
Defendant

No. 07-583-CD

MOTION FOR ENTRY UPON PROPERTY
OF A NON-PARTY FOR A SITE
INSPECTION

Filed on behalf of:

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE

PA I.D. No. 34620

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

FILED ICC Sheriff
MAY 02 2007
M 11:35 AM
GRO

William A. Shaw
Prothonotary/Clerk of Courts

#3

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.: 07-583-CD

Vs.

BARRY M. NEFF,
Defendant

IMPORTANT NOTICE

YOU HAVE PROPERTY WHICH THE PARTIES TO THE ABOVE LAWSUIT WISH TO ENTER FOR INSPECTION OR OTHER ACTIVITIES. THE MOTION ATTACHED TO THIS NOTICE ASKS THE COURT FOR AN ORDER ALLOWING THE ENTRY INTO YOUR PROPERTY. IF YOU CONSENT TO THIS ENTRY PLEASE FILL IN THE ATTACHED FORM. PLEASE CONTACT THE ATTORNEY LISTED BELOW:

Gregory S. Olsavick, Esq.
Edgar Snyder & Associates
Regency Square
2900 Old Route 220, Suite 201
Altoona, PA 16601
(814) 942-3699

IF YOU DO NOT CONSENT TO THE ENTRY, YOU HAVE A RIGHT TO A HEARING ON THE MATTER. A DATE FOR PRESENTATION OF THE MOTION TO THE COURT WILL BE SET AND THE PARTY FILING THE MOTION WILL GIVE YOU FIFTEEN DAYS NOTICE OF ITS PRESENTATION. IF YOU DO NOT APPEAR AT THE PRESENTATION OF THE MOTION, THE COURT MAY ENTER AN ORDER ALLOWING ENTRY.

YOU MAY WISH TO TAKE THIS NOTICE TO A LAWYER WHO CAN ADVISE YOU. IF YOU DO NOT HAVE A LAWYER AND WISH TO OBTAIN ONE, CONTACT THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

Court Administrator's Office
1 North Second Street
Clearfield, PA 16830
(814) 765-2641, Ext. 50

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.: 07-583-CD

Vs.

BARRY M. NEFF,
Defendant

ORDER

AND NOW, this ____ day of _____, 2007, the Plaintiffs in the above-captioned lawsuit, by and through counsel, having filed a Motion for Entry Upon Property of a Non-Party, for the purpose of a Site Inspection, pursuant to Pennsylvania Rule of Civil Procedure 4009.33, it is hereby ORDERED, DIRECTED and DECREED that the present owners of the subject premises located at 1742 Windy Hill Road, Curwensville, PA., are granted a period of fifteen (15) days to consent to the Motion for Site Visit by contacting counsel for Plaintiffs to wit, Gregory S. Olsavick, Esquire, Edgar Snyder & Associates, 2900 Old Route 220, Suite 201, Altoona, Pennsylvania 16601; telephone number (814) 942-3699; fax number (814) 942-9337.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.: 07-583-CD

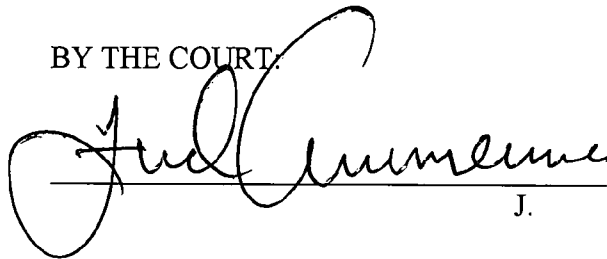
Vs.

BARRY M. NEFF,
Defendant

RULE RETURNABLE

AND NOW this 3 day of MAY, 2007, the Motion for Entry Upon Property of a Non-Party having been filed, and the time for consent to the Motion having passed, it is hereby ORDERED, DIRECTED and DECREED that Daniel and Lisa Oswald are directed to show cause, if any they have, as to why the Motion for Entry Upon Property of Non-Party for a Site Inspection should not be granted. Said hearing to be held on the 3rd day of May 2007 at 1:30 o'clock P m.

BY THE COURT:


J.

FILED

MAY 03 2007

0/12:30/15

William A. Shaw
Prothonotary/Clerk of Courts

1 COPY TO ATT

1 COPY TO SUFF

DATE: 5-3-07

☒ 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

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.: 07-583-CD

Vs.

BARRY M. NEFF,
Defendant

SUGGESTED ORDER OF COURT

AND NOW this ____ day of _____, 2007, the Court having reviewed the within Motion for Entry Upon Property of a Non-Party for purposes of a site inspection, pursuant to Pa. Rule of Civil Procedure 4009.33, and the Court being satisfied with the necessity and propriety of the same, and the present owners of the subject real estate having been notified in accordance with the Rules of Civil Procedure, it is hereby ORDERED, DIRECTED and DECREED, that the Motion is granted, and that Plaintiff, counsel and their expert Ron Eck, shall be permitted to conduct a site visit of the subject residence, specifically the interior subject stairs/stairway with the site inspection to take place on Monday, June 4, 2007 at 9:00 a.m. The individuals present for the site visit, and the activities to be conducted by the expert and undersigned counsel at that time, are set forth in the Motion itself, and hereby affirmed by the Court.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.: 07-583-CD

Vs.

BARRY M. NEFF,
Defendant

**MOTION FOR ENTRY UPON PROPERTY OF A
NON-PARTY FOR A SITE INSPECTION**

AND NOW, come the Plaintiffs Elizabeth L. Nelson and Kenneth A. Nelson, by and through their attorneys, Edgar Snyder & Associates, LLC; Todd Berkey, Esquire; Gregory S. Olsavick, Esquire; and file the within Motion for Entry upon Property of a Non-Party for a Site Inspection and in support thereof aver as follows:

1. Plaintiffs Elizabeth L. Nelson and Kenneth A. Nelson, are wife and husband and adult individuals who reside at 301 West Fifth Avenue, Clearfield, Clearfield County, Pennsylvania 16830.
2. Defendant Barry M. Neff, presently resides at 306 Southwest Third Avenue, Clearfield, Pennsylvania; but at all relevant times was owner of real estate, consisting of a single family residence, located at 1742 Windy Hill Road, Curwensville, Clearfield Co., Pennsylvania.
3. At that time, Defendant Neff had listed his real estate at 1742 Windy Hill Road for sale with a realtor.
4. On January 13, 2007, at approximately 1:00 p.m., Plaintiff Elizabeth L. Nelson, had proceeded to the aforesaid premises located at 1742 Windy Hill Road, Curwensville, PA.
5. At the time of the accident, Plaintiff Elizabeth L. Nelson, who was working in the course and scope of her employment, had proceeded to the subject premises at 1742 Windy Hill

Road in order to look at the premises, including the interior of the residence, in preparation for later that day meeting with clients.

6. On January 13, 2007, at approximately 1:00 p.m, Plaintiff Elizabeth L. Nelson, proceeded to the premises, and was inside the residence for the first time. Plaintiff went from the ground floor and proceeded up an interior stairway. At that point, Plaintiff proceeded to open a door and looked into a room located at the top of the stairway.

7. Plaintiff then proceeded to close the door, and intended to proceed back down the subject stairway to the ground floor. Suddenly and without warning, Plaintiff was caused to slip and fall on the subject stairs, and her body was caused to plummet down the stairway, with repeated impacts on various stairs.

8. As a direct result and consequence of Plaintiff's fall on the subject interior stairway, Elizabeth L. Nelson sustained serious and severe injuries, including a fractured left humerus requiring open reduction and internal fixation, together with a severe injury and damage to her left rotator cuff.

9. On or about April 16, 2007, the Plaintiffs Elizabeth L. Nelson and Kenneth A. Nelson, filed a Complaint in Civil Action against Defendant Barry M. Neff, alleging that the injuries and damages sustained by Plaintiffs were caused solely by and a direct and proximate result of the negligence, carelessness, and recklessness, of Barry M. Neff.

10. A true and correct copy of the Complaint in Civil Action is attached as Exhibit A.

11. On or about February 16, 2007 the aforesaid premises at 1742 Windy Hill Road, Curwensville, PA were sold to Daniel and Lisa Oswald, who took possession of the premises on or about that date.

12. Thereafter, both the Plaintiff, and undersigned counsel, had phone discussions with Mr. and Mrs. Oswald regarding the circumstances of the fall of Elizabeth Nelson on January 13, 2007, and the necessity for one or more site visits at the subject premises.

13. This included undersigned counsel's phone discussion with Dan Oswald on March 1, 2007. At that time, it was explained to Mr. Oswald that no claim would be asserted, nor any lawsuit filed against the Oswalds as current owners for the injuries and damages sustained by Elizabeth Nelson as a consequence of her fall. Further, undersigned counsel also explained to Mr. Oswald that there was a necessity for two limited visits to be made at the premises, the first by counsel and Plaintiff, and the second by counsel and an expert, Ron Eck.

14. The discussion in this regard was followed up by undersigned counsel forwarding correspondence to Mr. and Mrs. Oswald dated March 5, 2007, in which the aforesaid matters were confirmed, including that no claim or lawsuit would be filed against the Oswalds as current owners. A true and correct copy of the March 5, 2007 letter is attached as Exhibit "B".

15. Thereafter, additional attempts were made to discuss the matter with Mr. and Mrs. Oswald, but despite numerous calls and messages on almost a daily basis, there was no further discussion. Subsequently, undersigned counsel forwarded correspondence dated March 16, 2007 to Mr. and Mrs. Oswald, again reiterating the matters from the earlier correspondence, and requesting that contact be made with undersigned counsel. A true and correct copy of the March 16, 2007 letter is attached as Exhibit "C".

16. There has been no response to the said items of correspondence, and Mr. and Mrs. Oswald have not contacted undersigned counsel regarding the requested site visit(s).

17. Undersigned counsel has remained in contact with its expert Ron Eck, for purposes of the request for site visit. Mr. Eck has provided the date of **June 4, 2007 at 9:00**

a.m., for purposes of proceeding to and conducting the site visit and inspection at the aforesaid premises. Under the circumstances, this would represent the sole site visit to the subject premises which Plaintiffs are requesting.

18. In accordance with the said correspondence of March 5, 2007, this site visit would involved undersigned counsel, expert Ron Eck (and possibly Elizabeth Nelson), coming to and entering the premises, for a maximum of 30 minutes. This site visit would involve Mr. Eck viewing the subject stairs/stairway, taking measurements, and taking some photographs of the subject stairs/stairway.

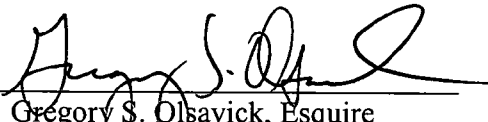
19. Furthermore, and to reiterate from the March 5, 2007 letter, from the Plaintiffs perspective, there would be no need or necessity for any additional site visit to the subject premises at any time in the future, through and including the time of any trial of this case.

WHEREFORE, the Plaintiffs Elizabeth L. Nelson and Kenneth A. Nelson, by and through counsel, respectfully requests the grant of the within Motion for Entry Upon Property of the Non-Party, for the limited purpose of a site visit and inspection of the subject interior stairs/stairway to be conducted by Plaintiff's expert Ron Eck.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES LLC

By: _____


Gregory S. Olsavick, Esquire
Attorney for Plaintiffs

410197

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COPY

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs,

No. 07-583-CD

COMPLAINT IN CIVIL ACTION

vs.

BARRY M. NEFF
Defendant

Filed on behalf of:
Plaintiffs

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE

PA I.D. No. 34620

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

COPY
FILED
APR 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

#849411



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.:

CIVIL ACTION - LAW

Vs.

BARRY M. NEFF,
Defendant

NOTICE TO DEFEND

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 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]. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

LAWYER REFERRAL SERVICE -

Court Administrator's Office
1 North Second Street
Clearfield, PA 16830

Telephone (814) 765-2641, Ext: 50

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.:

CIVIL ACTION - LAW

Vs.

BARRY M. NEFF,
Defendant

COMPLAINT IN CIVIL ACTION

AND NOW, come the Plaintiffs, Elizabeth L. Nelson and Kenneth A. Nelson, by and through their attorneys, Edgar Snyder & Associates, LLC, Todd Berkey, Esquire and Gregory S. Olsavick, Esquire, and file the within Complaint in Civil Action and in support thereof aver as follows:

COUNT I

1. Plaintiffs Elizabeth L. Nelson and Kenneth A. Nelson, are wife and husband and adult individuals who reside at 301 West Fifth Avenue, Clearfield, Clearfield County, Pennsylvania 16830.

2. Defendant Barry M. Neff, is an adult individual who presently resides at 306 Southwest Third Avenue, Clearfield, Clearfield County, Pennsylvania 16830.

3. At all relevant times herein, Defendant Barry M. Neff was owner of real estate, consisting of a single family residence, located at 1742 Windy Hill Road, Curwensville, Clearfield County, Pennsylvania; and said parcel of real estate was found at Clearfield County Deed Book Volume 894, page 290.

4. The events hereinafter complained of occurred on or about January 13, 2007, at approximately 1:00 p.m., in the aforesaid premises located at 1742 Windy Hill Road, Curwensville, Pennsylvania.

5. At this time, Defendant had listed his real estate at 1742 Windy Hill Road for sale with a realtor. Defendant remained owner and in possession of the subject premises until it was sold subsequently, with a closing date on or about February 16, 2007.

6. At the time of the accident, Plaintiff Elizabeth L. Nelson was a licensed real estate agent with C.P. Realty, Clearfield, PA.

7. At the time of the accident, Plaintiff Elizabeth L. Nelson, who was working in the course and scope of her employment, had proceeded to the subject premises at 1742 Windy Hill Road in order to look at the premises, including the interior of the residence, in preparation for later that day meeting with clients – prospective buyers at the premises, at which time Plaintiff intended to show them the residence.

8. As such, Plaintiff Elizabeth L. Nelson, was under the circumstances, an invitee and/or business invitee at Defendant's premises and residence.

9. Plaintiff Elizabeth L. Nelson was expressly permitted to enter the subject premises and to examine and inspect the same, in her capacity as a licensed real estate agent, and in order that she become familiar with the physical layout of the residence, to assist in her showing it to prospective buyers.

10. On January 13, 2007, at approximately 1:00 p.m., Plaintiff Elizabeth L. Nelson, proceeded to the premises, and was inside the residence for the first time. Plaintiff went from the ground floor and proceeded up an interior stairway. At the top of the stairway was a small threshold with a closed door which she understood was an upstairs bedroom. Plaintiff Elizabeth L. Nelson, proceeded to open the door and stood in the doorway on the threshold and looked into and around the room.

11. Plaintiff then proceeded to close the door, and intended to proceed back down the subject stairway to the ground floor. Suddenly and without warning, Plaintiff was caused to slip and fall on the subject stairs, and her body was caused to plummet down the stairway, with repeated impacts on various stairs, particularly impacts to her left shoulder and side.

12. The subject stairs were wooden with no skid resistant material on the treads, and the risers were of different and varying heights. There was no handrail on the subject stairway at any point between the first – ground floor, and the upstairs bedroom. In addition, a sharp right angle turn on the stairway near the top had to be negotiated descending the stairway.

13. Defendant failed to recognize that these conditions of the stairs and stairway were dangerous and unsafe, and constituted a serious fall hazard; and failed to take any actions to correct the dangerous and unsafe conditions, including the installation of a handrail, placement of skid-resistant materials on the treads and/or markings on the stairs, or other corrective actions.

14. As a direct consequence, the circumstances existing with the stairs and the subject stairway, as aforesaid, constituted dangerous, unsafe and hazardous conditions as of the time of the incident.

15. The Defendant knew or should have known of these dangerous, unsafe and hazardous conditions prior to the time of the incident.

16. The Defendant had actual notice of these dangerous, unsafe and hazardous conditions as aforesaid, and/or Defendant had constructive notice of these conditions under the circumstances herein.

17. The Defendant knew or should have known that the said dangerous, unsafe and hazardous conditions which existed on the subject stairs and stairway, presented an unreasonable

risk of harm and injury to individuals, particularly invitees or business invitees who would be descending the stairway at the time.

18. The Defendant knew or should have known that individuals such as Plaintiff Elizabeth L. Nelson would not discover or notice these dangerous, unsafe and hazardous conditions under the circumstances.

19. Under the circumstances, the Defendant was required to inspect the subject stairs and stairway to discover any dangerous, unsafe and hazardous conditions, such as existed here, and to warn invitees and/or business invitees of such conditions, including Plaintiff Elizabeth L. Nelson.

20. The injuries and damages sustained by Plaintiff Elizabeth L. Nelson were caused solely by and were a direct and proximate result of the negligence, carelessness, and recklessness, of the Defendant Barry M. Neff, as hereinafter set forth in detail.

21. The aforesaid incident and resulting injuries and damages sustained by Elizabeth L. Nelson were caused solely by and were a direct and proximate result of the negligence, carelessness and recklessness of Defendant Neff, generally, and in the following particulars:

- a. In causing and/or permitting dangerous, hazardous, unsafe and slippery conditions to exist on the subject stairs/stairway.
- b. In causing and/or permitting dangerous, hazardous, unsafe and slippery conditions to exist on stairs/stairway being utilized by invitees and/or business invitees;
- c. In failing to warn and/or notify the Plaintiff of the dangerous, hazardous, unsafe and slippery conditions of the subject stairs/stairway prior to the incident;

d. In failing to warn Plaintiff of the dangerous, hazardous, and slippery conditions of the subject stairs/stairway, and advise Plaintiff to exercise a high degree of caution in descending the stairs/stairway;

e. In failing to take any steps, actions, or adequate precautions to correct the dangerous, hazardous, and slippery conditions of the subject stairs/stairway;

f. In failing to adequately inspect the subject stairs/stairway prior to the incident, when Defendant knew or reasonably should have known that dangerous, hazardous and slippery conditions existed on the stairs/stairway under the circumstances;

g. In failing to properly inspect for dangerous, unsafe, and slippery conditions of the subject stairs/stairway, including the failure to recognize that there did not exist a handrail anywhere on the subject stairway, notwithstanding that the subject stairs did not have any slip resistant material on the treads;

h. In failing to properly inspect for dangerous, unsafe, and slippery conditions of the subject stairs/stairway, including the sharp right angle turn near the top of the stairway, which had to be negotiated by individuals descending the stairway;

i. In failing to properly inspect for dangerous, unsafe, and slippery conditions of the subject stair/stairway, including the failure to recognize that the individual might step from the first stair below the threshold onto the stair located at a right degree angle below the landing where the raiser was of extreme height;

j. In causing and/or permitting the threshold of the door at the top of the stairway to be uneven and not level, and in a deteriorated condition such that it sloped downward from the door of the upstairs bedroom;

k. In causing and/or permitting the threshold of the door at the top of the stairway to be worn, deteriorated, irregular and slippery prior to the incident;

l. In causing and/or permitting the landing near the top of the stairway descending from the threshold to be of a shorter width compared to the stairs themselves, which creates a serious fall hazard;

m. In causing and/or permitting the conditions of the subject stairs/stairway, as aforesaid, which were inherently dangerous as they violated pedestrian expectancy and created a serious fall hazard; including that an individual could step from the upper stair down at a right degree angle where there exists an excessively high riser;

n. In failing to take any steps, actions or adequate precautions to remedy the said dangerous, hazardous and unsafe conditions of the subject stairs/stairway, as aforesaid, resulting in a situation where it was reasonably foreseeable that falls would occur at or near the top of the stairway;

o. In failing to have adequate lighting and/or illumination in the subject stairway which was utilized by invitees and/or business invitees, as of the time of the incident.

22. As a direct and proximate result of the negligence, carelessness, and recklessness of Defendant Barry M. Neff, Plaintiff Elizabeth L. Nelson, sustained the following serious and severe injuries, some or all of which may be permanent in nature:

a. A fractured left humerus requiring open reduction and internal fixation with an IM rod, spiral blade and two cortical screws;

b. Severe injury and damage to her left rotator cuff resulting in physical limitations;

c. Swelling, strain/sprain of the nerves, muscles, tissues, ligaments of the neck and left shoulder;

d. Contusions, abrasions, and bruising to her left shoulder;

e. Acute anemia from blood loss; and

f. Severe shock, strain and sprain of the nerves, muscles, tissues, ligaments and vessels of the musculoskeletal system.

23. As a direct and proximate result of the negligence, carelessness, and recklessness of Defendant Neff, as aforesaid, the Plaintiff Elizabeth L. Nelson, has been damaged as follows:

a. She has suffered and will suffer great physical pain, suffering, inconvenience, embarrassment, and humiliation;

b. She has been and will be deprived of her health, strength, and vitality;

c. She has in the past and may in the future, suffer from the loss of enjoyment of life's pleasures;

d. She has in the past and may in the future, suffer from mental and emotional anguish, stress, depression and anxiety as a result of her injuries;

e. She has in the past and may in the future, be limited in her normal and daily activities;

f. She has in the past and may in the future, sustain a loss of earnings, and incapacity and seeks reimbursement for the loss of earnings and earning capacity;

g. She has in the past and may in the future, undergo numerous medical procedures, resulting in large and substantial expenses for medical treatment and care because of her injuries; and

h. She has suffered scarring and disfigurement.

24. As a direct and proximate result of the negligence, carelessness, and recklessness of Defendant Neff as aforesaid, the Plaintiff Elizabeth L. Nelson has incurred in the past and may incur in the future, large and substantial expenses for medical treatment and care because of the injuries sustained by her.

WHEREFORE, the Plaintiff Elizabeth L. Nelson demands judgment in her favor and against Defendant, Barry M. Neff, in an amount in excess of the jurisdictional limits in Clearfield County, Pennsylvania.

COUNT II

25. Plaintiff Kenneth A. Nelson hereby incorporates by reference paragraphs 1 through 24 of the Complaint as if the same were fully set forth herein at length.

22. As a direct and proximate result of the negligence, carelessness, and recklessness of Defendant Neff, Plaintiff Kenneth A. Nelson has sustained the following damages:

- a. Husband/Plaintiff has suffered a loss of consortium; and
- b. Husband/Plaintiff has sustained great inconvenience due to a loss of services, society and companionship that were provided by Wife/Plaintiff;

WHEREFORE, the Plaintiff Kenneth A. Nelson demands judgment in his favor and against Defendant, Barry M. Neff, in an amount in excess of the jurisdictional limits in Clearfield County, Pennsylvania.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES LLC

By: 

Todd Berkey, Esquire

Gregory S. Olsavick, Esquire

Attorney for Plaintiffs

VERIFICATION

We, Elizabeth L. Nelson and Kenneth A. Nelson, Plaintiffs herein, hereby verify that the averments of fact contained in the foregoing Complaint in Civil Action are true and correct and based upon our personal knowledge, information or belief. We understand that these averments of fact are made subject to the penalties of 18 Purdons Consolidated Statutes Section 4904, relating to unsworn falsification to authorities.

Elizabeth L. Nelson
Elizabeth L. Nelson

Kenneth A. Nelson
Kenneth A. Nelson

Date:

4/10/07

March 5, 2007

Mr. and Mrs. Daniel Oswald
1742 Windy Hill Road
Curwensville, PA 16833

RE: Elizabeth Nelson
Claim Against Prior Owner

Dear Mr. and Mrs. Oswald:

I am writing by way of follow-up to my phone discussion with Dan on March 1, 2007. Our office represents Elizabeth Nelson for injuries which she sustained in a fall which occurred on January 13, 2007, on the stairs leading to the second floor of your residence. Previously, I believe that the two of you had spoken briefly to Elizabeth Nelson herself concerning this matter.

At the time of Elizabeth's fall, the residence was owned by Barry Neff. Accordingly, Barry Neff and his homeowner's insurance carrier would be solely responsible for the claims which we are asserting on behalf of Elizabeth Nelson. Since the two of you did not own (nor were you purchasing) the residence, nor were you in possession of it, it would not be possible legally to assert any claim for injuries and damages against you. I am writing to confirm at this time, on behalf of our client, that there will be no claim asserted, nor any lawsuit filed against you for the injuries and damages sustained by Elizabeth Nelson as a consequence of her fall on the stairs on January 13, 2007.

I am also writing by way of follow-up to my discussion with Dan concerning two limited visits which we need to make to the premises. These will both be brief visits, and will be scheduled on a day and time that is convenient for both of you. The first visit would be myself and Elizabeth coming to the residence for a fifteen/twenty minute visit. This would involve Elizabeth and I trying to retrace her steps, and specifically what happened at the time of her fall on the stairs. This would include my taking a few photos of the stairs with a digital camera. It is necessary that Elizabeth and I come to the residence within approximately the next week. I would specifically propose either Thursday, March 8; Friday, March 9; or Monday, March 12, 2007, or Wednesday, March 14 (afternoon) for this purpose. As stated above, this would be at a time convenient for the two of you. In this regard, Elizabeth had indicated that typically you would want to be called approximately between 9:00 and 10:00 a.m., thus, we can plan to be at your residence on each of these days at 9:00 a.m. for example. When I spoke to Dan on March 1, 2007, this was at approximately 4:15/4:30 p.m., thus, as an alternative, on any of these days,

Elizabeth and I could come to your residence at 4:00 or 4:30 p.m., as another example. If there is some other time during the day that would be more convenient, Elizabeth and I will arrange our schedules accordingly.

The second visit, as I related to Dan, concerns our expert whose name is Ron Eck. He is an Engineering professor at West Virginia University, and the first available date which he could come for purposes of a site visit would be Wednesday, April 11, 2007. If that date would be convenient, it would be Ron Eck and myself again (and possibly Elizabeth), and this visit would take twenty/thirty minutes maximum. Again, it would be at a time of your choosing, and at a time most convenient for you. If April 11, 2007 is not a good date for whatever reason, please let me know, and I will obtain other dates from Mr. Eck. This is something we can discuss when Elizabeth and I come to your residence for the initial visit. In terms of Mr. Eck, he will come to view the subject stairs, take some measurements, and also take some photographs. Again, this would be a twenty/thirty minute visit.

As I told Dan, these two brief visits would represent the total of the time that we would need to come to your residence and disturb you. From our perspective, there would be no additional visits which would be necessary at any time, up until and through the time of settlement and/or trial of this case. I want to thank you very much in advance for your cooperation and assistance in this matter, and I wish to apologize for disturbing you and causing any inconvenience in your residence. I would simply ask that you put yourself in the place of Elizabeth under the circumstances. That is, if either of you, or a member of your family had fallen in similar circumstances, I am sure that you would appreciate very much the new owners of the property permitting you, your family member, attorney, and expert the opportunity to briefly visit the residence/property. Thanks again very much for your cooperation and assistance.

Very truly yours,



Gregory S. Olsavick

GSO:lmw

CERTIFIED MAIL RETURN RECEIPT
#7004 1350 0002 9643 0899

March 16, 2007

Mr. and Mrs. Daniel Oswald
1742 Windy Hill Road
Curwensville, PA 16833

RE: Elizabeth Nelson
Claim Against Prior Owner

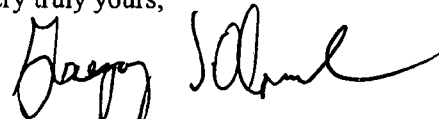
Dear Mr. and Mrs. Oswald:

I am writing to you again concerning the injury claim of our client, Elizabeth Nelson, by way of follow-up to my letter of March 5, 2007. I am forwarding at this time, another copy of the March 5 letter. This letter in turn was by way of follow-up to my phone discussion with Dan on March 1, 2007.

Since forwarding of the above correspondence, we have basically been calling your home on a daily basis, both in the morning and later in the afternoon – but we have been unable to reach you. Moreover, I had also asked that you contact our office once you have had an opportunity to review the details. The March 5 letter makes it absolutely clear that there can and will be no claim asserted nor any lawsuit filed against the two of you for the injuries and damages sustained by Elizabeth Nelson as a consequence of her fall on January 13, 2007. In that letter, I also provide you with details regarding two separate limited visits which need to be made to the premises, initially by myself and Ms. Nelson; and then subsequently by myself and our engineering expert, Ron Eck.

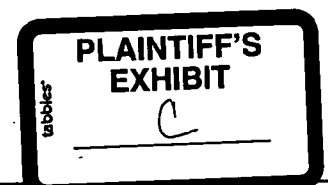
I would ask again that you contact me upon receipt of this additional letter. If you call the office, I will immediately return your call so that you do not need to incur the phone charges. I would ask once again that you put yourself in the place of Ms. Nelson under the circumstances, and permit us to proceed with the limited site visits. Finally, I would indicate that if need be, we can proceed with this case, and file a Motion with the Court in order to obtain a court order to conduct the site visits. I do not wish to proceed in that manner, but would instead like to just work the visits out voluntarily and without court involvement. I look forward to your prompt response.

Very truly yours,



Gregory S. Olsavick

GSO:lmw

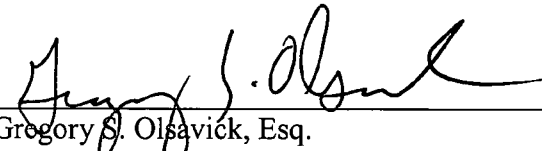


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within document was served on all Counsel listed below, by First Class Mail, postage prepaid, on this 1st day of May 2007:

Barry M. Neff
306 Southwest Third Avenue
Clearfield, PA 16830

EDGAR SNYDER & ASSOCIATES LLC



Gregory S. Olsavick, Esq.
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW
:
:
:
: No: 2007 CD 583
:
: **ISSUE: Praecipe for Appearance**
:
: Filed on Behalf of Defendant
:
: Counsel of Record for this Defendant:
:
: MARGOLIS EDELSTEIN
: Stephen L. Dugas, Esquire
: PA. I.D. # 21351
: PO Box 628
: Hollidaysburg, PA 16648
: (814) 695-5064
: Fax: (814) 695-5066

I hereby certify that a true and correct
copy of the within was mailed to all
counsel this 30th day of April, 2007

Attorney for Defendant

FILED *McC*
M 10:50 AM
MAY 01 2007 *@*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

CIVIL ACTION - LAW

No: 2007 CD 583

JURY TRIAL DEMANDED

PRAECIPE FOR APPEARANCE

TO PROTHONOTARY:

Enter our Appearance for Defendant, Barry M. Neff in the above captioned action.

Papers may be served at the address set forth below.

MARGOLIS EDELSTEIN

By: _____

Stephen L. Dugas, Esquire
Attorney for Defendant
Attorney I.D. # 21351
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695-5066

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs,

vs.

BARRY M. NEFF
Defendant

No. 07-583-CD

COMPLAINT IN CIVIL ACTION

Filed on behalf of:
Plaintiffs

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE

PA I.D. No. 34620

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

FILED *Atty pd. 85.00*
mt 12:40/24
APR 16 2007 *ICC Sheriff*

(5)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.:

CIVIL ACTION - LAW

Vs.

BARRY M. NEFF,
Defendant

NOTICE TO DEFEND

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 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]. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

LAWYER REFERRAL SERVICE -

Court Administrator's Office
1 North Second Street
Clearfield, PA 16830

Telephone (814) 765-2641, Ext: 50

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

No.:

CIVIL ACTION - LAW

Vs.

BARRY M. NEFF,
Defendant

COMPLAINT IN CIVIL ACTION

AND NOW, come the Plaintiffs, Elizabeth L. Nelson and Kenneth A. Nelson, by and through their attorneys, Edgar Snyder & Associates, LLC, Todd Berkey, Esquire and Gregory S. Olsavick, Esquire, and file the within Complaint in Civil Action and in support thereof aver as follows:

COUNT I

1. Plaintiffs Elizabeth L. Nelson and Kenneth A. Nelson, are wife and husband and adult individuals who reside at 301 West Fifth Avenue, Clearfield, Clearfield County, Pennsylvania 16830.

2. Defendant Barry M. Neff, is an adult individual who presently resides at 306 Southwest Third Avenue, Clearfield, Clearfield County, Pennsylvania 16830.

3. At all relevant times herein, Defendant Barry M. Neff was owner of real estate, consisting of a single family residence, located at 1742 Windy Hill Road, Curwensville, Clearfield County, Pennsylvania; and said parcel of real estate was found at Clearfield County Deed Book Volume 894, page 290.

4. The events hereinafter complained of occurred on or about January 13, 2007, at approximately 1:00 p.m., in the aforesaid premises located at 1742 Windy Hill Road, Curwensville, Pennsylvania.

5. At this time, Defendant had listed his real estate at 1742 Windy Hill Road for sale with a realtor. Defendant remained owner and in possession of the subject premises until it was sold subsequently, with a closing date on or about February 16, 2007.

6. At the time of the accident, Plaintiff Elizabeth L. Nelson was a licensed real estate agent with C.P. Realty, Clearfield, PA.

7. At the time of the accident, Plaintiff Elizabeth L. Nelson, who was working in the course and scope of her employment, had proceeded to the subject premises at 1742 Windy Hill Road in order to look at the premises, including the interior of the residence, in preparation for later that day meeting with clients – prospective buyers at the premises, at which time Plaintiff intended to show them the residence.

8. As such, Plaintiff Elizabeth L. Nelson, was under the circumstances, an invitee and/or business invitee at Defendant's premises and residence.

9. Plaintiff Elizabeth L. Nelson was expressly permitted to enter the subject premises and to examine and inspect the same, in her capacity as a licensed real estate agent, and in order that she become familiar with the physical layout of the residence, to assist in her showing it to prospective buyers.

10. On January 13, 2007, at approximately 1:00 p.m., Plaintiff Elizabeth L. Nelson, proceeded to the premises, and was inside the residence for the first time. Plaintiff went from the ground floor and proceeded up an interior stairway. At the top of the stairway was a small threshold with a closed door which she understood was an upstairs bedroom. Plaintiff Elizabeth L. Nelson, proceeded to open the door and stood in the doorway on the threshold and looked into and around the room.

11. Plaintiff then proceeded to close the door, and intended to proceed back down the subject stairway to the ground floor. Suddenly and without warning, Plaintiff was caused to slip and fall on the subject stairs, and her body was caused to plummet down the stairway, with repeated impacts on various stairs, particularly impacts to her left shoulder and side.

12. The subject stairs were wooden with no skid resistant material on the treads, and the risers were of different and varying heights. There was no handrail on the subject stairway at any point between the first – ground floor, and the upstairs bedroom. In addition, a sharp right angle turn on the stairway near the top had to be negotiated descending the stairway.

13. Defendant failed to recognize that these conditions of the stairs and stairway were dangerous and unsafe, and constituted a serious fall hazard; and failed to take any actions to correct the dangerous and unsafe conditions, including the installation of a handrail, placement of skid-resistant materials on the treads and/or markings on the stairs, or other corrective actions.

14. As a direct consequence, the circumstances existing with the stairs and the subject stairway, as aforesaid, constituted dangerous, unsafe and hazardous conditions as of the time of the incident.

15. The Defendant knew or should have known of these dangerous, unsafe and hazardous conditions prior to the time of the incident.

16. The Defendant had actual notice of these dangerous, unsafe and hazardous conditions as aforesaid, and/or Defendant had constructive notice of these conditions under the circumstances herein.

17. The Defendant knew or should have known that the said dangerous, unsafe and hazardous conditions which existed on the subject stairs and stairway, presented an unreasonable

risk of harm and injury to individuals, particularly invitees or business invitees who would be descending the stairway at the time.

18. The Defendant knew or should have known that individuals such as Plaintiff Elizabeth L. Nelson would not discover or notice these dangerous, unsafe and hazardous conditions under the circumstances.

19. Under the circumstances, the Defendant was required to inspect the subject stairs and stairway to discover any dangerous, unsafe and hazardous conditions, such as existed here, and to warn invitees and/or business invitees of such conditions, including Plaintiff Elizabeth L. Nelson.

20. The injuries and damages sustained by Plaintiff Elizabeth L. Nelson were caused solely by and were a direct and proximate result of the negligence, carelessness, and recklessness, of the Defendant Barry M. Neff, as hereinafter set forth in detail.

21. The aforesaid incident and resulting injuries and damages sustained by Elizabeth L. Nelson were caused solely by and were a direct and proximate result of the negligence, carelessness and recklessness of Defendant Neff, generally, and in the following particulars:

- a. In causing and/or permitting dangerous, hazardous, unsafe and slippery conditions to exist on the subject stairs/stairway.
- b. In causing and/or permitting dangerous, hazardous, unsafe and slippery conditions to exist on stairs/stairway being utilized by invitees and/or business invitees;
- c. In failing to warn and/or notify the Plaintiff of the dangerous, hazardous, unsafe and slippery conditions of the subject stairs/stairway prior to the incident;

d. In failing to warn Plaintiff of the dangerous, hazardous, and slippery conditions of the subject stairs/stairway, and advise Plaintiff to exercise a high degree of caution in descending the stairs/stairway;

e. In failing to take any steps, actions, or adequate precautions to correct the dangerous, hazardous, and slippery conditions of the subject stairs/stairway;

f. In failing to adequately inspect the subject stairs/stairway prior to the incident, when Defendant knew or reasonably should have known that dangerous, hazardous and slippery conditions existed on the stairs/stairway under the circumstances;

g. In failing to properly inspect for dangerous, unsafe, and slippery conditions of the subject stairs/stairway, including the failure to recognize that there did not exist a handrail anywhere on the subject stairway, notwithstanding that the subject stairs did not have any slip resistant material on the treads;

h. In failing to properly inspect for dangerous, unsafe, and slippery conditions of the subject stairs/stairway, including the sharp right angle turn near the top of the stairway, which had to be negotiated by individuals descending the stairway;

i. In failing to properly inspect for dangerous, unsafe, and slippery conditions of the subject stair/stairway, including the failure to recognize that the individual might step from the first stair below the threshold onto the stair located at a right degree angle below the landing where the raiser was of extreme height;

j. In causing and/or permitting the threshold of the door at the top of the stairway to be uneven and not level, and in a deteriorated condition such that it sloped downward from the door of the upstairs bedroom;

k. In causing and/or permitting the threshold of the door at the top of the stairway to be worn, deteriorated, irregular and slippery prior to the incident;

l. In causing and/or permitting the landing near the top of the stairway descending from the threshold to be of a shorter width compared to the stairs themselves, which creates a serious fall hazard;

m. In causing and/or permitting the conditions of the subject stairs/stairway, as aforesaid, which were inherently dangerous as they violated pedestrian expectancy and created a serious fall hazard; including that an individual could step from the upper stair down at a right degree angle where there exists an excessively high riser;

n. In failing to take any steps, actions or adequate precautions to remedy the said dangerous, hazardous and unsafe conditions of the subject stairs/stairway, as aforesaid, resulting in a situation where it was reasonably foreseeable that falls would occur at or near the top of the stairway;

o. In failing to have adequate lighting and/or illumination in the subject stairway which was utilized by invitees and/or business invitees, as of the time of the incident.

22. As a direct and proximate result of the negligence, carelessness, and recklessness of Defendant Barry M. Neff, Plaintiff Elizabeth L. Nelson, sustained the following serious and severe injuries, some or all of which may be permanent in nature:

a. A fractured left humerus requiring open reduction and internal fixation with an IM rod, spiral blade and two cortical screws;

b. Severe injury and damage to her left rotator cuff resulting in physical limitations;

c. Swelling, strain/sprain of the nerves, muscles, tissues, ligaments of the neck and left shoulder;

d. Contusions, abrasions, and bruising to her left shoulder;

e. Acute anemia from blood loss; and

f. Severe shock, strain and sprain of the nerves, muscles, tissues, ligaments and vessels of the musculoskeletal system.

23. As a direct and proximate result of the negligence, carelessness, and recklessness of Defendant Neff, as aforesaid, the Plaintiff Elizabeth L. Nelson, has been damaged as follows:

a. She has suffered and will suffer great physical pain, suffering, inconvenience, embarrassment, and humiliation;

b. She has been and will be deprived of her health, strength, and vitality;

c. She has in the past and may in the future, suffer from the loss of enjoyment of life's pleasures;

d. She has in the past and may in the future, suffer from mental and emotional anguish, stress, depression and anxiety as a result of her injuries;

e. She has in the past and may in the future, be limited in her normal and daily activities;

f. She has in the past and may in the future, sustain a loss of earnings, and incapacity and seeks reimbursement for the loss of earnings and earning capacity;

g. She has in the past and may in the future, undergo numerous medical procedures, resulting in large and substantial expenses for medical treatment and care because of her injuries; and

h. She has suffered scarring and disfigurement.

24. As a direct and proximate result of the negligence, carelessness, and recklessness of Defendant Neff as aforesaid, the Plaintiff Elizabeth L. Nelson has incurred in the past and may incur in the future, large and substantial expenses for medical treatment and care because of the injuries sustained by her.

WHEREFORE, the Plaintiff Elizabeth L. Nelson demands judgment in her favor and against Defendant, Barry M. Neff, in an amount in excess of the jurisdictional limits in Clearfield County, Pennsylvania.

COUNT II

25. Plaintiff Kenneth A. Nelson hereby incorporates by reference paragraphs 1 through 24 of the Complaint as if the same were fully set forth herein at length.

22. As a direct and proximate result of the negligence, carelessness, and recklessness of Defendant Neff, Plaintiff Kenneth A. Nelson has sustained the following damages:

- a. Husband/Plaintiff has suffered a loss of consortium; and
- b. Husband/Plaintiff has sustained great inconvenience due to a loss of services, society and companionship that were provided by Wife/Plaintiff;

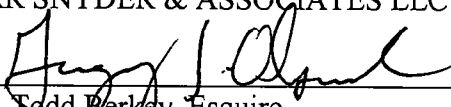
WHEREFORE, the Plaintiff Kenneth A. Nelson demands judgment in his favor and against Defendant, Barry M. Neff, in an amount in excess of the jurisdictional limits in Clearfield County, Pennsylvania.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

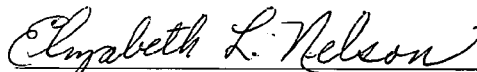
EDGAR SNYDER & ASSOCIATES LLC

By: _____


Todd Berkey, Esquire
Gregory S. Olsavick, Esquire
Attorney for Plaintiffs

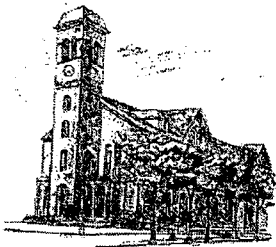
VERIFICATION

We, Elizabeth L. Nelson and Kenneth A. Nelson, Plaintiffs herein, hereby verify that the averments of fact contained in the foregoing Complaint in Civil Action are true and correct and based upon our personal knowledge, information or belief. We understand that these averments of fact are made subject to the penalties of 18 Purdons Consolidated Statutes Section 4904, relating to unsworn falsification to authorities.


Elizabeth L. Nelson


Kenneth A. Nelson

Date: 4/10/07



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 54G, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

COPY

April 11, 2008

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

Re: Elizabeth L. Nelson and Kenneth A. Nelson
Vs.
Barry M. Neff
No. 07-583-CD
Superior Court No. 350 WDA 2008

Dear Prothonotary:

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

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED

01/11/04/201
APR 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

Elizabeth L. Nelson and
Kenneth A. Nelson

Vs.

Case No. 2007-00583-CD

Barry M. Neff

CERTIFICATE OF CONTENTS

NOW, this 11th day of April, 2008, the undersigned, Prothonotary or Deputy Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court of record, does hereby certify that attached is the original record of the case currently on Appeal.

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

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

Record, Etc. Received:

Date: _____

(Signature & Title)

FILED NOCC
m110:3084
APR 17 2008 @

William A. Shaw
Prothonotary/Clerk of Courts

RECEIVED
APR 14 2008
PITTSBURGH OFFICE OF
SUPERIOR COURT

FILED

APR 17 2008

William A. Shaw
Prothonotary/Clerk of Courts

CA

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

ELIZABETH L. NELSON AND KENNETH
A. NELSON, wife and husband

vs.

BARRY M. NEFF

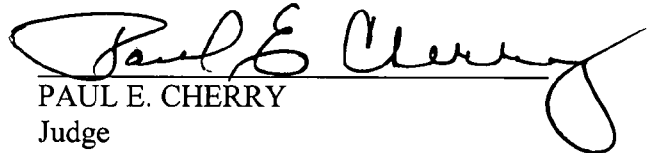
:
:
:
: No. 07-583-CD
:
:

ORDER

AND NOW, this 16th day of January, 2009, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby scheduled for **Tuesday, February 17, 2009 at 2:30 P.M.** in Judges Chambers, Clearfield County Courthouse, Clearfield, PA.

Additionally, Jury Selection in this matter shall be and is hereby scheduled for April 2, 2009 at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:


PAUL E. CHERRY
Judge

FILED
012:34
JAN 16 2009

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty's:
Olsavick
Dugas

(610)

FILED

JAN 16 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/16/09

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

**The Superior Court of Pennsylvania
Sitting at Pittsburgh**

6th floor Grant Building
Suite 600
Pittsburgh, Pennsylvania
15219

FILED

JAN 21 2009

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

RECORD, 2 DEPOSITIONS, SUPERIOR COURT JUDGMENT ORDER AND OPINION

As remanded from said court in the following matter:

**Nelson, E. v. Neff, B.
NO. 350 WDA 2008**

**COURT OF COMMON PLEAS-CIVIL DIVISION-CLEARFIELD COUNTY
NO. 07-583-CD**

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded January 20, 2009

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.

Elemer R. Valecko
DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: 1-21-09

William A. Shaw
(Signature & Title)

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

FILED
JAN 21 2009
Prothonotary/Clerk of Courts
William A. Shaw

MAILED
JAN 21 2009
CLERK OF COURTS

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

ELIZABETH L. NELSON and KENNETH : IN THE SUPERIOR COURT OF
A. NELSON, wife and husband, : PENNSYLVANIA

Appellants :

v. :

BARRY M. NEFF, :

Appellee :

No. 350 WDA-2008

JAN 21 2009

m/11.30.09

William A. Shaw

Clerk of Courts

Appeal from the Order January 2, 2008
In the Court of Common Pleas of Clearfield County
Civil at No(s): 07-583-CD

BEFORE: BENDER, PANELLA and COLVILLE*, JJ.

MEMORANDUM:

FILED: DECEMBER 16, 2008

Appellants, Elizabeth L. Nelson (hereinafter "Mrs. Nelson") and Kenneth A. Nelson, appeal from the order granting summary judgment, entered on January 2, 2008, by the Honorable John K. Reilly, Jr., Court of Common Pleas of Clearfield County. After careful review, we reverse the order granting summary judgment and remand the case for proceedings consistent with this memorandum.

On January 15, 2007, Mrs. Nelson fell down a flight of stairs located in a residence owned by Appellee, Barry M. Neff. At the time, Mrs. Nelson, a realtor, was preparing to show the residence to a prospective buyer. In the course of her inspection of the premises, she walked up a stairwell to the second floor. The top portion of the stairwell ended in a small landing and formed a right angle with the final stair, which lead to a doorway to the

* Retired Senior Judge assigned to the Superior Court.

second floor bedroom. The final stair had a riser height twice that of the rest of the stairs. Also, there was no handrail on either side of the stairwell.

Mrs. Nelson opened the door, looked into the room through the doorway, and closed the door. As she turned around to step down, she lost her balance and fell down the stairs head-first. As a result of the fall, she sustained serious injuries, including a fractured left humerus, a damaged left rotator cuff, and associated contusions, abrasions, and bruises.

Subsequently, the Nelsons commenced an action in negligence against Neff. They submitted the report of their expert, Ronald W. Eck, P.E., Ph.D., indicating that there were various defects found on the premises. At the close of discovery, Neff filed a motion for summary judgment, alleging that the Nelsons failed to sustain their burden of proving causation. The trial court granted summary judgment in an order dated January 2, 2008, noting, "it is clear that based on Dr. Eck's report there is sufficient evidence and testimony of negligence to submit to the jury, but there is absolutely no proof in the form of testimony or evidence that this negligence, in any way, was the legal or proximate cause of Plaintiff's fall." Trial Court Opinion, 1/2/08, at 2-3. This timely appeal followed.

On appeal, the Nelsons present the following issue for our review:

- I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT WHERE THE TRIAL COURT SPECIFICALLY CONCLUDED THAT THERE WAS SUFFICIENT EVIDENCE OF

NEGLIGENCE PURSUANT TO THE PLAINTIFFS' EXPERT REPORT TO PROCEED TO A JURY TRIAL, BUT NEVERTHELESS CONCLUDED IN ERROR THAT THERE WAS NO CAUSATION ESTABLISHED AS A MATTER OF LAW.

Appellants' Brief, at 4.

The Nelsons argue that the trial court should not have granted the motion for summary judgment because there is a genuine issue of material fact regarding proof of causation, such that the issue should be presented to the jury. We agree.

As our Supreme Court has summarized:

Our standard of review on an appeal from the grant of a motion for summary judgment is well-settled. A reviewing court may disturb the order of the trial court only where it is established that the court committed an error of law or abused its discretion. As with all questions of law, our review is plenary.

In evaluating the trial court's decision to enter summary judgment, we focus on the legal standard articulated in the summary judgment rule. **See** PA.R.C.P. 1035.2. The rule states that where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law, summary judgment may be entered. Where the nonmoving party bears the burden of proof on an issue, he may not merely rely on his pleadings or answers in order to survive summary judgment. Failure of a non-moving party to adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof establishes the entitlement of the moving party to judgment as a matter of law. Lastly, we will review the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.

Shepard v. Temple University, 948 A.2d 852, 856 (Pa. Super. 2008) (citations omitted).

After considering the foregoing law concerning the requirements for granting summary judgment, we find that the trial court abused its discretion in granting Neff's motion. The four elements necessary to establish a cause of action in negligence are: "a duty or obligation recognized by law; breach of that duty by the defendant; causal connection between the defendant's breach of that duty and the resulting injury; and actual loss or damage suffered by the complainant." ***Cade v. McDanel***, 679 A.2d 1266, 1271 (Pa. Super. 1996) (quoting ***Reilly v. Tiergarten, Inc.***, 633 A.2d 208, 210 (Pa. Super. 1993)). In holding that circumstantial evidence is sufficient for the jury to infer that the defendant's negligence caused the plaintiff's injuries, our Supreme Court stated

It is not necessary, under Pennsylvania law, that every fact or circumstance point unerringly to liability; it is enough that there be sufficient facts for the jury to say reasonably that the preponderance favors liability ... The facts are for the jury in any case whether based upon direct or circumstantial evidence where a reasonable conclusion can be arrived at which would place liability on the defendant. It is the duty of plaintiff to produce substantial evidence which, if believed, warrants the verdict [s]he seeks. The right of a litigant to have the jury pass upon the facts is not to be foreclosed just because the judge believes that a reasonable man might properly find either way. A substantial part of the right to trial by jury is taken away when judges withdraw close cases from the jury. Therefore, when a party who has

the burden of proof relies upon circumstantial evidence and inferences reasonably deductible therefrom, such evidence, in order to prevail, must be adequate to establish the conclusion sought and must so preponderate in favor of that conclusion as to outweigh in the mind of the fact-finder any other evidence and reasonable inferences therefrom which are inconsistent therewith.

Smith v. Bell Telephone Co. of Pennsylvania, 397 Pa. 134, 139-140, 153 A.2d 477, 480 (1959).

We find that the Nelsons presented adequate evidence for the issue of whether Neff's negligence caused Mrs. Nelson's injuries to be decided by the jury. Following his inspection of the stairwell, Dr. Eck opined that there were multiple housing code violations, namely: the non-standard arrangement of the landing and the final stair; the excessive riser height of the final stair; the lack of a handrail on either side; and, inadequate lighting to delineate the stair treads. **See** Expert Report of Ronald W. Eck, P.E., Ph.D., 7/27/07, at 5-6. He concluded that

[G]iven the circumstances presented, the stairs constituted a high accident risk situation such that falls of the type which occurred were foreseeable. The condition violated several provisions of the International Residential Code and violated accepted safety principles. In combination, these defects interfered with Mrs. Nelson's ability to monitor the relationship between her foot movement and the walking surface. Thus, the fall in question was a direct result of improper stair design, construction and maintenance.

Id., at 7.

The trial court determined that based on Dr. Eck's report, there was sufficient evidence for the issue of Neff's negligence to be submitted to the jury – *i.e.*, Neff had a legal duty to maintain a safe stairwell and he breached that duty – yet, it somehow decided that there was no proof of causation. **See** Trial Court Opinion, 1/2/08, at 2-3. We find it difficult to reconcile the trial court's ruling that there was no evidence of causation, with Dr. Eck's expert conclusion that Mrs. Nelson's fall was "a direct result" of Neff's negligence. Expert Report of Ronald W. Eck, P.E., Ph.D., 7/27/07, at 7. Dr. Eck thus opined that Neff's negligence proximately caused Mrs. Nelson's harm.

Furthermore, Mrs. Nelson's deposition testimony permits the reasonable inference that the defective stairs caused her to fall and sustain injuries, thereby creating a genuine issue of material fact. In a similar case, our Supreme Court concluded that where the appellant fell on a sidewalk while his feet were in a large indentation, it could be reasonably inferred that the appellant tripped on the large hole in the sidewalk, and this evidence, if believed, was sufficient to establish causation and create a genuine issue of material fact. **See Marks v. Tasman**, 527 Pa. 132, 137, 589 A.2d 205, 207 (1991).

Here, Mrs. Nelson testified that she began her descent after inspecting the second-floor room. **See** N.T., Deposition, 8/21/07, at 31. She recalls

turning away from the door at the top of the stairs, looking down she could see the staircase, and putting one foot down, and then the other. ***See id.*** The next thing she remembers is falling down the stairs headfirst and landing at the bottom, flat on her back, with her head up against a wall and her feet pointing upwards towards the stairs. ***See id.***, at 36-40. She also testified that when she fell, there was nothing that would have prevented her from being observant and aware of her surroundings, or anything to distract her such as a loud noise or the arrival of her clients. ***See id.***, at 38. Accordingly, we conclude that there is a genuine issue of material fact as to proximate causation because Mrs. Nelson's testimony permits the reasonable inference that the defective stairs caused her to fall and sustain injuries.

Given such evidence, we find that the trial court abused its discretion in granting the motion for summary judgment.

Order reversed. Case remanded for proceedings consistent with this memorandum. Jurisdiction relinquished.

Judgment Entered:

Eleanor K. Valecko
Deputy Prothonotary

DATE: DECEMBER 16, 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and KENNETH A. NELSON No. 07-583-CD

Plaintiffs,

vs.

BARRY M. NEFF,

Defendant.

PRAECIPE FOR APPEARANCE OF CO-COUNSEL

Filed on behalf of: Plaintiffs, ELIZABETH L. NELSON and KENNETH A. NELSON

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE
PA I.D. No. 34620

CHRISTOPHER M. MILLER, ESQUIRE
PA I.D. No. 79533

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

JURY TRIAL DEMANDED

FILED

013:1730
FEB 17 2009

William A. Shaw
Prothonotary/Clerk of Courts

Copy to CIA
610

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and KENNETH A.
NELSON

CIVIL DIVISION

No. 07-583-CD

Plaintiffs,

vs.

BARRY M. NEFF,

Defendant.

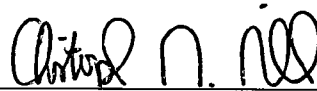
PRAECIPE FOR APPEARANCE OF CO-COUNSEL

To: Clearfield County Prothonotary:

Kindly add my appearance as co-counsel for the Plaintiffs in the above-captioned case.

EDGAR SNYDER & ASSOCIATES, LLC

By




Christopher M. Miller, Esquire
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Praeipie For Appearance of Co-Counsel was served on all Counsel listed below, by hand delivery, on this 17th day of February, 2009:

Steven Dugas, Esquire
Margolis Edelstein
Allegheny Professional Center, Suite 303
1798 Old Route 220 North
P.O. Box 628
Hollidaysburg, PA 16648

EDGAR SNYDER & ASSOCIATES LLC



Christopher M. Miller, Esquire
Attorney for Plaintiffs

FILED

FEB 17 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

ELIZABETH L. NELSON and
KENNETH A. NELSON

: NO. 07-583-CD
:
:
:
:
:
:

V.

BARRY M. NEFF

ORDER

AND NOW, this 17th day of January, 2009, following Pre-Trial Conference, it is
the ORDER of this Court as follows:

1. Jury Selection in this matter is scheduled for April 2, 2009, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Trial in this matter is scheduled for May 7, 8, 2009, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
3. The deadline for providing any and all outstanding discovery shall be by and no later than thirty (30) days prior to the commencement of trial.
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. Points for Charge shall be submitted to the Court by and no later than twenty (20) days prior to the commencement of trial.
6. Proposed Verdict Slip shall be submitted to the Court by and no later than twenty (20) days prior to the commencement of trial.
7. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.
8. Settlement Conference shall be held on April 22, 2009 at 9:30 A.M. by telephone.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
01/19/09
FEB 18 2009

William A. Shaw
Prothonotary/Clerk of Courts
2009-01-18
Olsavick
Sugas
@

FILED

FEB 18 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/18/09

☐ 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

ELIZABETH L. NELSON and
KENNETH A. NELSON

NO. 07-583-CD

V.

BARRY M. NEFF

FILED

FEB 19 2009

0/10:00/2

William A. Shaw
Prothonotary/Clerk of Courts

AMENDED ORDER

AND NOW, this 19th day of February, 2009, it is the ORDER of this Court that this Court's Order dated February 17, 2009 shall be and is hereby AMENDED as follows:

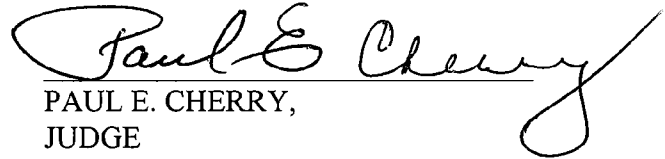
ORDER

AND NOW, this 17th day of February, 2009, following Pre-Trial Conference, it is the ORDER of this Court as follows:

1. Jury Selection in this matter is scheduled for April 2, 2009, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Trial in this matter is scheduled for May 6, 7, 2009, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
3. The deadline for providing any and all outstanding discovery shall be by and no later than thirty (30) days prior to the commencement of trial.
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. Points for Charge shall be submitted to the Court by and no later than twenty (20) days prior to the commencement of trial.
6. Proposed Verdict Slip shall be submitted to the Court by and no later than twenty (20) days prior to the commencement of trial.
7. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

8. Settlement Conference shall be held on April 22, 2009 at 9:30 A.M. by telephone.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

FEB 19 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2-19-09

☐ 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:

Olsavick + Mullen

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and KENNETH A. NELSON,
NELSON,

Plaintiffs,

vs.

BARRY M. NEFF,

Defendant

NOTICE OF VIDEOTAPE DEPOSITION OF
ROLDOFO S. POLINTAN, MD

Filed on behalf of: Plaintiffs Elizabeth L.
Nelson and Kenneth A. Nelson

Counsel of record for this party:

GREGORY S. OLSAVICK, ESQUIRE

PA I.D. No. 34620

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

5 FILED No CC.
m/12:20pm
MAR - 5 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and KENNETH A. NELSON,)	CIVIL DIVISION
)	
Plaintiffs,)	No. 07-583-CD
)	
vs.)	
)	
BARRY M. NEFF,)	
Defendant)	

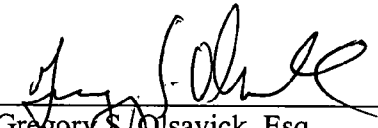
NOTICE OF VIDEOTAPE DEPOSITION

To: Rodolfo S. Polintan, MD
807 Turnpike Avenue
Suite 120
Clearfield, PA 16830

PLEASE TAKE NOTICE that Plaintiffs ELIZABETH L. NELSON AND KENNETH A. NELSON, by their Attorneys, GREGORY S. OLSAVICK, ESQUIRE and EDGAR SNYDER & ASSOCIATES, LLC, will take the deposition by videotape of Rodolfo S. Polintan, MD on Monday, April 6, 2009 at 3:00 p.m. at Clearfield Hospital, Conference Rooms A, B and C, 809 Turnpike Avenue, Clearfield, PA 16830, for use at trial pursuant to the Pennsylvania Rules of Civil Procedure before a court reporter duly authorized to administer oaths on at the offices of at which time you are invited to appear and take such part as shall be fitting and proper.

The videotape deposition shall be taken before a Notary Public employed by Sargent's Court Reporting, and the videotape operator shall be Precise Litigation Technologies.

EDGAR SNYDER & ASSOCIATES, LLC

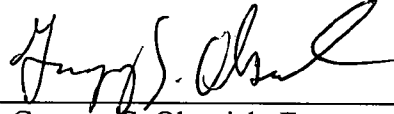
By 
Gregory S. Olsavick, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above **NOTICE OF VIDEOTAPE DEPOSITION** was served on Counsel of Record by First Class Mail, postage prepaid, on this 4th day of March, 2009:

Stephen Dugas, Esquire
Margolis Edelstein
Allegheny Professional Center, Suite 303
1798 Old Route 220 North
P.O. Box 628
Hollidaysburg, PA 16648

EDGAR SNYDER & ASSOCIATES, LLC

By 
Gregory S. Olsavick, Esq.
Attorney for Plaintiff

MARGOLIS EDELSTEIN

ATTORNEYS AT LAW
www.margolisedelstein.com

CENTRAL PENNSYLVANIA OFFICE:
P.O. Box 628
HOLLIDAYSBURG, PA 16648
814-695-5064
FAX 814-695-5066

Stephen L. Dugas, Esquire
Central Pennsylvania Office
sdugas@margolisedelstein.com

April 4, 2009

PHILADELPHIA OFFICE: *
THE CURTIS CENTER, 4TH FLOOR
601 WALNUT STREET
INDEPENDENCE SQUARE WEST
PHILADELPHIA, PA 19106-3304
215-922-1100
FAX 215-922-1772

HARRISBURG OFFICE: *
3510 TRINDLE ROAD
CAMP HILL, PA 17011
717-975-8114
FAX 717-975-8124

PITTSBURGH OFFICE:
525 WILLIAM PENN PLACE
SUITE 3300
PITTSBURGH, PA 15219
412-281-4256
FAX 412-642-2380

SCRANTON OFFICE:
THE OPPENHEIM BUILDING
409 LACKAWANNA AVENUE
SUITE 3C
SCRANTON, PA 18503
570-342-4231
FAX 570-342-4841

SOUTH NEW JERSEY OFFICE: *
SENTRY OFFICE PLAZA
216 HADDON AVENUE, 2ND FLOOR
P.O. Box 92222
WESTMONT, NJ 08108
856-858-7200
FAX 856-858-1017

NORTH NEW JERSEY OFFICE:
CONNELL CORPORATE CENTER
THREE HUNDRED CONNELL DRIVE
SUITE 6200
BERKELEY HEIGHTS, NJ 07922
908-790-1401
FAX 908-790-1486

DELAWARE OFFICE:
760 SOUTH MADISON STREET
SUITE 102
WILMINGTON, DE 19801
302-888-1112
FAX 302-888-1119

Clearfield County Prothonotary
P.O. Box 549
230 East Market Street
Clearfield, PA 16830

Re: Nelson v. Neff
No. 2007 CD 583, Clearfield County.
Our File No: 23000.7-00003

Dear Prothonotary:

In connection with the above you will find enclosed herewith Defendant's Motion In Limine, for filing in the above. A copy of this letter and the enclosure have been served on counsel for plaintiffs. I am also sending a copy of this letter and the enclosure to Judge Cherry, with the understanding that he will hear argument on same during the Settlement Conference scheduled for April 22, 2009 at 9:30 a.m., at which I intend to personally appear.

Thank you.

Very Truly Yours,

Stephen L. Dugas, Esquire

SLD/vmd
Enclosure

cc: Gregory S. Olsavick, Esquire
cc: The Honorable Paul E. Cherry

LA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

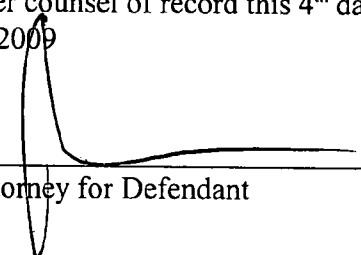
v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW
:
:
: No: 2007 CD 583
:
: **ISSUE: Motion In Limine**
:
:
:
: Filed on Behalf of Defendant:
:
: Counsel of Record for this Defendant:
:
: **MARGOLIS EDELSTEIN**
: Stephen L. Dugas, Esquire
: PA. I.D. # 21351
: PO Box 628
: Hollidaysburg, PA 16648
: (814) 695-5064
: Fax: (814) 695-5066

I hereby certify that a true and correct
copy of the within was served by mail
on other counsel of record this 4th day of
April, 2009



Attorney for Defendant

FILED No CC.
m 12:05pm (GD)
APR 06 2009

S
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

V.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW

: No: 2007 CD 583

: JURY TRIAL DEMANDED

MOTION IN LIMINE

NOW COMES Defendant, and by his attorneys, Margolis Edelstein, submits this Motion in Limine, whereof the following is a statement:

MOTION TO LIMIT TESTIMONY OF DR. POLINTAN

This case was pre-tried on two separate occasions. On the first occasion the case was Pre-Tried by Senior Judge Reilly on December 11, 2007. In connection with that Pre-Trial, Plaintiffs submitted a Pre-Trial Memorandum identifying Darren Smeal, M.D. and Rodolfo Polintan, M.D. as medical witnesses, but supplied no reports from either physician. Previously, Defendants had served "Expert Interrogatories" on Plaintiffs, requiring identification of all experts for use at trial, as well as compliance with Pa. R. C. P., Rule 4003.5. In response, Plaintiffs declined to identify any experts nor provide any of the required information. A copy of Plaintiff's Answers to the "Expert Interrogatories" is attached hereto. Plaintiffs did supply copies of records from Clearfield Hospital, including operative notes and reports of Dr. Polintan, as well as his discharge summary dated 01/27/2007, but supplied no later records reflecting treatment by Dr. Polintan.

The matter came before the Court on a later Pre-Trial Conference held on February 17, 2009. No additional or supplemental Pre-Trial Memoranda or Narratives were provided by Plaintiffs. However, on or about March 4, 2009, counsel for Plaintiffs filed a Notice scheduling the Videotape Deposition of Dr. Polintan for April 6, 2009.

On April 2, 2009, counsel for Defendant received a copy of Plaintiff's First Supplemental Pre-Trial Memorandum containing an office note dated January 6, 2009 and report dated March 16, 2009 from Dr. Polintan. Dr. Polintan specifically noted the presence of a pre-existing, chronically torn left rotator cuff and nowhere opines that this is related in any way to the subject accident. He does not opine that the fracture of the neck of her left humerus, which he did relate to the subject accident, contributes or causes any of the decreased range of motion or pain that allegedly exists. Although he opines that Plaintiff has a "permanent impairment because of her injuries," he does not delineate or attempt to distinguish between the residua related to the fractured left humerus (which he also describes as "healed") and the residua from her pre-existing and unrelated chronically torn left rotator cuff. He also fails to attribute any future impairment, or the need for further treatment to the residua from the fractured left humerus.

Dr. Polintan makes no reference whatsoever to the Plaintiff's prior employment as a real estate salesperson, and expresses no opinion regarding Plaintiff's inability to engage in that occupation.

In addition to these specific deficiencies in the report, the report was supplied in an untimely manner, resulting in prejudice to Defendant, in as much as Plaintiffs had never previously supplied any report or record from any expert witness that indicated any continuing impairment nor any future impairment, thus leading to the decision to refrain from scheduling an independent medical evaluation. Defendant therefore seeks an Order from the Court precluding any testimony

from Dr. Polintan entirely, or in the alternative, limiting his testimony to the opinions he expressed in the documents supplied by Plaintiffs in response to Defendant's "Expert Interrogatories". Defendant specifically seeks an Order precluding any attempt to elicit, or any opinions from Dr. Polintan relating to future impairment of function, future pain or loss of earnings or impairment of earning capacity, as well as any opinion regarding future medical care or treatment. In this regard it is also to be noted that even in his report of March 16, 2009 he specifically states that he "cannot make any definite comment" regarding further medical care or treatment, nor could he estimate the future cost of such treatment, thereby rendering his opinions in this area incompetent and inadmissible.

MOTION TO EXCLUDE OR LIMIT TESTIMONY FROM RONALD W. ECK, P.E.

This individual was identified as a liability expert, and his report first supplied to Defendant on or about November 14, 2007. In his report, he identifies, and relies upon a publication of the National Bureau of Standards, "Guidelines for Stair Safety," promulgated in 1979. He concludes that as a result of certain deficiencies existing in defendant's premises, the 1979 guidelines from National Bureau Standards were violated.

The witness also makes reference to the International Residential Code (2003), alleging that Defendant was also in violation of certain sections thereof. The witness also makes a reference to a treatise authored by one "W. English" in 1989 as further constituting one of the professional references upon which he relied.

At the time Defendant purchased the subject residence in 1983, he made no interior changes or alterations. By Defendant's estimate, the structure was in excess of 40 years old at the time he purchased it. Accordingly, no standards issued, promulgated or otherwise coming into existence during the time frame discussed in the subject report are applicable. To the extent the subject

1

report specifically refers to or relies upon any subsequently issued standards or regulations, it is irrelevant and prejudicial. Moreover, there is an absence of proof in this record that any of the standards set forth in the Report were adopted by any building code applicable to the subject premises and by either State law or local ordinance, or any regulation pertaining thereto. Likewise, any reference to OSHA regulations would be specifically irrelevant because Defendant in the instant case was not subject to any provisions of the federal Occupational Safety and Health Act (OSHA).

The report provided by Mr. Eck also states that there was inadequate lighting, but in her deposition testimony, Plaintiff specifically stated that lighting was adequate to enable her to see her surroundings. To the extent the Report alleges inadequacy of lighting, it is therefore incompetent (as not based on facts in evidence), irrelevant and prejudicial.

Additionally in his report, Mr. Eck criticizes the absence of a handrail. However, absence of a handrail has been determined to be irrelevant as a matter of law, particularly where there is no evidence, as here, that Plaintiff would or could have availed herself of the handrail prior to falling.

Inasmuch as this litigation involves a fall down a flight of stairs, it is submitted that expert evidence is simply not required to allow the jury to determine if there was negligence on the part of the Defendant, and no "expert" testimony whatsoever should be allowed at trial.

Finally, to the extent the subject report contains opinions or conclusions that defendant "was negligent," or "failed to use reasonable care," or that Plaintiff's accident "was a direct result" of any purported failure attributable to defendant, it is simply inadmissible as an invasion of the province of the judge and jury to determine the issues of negligence and causation. The proper scope of expert opinion, to the extent it might otherwise be admissible, is merely to establish the existence of applicable standards and whether or not those standards were complied with.

Anything beyond that exceeds scope of permissible expert testimony and must be excluded.

Accordingly, Defendant seeks an Order entirely precluding the testimony from the proffered expert, or an Order properly limiting the nature and scope of his testimony.

MOTION TO PRECLUDE EVIDENCE RELATED TO EXTERIOR CONDITIONS OF THE PREMISES

In his deposition Defendant was asked, and testified about his removal of the rickety, *exterior* porch and stairs that existed when he purchased the home, and his replacement with a new porch and set of exterior stairs. Inasmuch as there is no allegation that Plaintiff's accident occurred on the exterior steps or porch, nor that they had anything to do with Plaintiff's accident, Defendant's activities in that regard are completely irrelevant and therefore inadmissible.

Accordingly, defendant seeks an Order precluding Plaintiff from inquiring about or attempting to elicit testimony relative to Defendant's exterior remodeling work.

MARGOLIS EDELSTEIN

By: _____

Stephen L. Dugas, Esquire
Attorney for Defendant
Attorney I.D. # 21351
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695-5066

100

FILED

APR 06 2009

William A. Shaw
Prothonotary/Clerk of Courts

CA

FILED NoCC.
m/11:50m
APR 08 2009 (610)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and KENNETH
A. NELSON,

CIVIL DIVISION

No. 07-583-CD

Plaintiffs,

vs.

PLAINTIFFS' MOTIONS IN LIMINE

BARRY M. NEFF,

Defendant.

Filed on behalf of:
Plaintiffs Elizabeth L. Nelson and Kenneth A.
Nelson

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
PA I.D. No. 79533

GREGORY OLSAVICK, ESQUIRE
PA I.D. No. 34620

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Regency Square
2900 Old Route 220
Suite 201
Altoona, PA 16601

(814) 942-3699

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

CIVIL DIVISION

Vs.

No.: 07-583 CD

BARRY M. NEFF,
Defendant

PLAINTIFFS' MOTIONS IN LIMINE

AND NOW, come Plaintiffs, ELIZABETH L. NELSON and KENNETH A. NELSON, by and through their attorneys, EDGAR SNYDER & ASSOCIATES, LLC, CHRISTOPHER M. MILLER, ESQUIRE and GREGORY S. OLSAVICK, ESQUIRE and file the within Plaintiffs' Motions in Limine , averring and in support thereof as follows:

I. PLAINTIFF, ELIZABETH L. NELSON'S PRIOR FALL

1. In the answers to interrogatories propounded by Defendant, Plaintiff responded that in 2004, Elizabeth had fallen on ice on a sidewalk outside of an attorney's office and sustained a bump and/or abrasion to the back of her head.
2. This was confirmed at the time of Plaintiff's deposition, with treatment limited to being checked and released from the emergency room.
3. There is no testimony or evidence that Plaintiff Elizabeth L. Nelson sustained any other injury as a consequence of this fall; most particularly there is no testimony or evidence that she sustained any injury to her left shoulder, arm or hand.
4. Based upon the aforementioned, there should not be permitted any evidence and/or testimony concerning the Plaintiff's prior fall in 2004; nor should defense counsel be permitted to ask the Plaintiff any question about the same.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to preclude the submission and/or elicitation of any evidence and/or testimony in which in any manner references a prior fall of Elizabeth Nelson in 2004.

II. DEFENDANT'S DUTIES AND RESPONSIBILITIES AS AN OWNER/POSSESSOR OF PROPERTY

1. It is believed and therefore averred that Defendant Barry Neff may attempt to testify and/or allege that he is not responsible for the condition of the subject interior steps in question, as he did not own the property-residence when the subject steps were constructed.

2. Defendant testified that at the time of his deposition that he was owner of, and in possession of the subject property-residence for twenty-three plus years. Defendant testified that he resided there continuously during that time period except for an approximate nine month period during 1991-1992.

3. Just prior to the incident, on or about January 2, 2007, Defendant proceeded to have the subject property-residence listed for sale by a real estate agent.

4. Defendant further testified that notwithstanding having the subject property-residence listed for sale, that he remained owner and in possession of the property, and continued to reside at the residence, until moving out on or after February 12, 2007.

5. At the time of the incident, Plaintiff Elizabeth L. Nelson, as a licensed real estate agent had proceeded to the Defendant's property-residence in order to look at the residence (including the interior of the residence), in preparation for meeting scheduled prospective buyers at the residence later that same day.

6. Accordingly, Plaintiff was permitted to enter the subject premises and to examine and inspect the same in her capacity as a licensed real estate agent; and as such was an invitee and/or business visitor on the subject property.

7. As such, and given Plaintiff's legal status as of the time of the incident, Elizabeth L. Nelson was owed the highest standard of care afforded under the law.

8. In this regard, and pursuant to Restatement (2nd) of Torts Section 343 and 343 A, Defendant as owner/possessor of the property was required to use reasonable care in the maintenance of the property, and further had a duty to protect invitees from foreseeable harm. In addition, an owner/possessor of property was also required to inspect the premises in order to discover dangerous conditions.

9. Accordingly, Defendant should not be permitted to testify that he did not have any responsibility for the dangerous condition of the subject interior stairs due to the fact that he was a subsequent purchaser of the property in question and was not in possession of the property when the subject stairs/stairway was constructed.

10. To permit any such testimony or argument on the part of Defendant would be highly prejudicial to Plaintiffs' case.

WHEREFORE, Plaintiffs respectfully request this Honorable Court preclude Defendant from testifying or alleging in any manner that he is not responsible for the dangerous condition of the subject interior stairs due to the fact that he was a subsequent purchaser of the property and not in possession of the property when the subject stairs were constructed.

III. LACK OF ANY PRIOR FALLS AND/OR INJURIES ON SUBJECT STAIRWAY

1. Plaintiffs will incorporate by reference the averments set forth in Part II of the within Motion in Limine as though fully set forth herein.

2. It is believed and therefore averred that Defendant may attempt to testify and/or argue that the subject stairs/stairway on which Plaintiff fell was not dangerous or hazardous because no one had ever fallen and/or sustained injuries on the subject stairs/stairway at any time during which Defendant was owner/possessor of the subject property.

3. Pennsylvania Rules of Evidence clearly precludes this argument.

4. Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". Pa. R.E. Rule 401. "Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury". Pa. R.E. 403.

5. Defendant's anticipated claim that no one had previously tripped, fallen, and injured themselves on the subject stairs/stairway is not relevant nor probative of any fact at issue and is highly misleading and prejudicial.

6. Defendant's argument does not make any fact in this case more or less probable. It does not have any probative value and therefore is not relevant. The absence of a previously reported fall is not determinative of whether or not the condition of the stairway is dangerous and it has no bearing on Defendant's liability in this case.

7. Even assuming that the statement was somehow relevant, the prejudicial effect of such a statement clearly outweighs any probative value. Should a jury be allowed to hear this type of argument, it is this fact and this fact alone that could or may persuade them to find that since no one else fell (which no one knows if this is a true fact or not), then the alleged condition must not be dangerous. This clearly is impermissible as the jury should not and cannot be persuaded by this type of argument. The jury must assess the facts of this case and the condition

itself and decide whether the condition is one that posed a danger or hazard to persons proceeding on the stairway.

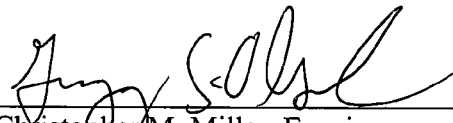
8. Should a jury be permitted to hear this type of argument it will be extremely misleading and highly prejudicial. This type of argument has no probative value as it does not tend to prove any fact at issue and any probative value the evidence may have is clearly outweighed by the highly prejudicial effect the evidence will have on the jury.

WHEREFORE, it is respectfully requested that Defendant be precluded from making the argument or introducing any evidence that no person has tripped, fallen, and/or suffered injuries as a result of the alleged dangerous condition in the past; therefore, the alleged condition is not a dangerous and hazardous condition.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

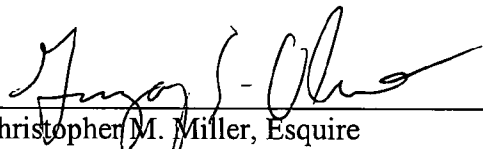
By: _____


Christopher M. Miller, Esquire
Gregory S. Olsavick, Esquire
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PLAINTIFFS' MOTIONS IN LIMINE** was served on all Counsel listed below, by U.S. First Class Mail and by telefax on this 7th day of April, 2009:

Stephen L. Dugas, Esquire
Margolis Edelstein
P.O. Box 629
Hollidaysburg, PA 16648
(814) 695-5066 (fax)



Christopher M. Miller, Esquire
Gregory S. Olsavick, Esquire
Attorneys for Plaintiffs

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

ELIZABETH L. NELSON and
KENNETH A. NELSON

NO. 07-583-CD

V.

BARRY M. NEFF

FILED

MAY 01 2009

William A. Shaw
Prothonotary/Clerk of Courts

SENT TO ATTORNEY

G. OLSAVICK

S. DUGAS

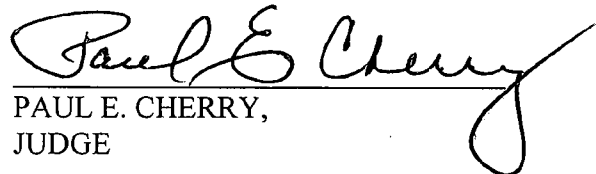
ORDER

AND NOW, this 1st day of May, 2009, following argument on Motion in Limine

filed on behalf of the Defendant, Barry M. Neff, it is the ORDER of this Court as follows:

1. The Motion to Limit Testimony of Dr. Polintan shall be and is hereby DENIED.
2. The Motion to Exclude or Limit Testimony of Ronald W. Eck, P.E., shall be and is hereby DENIED.
3. The Motion to Preclude Evidence related to exterior conditions of the premises shall be and is hereby GRANTED. Plaintiff is hereby precluded from inquiring about or attempting to elicit testimony relative to Defendant's exterior remodeling work.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
MAY 01 2009
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5-1-09
☒ 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 ____ Other
____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

V.

BARRY M. NEFF,
Defendant

NO. 07-583-CD

FILED

MAY 11 2009

William A. Shaw
Prothonotary/Clerk of Courts

CERT TO ATT.
OLSHAWK-

VERDICT SLIP

1. Do you find that the Defendant Barry M. Neff, was negligent?

Yes _____

No ☒

If you answered question no 1. "No", then the Plaintiffs cannot recover and you need not go any further and you may return to the courtroom. If you answered question no. 1 "Yes", then proceed to answer questions no. 2.

2. Was the Defendant, Barry M. Neff's negligence a factual cause in bringing about Plaintiff's harm?

Yes _____

No _____

If you answered question no. 2 "No", then the Plaintiffs cannot recover and you need not go any further and you may return to the courtroom. If you answered question no. 2 "Yes", then proceed to answer question no. 3.

3. Was the Plaintiff, Elizabeth L. Nelson, contributorily negligent?

Yes _____

No _____

If you answered "No" to this question, proceed directly to answer Question #6.

If you answered "Yes" to this question, proceed directly to answer Question #4.

4. If you answered "Yes" to Question No. 3, then was the Plaintiff's contributory negligence a factual cause of any harm to her?

Yes _____

No _____

If you answered "No" to this question, proceed directly to answer Question #6.

If you answered "Yes" to this question, proceed to Question #5.

5. Taking the combined negligence that was a factual cause in bringing about the Plaintiff's harm as 100 percent, what percentage of that causal negligence was attributable to the Defendant Barry Neff and what percentage of negligence was attributable to the Plaintiff, Elizabeth Nelson, if any:

Percentage of causal negligence attributable to Defendant Barry M. Neff (Answer only if you have answered "Yes" to Questions 1 and 2 for these Defendants.)

_____ %

Percentage of causal negligence attributable to Plaintiff Elizabeth Nelson (Answer only if you have answered "Yes" to Questions 3 and 4.)

_____ %

TOTAL 100%

If you have found the Plaintiff's causal negligence to be greater than 50%, then the Plaintiff cannot recover and you should not answer Question 6 and you should return to the Courtroom.

6. State the total amount of damages, if any, sustained by the Plaintiff, Elizabeth Nelson, as a result of the incident for each of the separate items of damages listed below and then total each of the separate items and place the total amount of damages in the space provided:

Medical Expenses

Past Pain and Suffering

(Includes past physical pain, mental anguish, discomfort, inconvenience and distress);

Future Pain and Suffering

(Includes future physical pain, mental anguish, discomfort, inconvenience/and, distress);

Embarrassment and humiliation;

Enjoyment of Life;

Disfigurement

TOTAL DAMAGES TO PLAINTIFF, ELIZABETH NELSON: _____

6(A). State the total amount of damages, if any, sustained by the Plaintiff, Kenneth A. Nelson as a result of the incident for the item of damage listed below:

Loss of Consortium _____

TOTAL DAMAGES TO PLAINTIFF, KENNETH A. NELSON _____

After you return your answers to these questions on the verdict form, signed by your foreperson, the Court will determine the amount to be awarded to the Plaintiffs, if any, by reducing the amount of damages found by you in proportion to the percentage of the Plaintiff Elizabeth Nelson's causal contributory negligence, if any. I again caution you that you are not to make this reduction yourselves in reaching the amount of the Plaintiff's damages, as set forth by your answer to Question 6.

Date: 5/7/09

Karpo M. Golding
Jury Foreperson

COURT OF COMMON PLEAS, CLEARFIELD COUNTY
PENNSYLVANIA

CASE NO. 2007-583-CD

Date of Jury Selection: April 2, 2009

Presiding Judge: Paul E. Cherry, Judge

Elizabeth L. Nelson and Kenneth A.
Nelson

Court Reporter: Gom Snyder

Date of Trial: May 6 & 7, 2009

VS

Date Trial Ended: May 7, 2009

Barry M. Neff

MEMBERS OF THE JURY

1. Kathleen Golding
2. Martin Vereshack
3. Rick Yontosh
4. Jeannie Vanscoyoc
5. Gregg Anderson
6. Richard Kephart
- ALT #1 Marilyn Kerner

7. Connie Armagost
8. Arnold Conklin
9. Sandra Kephart
10. Darlene Bain
11. Frank Barrett
12. Peter Summers
- ALT #2 Elaine Henry

FILED
MAY 11 2009
9/2:20/0
William A. Shaw
Prothonotary/Clerk of Courts

PLAINTIFF'S WITNESSES:

1. Elizabeth Nelson
2. Ronald W Eck
3. Kenneth Nelson
4. Dr Rodolfo Palencia
5. _____
6. _____

DEFENDANT'S WITNESSES:

1. Barry M. Neff
2. Monique Fogalish
3. _____
4. _____
5. _____
6. _____

PLAINTIFF'S ATTY: Gregory S. Olsavick Esq
and Christopher M. Miller Esq.

DEFENDANT'S ATTY: Stephen L. Dugas Esq

ADDRESS TO JURY: 3:06 PM

ADDRESS TO JURY: 2:28 PM

JUDGE'S ADDRESS TO JURY: 3:42 PM

JURY OUT: 4:26 PM JURY IN: 4:56 PM

VERDICT: Defend

FOREPERSON: _____

FILED

MAY 22 2009

William A. Shaw
Prothonotary/Clerk of Courts

1 sent to Att

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW

: No: 2007 CD 583

: **ISSUE: Praecipe to Enter Judgment**
: **on Verdict.**

: Filed on Behalf of Defendant:

: Counsel of Record for this Defendant:

: **MARGOLIS EDELSTEIN**

: Stephen L. Dugas, Esquire

: PA. I.D. # 21351

: PO Box 628

: Hollidaysburg, PA 16648

: (814) 695-5064

: Fax: (814) 695-5066

I hereby certify that a true and correct
copy of the within was mailed on all
other counsel of record this 20th day of
May, 2009

Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,

Plaintiffs,

v.

BARRY M. NEFF,

Defendant.

: CIVIL ACTION - LAW
:
:
: No: 2007 CD 583
:
:
:
:
: JURY TRIAL DEMANDED

PRAECIPE TO ENTER JUDGMENT ON VERDICT

TO PROTHONOTARY:

Enter Judgement for Defendant pursuant to Jury Verdict entered in Defendant's favor on
May 7, 2009.

MARGOLIS EDELSTEIN

By: _____

Stephen L. Dugas, Esquire
Attorney for Defendant
Attorney I.D. # 21351
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695-5066

**CERTIFICATE OF SERVICE OF NOTICE OF PRAECIPE FOR FINAL JUDGMENT,
PURSUANT TO RULE 237**

I, hereby certify that on the 20th day of May, 2009, a copy of the within Praecipe to Enter Judgment on Verdict has been served upon all other counsel/parties of record, by mailing a true and correct copy of the same by United States First Class mail, postage prepaid as follows:

Gregory S. Olsavick, Esquire
Edgar Snyder & Associates
2900 Old Route 220, Suite 201
Altoona, PA 16601

MARGOLIS EDELSTEIN

By: _____

Stephen L. Dugas, Esquire
P.A.J.D. # 21351
PO Box 628
Hollidaysburg, PA 16648
(814) 695-5064
Fax: (814) 695-5066

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELIZABETH L. NELSON and
KENNETH A. NELSON,
Plaintiffs

CIVIL DIVISION

Vs.

No.: 07-583 CD

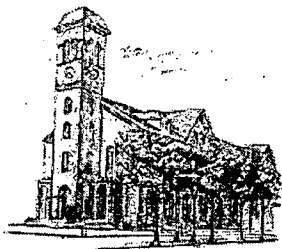
BARRY M. NEFF,
Defendant

ORDER OF COURT

AND NOW, to-wit, this _____ day of April, 2009, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiffs' Motions in Limine is granted and the Defendant is precluded from arguing or introducing any evidence at trial that no other person had every tripped, fallen and/or suffered injuries as a result of the condition that is alleged by Plaintiff to have caused her fall.

BY THE COURT:

J.



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

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COPY

John K. Reilly, Jr., Senior Judge Sp. Presiding
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Gregory S. Olsavick, Esq.
Regency Square
2900 Old Route 220, Ste. 201
Altoona, PA 16601

Stephen L. Dugas, Esq.
PO Box 628
Hollidaysburg, PA 16648

Elizabeth L. Nelson and Kenneth A. Nelson
Vs.
Barry M. Neff

Court No. 07-583-CD; Superior Court No. 350 WDA 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on April 11, 2008.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-583-CD
Elizabeth L. Nelson and Kenneth A. Nelson
VS.
Barry M. Neff

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	04/16/2007	Complaint in Civil Action	11
02	05/01/2007	Praeipe for Entry of Appearance	02
03	05/02/2007	Motion for Entry Upon Property of a Non-Party for a Site Inspection with Rule filed May 3, 2007, scheduling hearing	24
04	05/08/2007	Sheriff Return	01
05	05/14/2007	Answer	05
06	05/14/2007	Notice of Service of Interrogatories and First Request for Production of Documents	02
07	05/29/2007	Motion for Entry Upon Property of Non-Party	06
08	05/30/2007	Order, Re: Plaintiff's Motion for Entry Upon Property of a Non Party for a Site Inspection Granted	01
09	07/09/2007	Notice of Service of Plaintiffs' Answer to Defendant's Interrogatories and Request for Production of Documents Directed to Plaintiffs	02
10	07/09/2007	Notice of Service of Interrogatories and Request for Production of Documents	02
11	07/27/2007	Notice of Service of Deposition of Barry Neff	03
12	08/06/2007	Notice of Deposition	03
13	08/06/2007	Notice of Answers to Interrogatories and Request for Production of Documents	02
14	09/24/2007	Sheriff Return	01
15	10/01/2007	Certificate of Readiness for Jury Trial	02
16	10/15/2007	Motion for Summary Judgment	10
17	10/15/2007	Praeipe to File Deposition Transcripts, Re: depositions of Elizabeth Nelson and Barry M. Neff	Separate Cover
18	10/15/2007	Order, Re: Pre-trial conference scheduled	01
19	10/16/2007	Order, Re: oral argument is scheduled on Defendant's Motion for Summary Judgment	01
20	11/02/2007	Motion for Continuance and Order granting continuance filed November 8, 2007	01
21	11/15/2007	Notice of Service, Re: Original Supplemental Response to Defendant's Interrogatories and Request for Production of Documents Directed to Defendants	02
22	11/15/2007	Plaintiffs' Response to Defendant's Motion for Summary Judgment	18
23	12/11/2007	Order, Re: Jury Selection and Trial scheduled	01
24	01/17/2008	Opinion and Order, Defendant's Motion for Summary Judgment Granted	03
25	02/19/2008	Notice of Appeal to High Court	06
26	02/19/2008	Request for Transcript	04
27	02/22/2008	Order, Re: concise statement to be filed	01
28	02/28/2008	Appeal Docket Sheet, 350 WDA 2008	03
29	03/06/2008	Application for Enlargement of Time with Order filed March 10, 2008, granting Application	05
30	03/31/08	Statement of Matters Complained of on Appeal	04

Date: 4/11/2008

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:14 AM

ROA Report

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Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

Civil Other-COUNT

Date		Judge
4/16/2007	New Case Filed.	No Judge
	Filing: Complaint in Civil Action Paid by: Olsavick, Gregory S. (attorney for Nelson, Elizabeth L.) Receipt number: 1918583 Dated: 04/16/2007 Amount: \$85.00 (Check) 1CC shff.	No Judge
5/1/2007	Praecipe For Entry of Appearance, filed on behalf of Defendant, Enter appearance of Stephen L. Dugas, Esquire. No CC	No Judge
5/2/2007	Motion For Entry Upon Property of a Non-Party For a Site Inspection, filed by s/ Gregory S. Olsavick, Esquire. 1CC Sheriff	No Judge
5/3/2007	Rule, NOW, this 3rd day of May, 2007, it is Ordered that Daniel and Lisa Oswald are directed to show cause, if any they have, as to why the Motion for entry Upon Property of Non-Party for a Site Inspection should not be granted. Hearing to be held on the 30th of May, 2007 at 1:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty., 1CC to Shff.	Fredric Joseph Ammerman
5/8/2007	Sheriff Return, May 7, 2007 at 8:40 am Served the within Motion for Entry upon Property/Rule Returnable on Daniel & Lisa Oswald. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Snyder \$33.82	Fredric Joseph Ammerman
5/14/2007	Answer, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
	Notice of Service of Interrogatories & First Request for Production of Documents, on the 11th day of May, 2007 by First Class mail served upon Gregory S. Olsavick, Esquire. filed by s/ Stephen L. Dugas, Esquire.	Fredric Joseph Ammerman
5/29/2007	Motion For Entry Upon Property of Non-Party, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
5/30/2007	Order, this 30th day of May, 2007, Plaintiffs' Motion for Entry Upon Property of a Nonparty for a Site Inspection is granted. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Court For Distribution	Fredric Joseph Ammerman
7/9/2007	Notice of Service of Plaintiffs' Answer to Defendant's Interrogatories and Request for Production of Documents Directed to Plaintiffs on the 6th day of July 2007 to Stephen L. Dugas Esq., filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
	Notice of Service of Interrogatories and Request for Production of Documents upon Defendant on this 6th day of July 2007 to Stephen L. Dugas Esq., filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
7/27/2007	Notice of Service of Deposition of Barry Neff, filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
8/6/2007	Notice of Deposition, filed by s/ Stephen L. Dugas Esq. No CC.	Paul E. Cherry
	Notice of Answers to Interrogatories & Request for Production of Documents, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
9/24/2007	Sheriff Return, April 24, 2007 at 1:29 pm Served the within Complaint on Barry M. Neff. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamr Shff Hawkins costs pd by Edgar Snyder \$30.00	Fredric Joseph Ammerman
10/1/2007	Certificate of Readiness for Jury Trial, filed by s/ Gregory S. Olsavick, Esquire. No CC	Fredric Joseph Ammerman
10/15/2007	Motion For Summary Judgment, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman

Date: 4/11/2008

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:14 AM

ROA Report

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Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

Civil Other-COUNT

Date		Judge
10/15/2007	Praecipe to File Deposition Transcripts, Please file the transcripts of the depositions of Plaintiff Elizabeth L. Nelson and Defendant Barry M. Neff. These transcripts are being filed in connection with Defendant's Motion for Summary Judgment. (copies attached). Filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
	Order, this 15th day of Oct., 2007, it is Ordered that a pre-trial conference has been scheduled for Dec. 11, 2007 at 10:00 am. in Judges Chambers. By The Court, /s/ Paul E. cherry, Judge. 1CC Attys: Olsavick, Dugas	Paul E. Cherry
10/16/2007	Order, this 15th day of Oct., 2007, oral argument is scheduled on Defendant's Motion for Summary Judgment for 1:30 p.m. on the 19th day of Nov., 2007, in Courtroom 2. By The court, /s/ Paul E. Cherry, Judge. 1CC Atty. Dugas	Paul E. Cherry
11/2/2007	Motion For Continuance, filed by s/Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry
11/8/2007	Order, this 8th day of Nov., 2007, upon consideration of the within Motion, it is Ordered that the above matter be continued to the 11th day of Dec., 2007 at 10:30 a.m. By the court, /s/ Paul E. Cherry, Judge. 1CC Atty. Olsavick	Paul E. Cherry
11/15/2007	Notice of Service, on the 13th day of Nov., 2007, the Original Supplemental Response to Defendant's Interrogatories and Request for Production of Documents Directed to Defendants, and 1 copy of this Notice of Service were mailed by first Class Mail to Stephen L. Dugas, Esquire. Filed by s/ Gregory S. Olsavick, Esquire.	Paul E. Cherry
	Plaintiffs' Response to Defendant's Motion for Summary Judgment, filed by s/ Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry
12/11/2007	Order, Jury Selection is scheduled for Jan. 3, 2008, at 9:00 a.m. in Courtroom 2. Trial is scheduled for Feb. 19, 20, 2008 at 9:00 a.m. in Courtroom 2. (see original) By The court, /s/ Paul E. Cherry, Judge. 1CC Attys: Olsavick, Dugas; 1CC Judge Reilly (without memo)	Paul E. Cherry
1/17/2008	Opinion and Order, this 2nd day of Jan., 2008, Defendant's Motion for Summary Judgment is granted and Summary Judgment entered in favor of the Defendant and against Plaintiffs. By the Court, /s/ John K. Reilly, Jr., Senior Judge. 2CC Attys: Olsavick, Dugas; 1CC D. Mikesell and Law Library (without memo)	John K. Reilly Jr.
2/19/2008	Filing: Appeal to High Court Paid by: Edgar Snyder & Associates Receipt number: 1922737 Dated: 2/19/2008 Amount: \$50.00 (Check)	Paul E. Cherry
	Notice of Appeal, filed by s/ Gregory S. Olsavick Esq. 1CC & check to Superior Court and 5CC to Atty.	Paul E. Cherry
	Request for Transcript filed by s/ Gregory S. Olsavick Esq. 1CC to Superior Court and 5CC Atty.	Paul E. Cherry
2/22/2008	Order, this 22nd day of Feb., 2008, it is Ordered that Appellant shall, within 14 days from date hereof, file a concise statement of matters complained of on appeal in accordance with Pennsylvania Rule of Appellate Procedures 1925(b). By The Court, /s/ John K. Reilly, Jr., Senior Judge. 2CC Attys: Olsavick, Dugas	John K. Reilly Jr.
2/28/2008	Appeal Docket Sheet, 350 WDA 2008, filed. No CC	Paul E. Cherry
3/6/2008	Application for Enlargement of Time, filed by Atty. Olsavick 2 Cert. to Atty.	Paul E. Cherry

Date: 4/11/2008

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:14 AM

ROA Report

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Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

Civil Other-COUNT

Date		Judge
3/10/2008	Order of Court, upon consideration of Appellants/Plaintiffs Application for Enlargement of Time, Order that Appellants shall file a concise statement no later than March 28, 2008. BY THE COURT: /s/John K. Reilly, Jr., S.J., Specially Presiding Two CC Attorney	Paul E. Cherry
3/31/2008	Statement of Matters Complained of on Appeal, filed by s/ Gregory S. Olsavick, Esquire. No CC	Paul E. Cherry

Civil Other-COUNT

Date		Judge
4/16/2007	New Case Filed.	No Judge
	① Filing: Complaint in Civil Action Paid by: Olsavick, Gregory S. (attorney for Nelson, Elizabeth L.) Receipt number: 1918583 Dated: 04/16/2007 Amount: \$85.00 (Check) 1CC shff.	No Judge
5/1/2007	② Praecipe For Entry of Appearance, filed on behalf of Defendant, Enter appearance of Stephen L. Dugas, Esquire. No CC	No Judge
5/2/2007	Motion For Entry Upon Property of a Non-Party For a Site Inspection, filed by s/ Gregory S. Olsavick, Esquire. 1CC Sheriff	No Judge
5/3/2007	③ Rule, NOW, this 3rd day of May, 2007, it is Ordered that Daniel and Lisa Oswald are directed to show cause, if any they have, as to why the Motion for entry Upon Property of Non-Party for a Site Inspection should not be granted. Heaing to be held on the 30th of May, 2007 at 1:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty., 1CC to Shff.	Fredric Joseph Ammerman
5/8/2007	④ Sheriff Return, May 7, 2007 at 8:40 am Served the within Motion for Entry upon Property/Rule Returnable on Daniel & Lisa Oswald. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Snyder \$33.82	Fredric Joseph Ammerman
5/14/2007	⑤ Answer, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
	⑥ Notice of Service of Interrogatories & First Request for Production of Documents, on the 11th day of May, 2007 by First Class mail served upon Gregory S. Olsavick, Esquire. filed by s/ Stephen L. Dugas, Esquire.	Fredric Joseph Ammerman
5/29/2007	⑦ Motion For Entry Upon Property of Non-Party, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
5/30/2007	⑧ Order, this 30th day of May, 2007, Plaintiffs' Motion for Entry Upon Property of a Nonparty for a Site Inspection is granted. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Court For Distribution	Fredric Joseph Ammerman
7/9/2007	⑨ Notice of Service of Plaintiffs' Answer to Defendant's Interrogatories and Request for Production of Documents Directed to Plaintiffs on the 6th day of July 2007 to Stephen L. Dugas Esq., filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
	⑩ Notice of Service of Interrogatories and Request for Production of Documents upon Defendant on this 6th day of July 2007 to Stephen L. Dugas Esq., filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
7/27/2007	⑪ Notice of Service of Deposition of Barry Neff, filed by s/ Gregory S. Olsavick Esq. No CC.	Fredric Joseph Ammerman
8/6/2007	⑫ Notice of Depostion, filed by s/ Stephen L. Dugas Esq. No CC.	Paul E. Cherry
	⑬ Notice of Answers to Interrogatories & Request for Production of Documents, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman
9/24/2007	⑭ Sheriff Return, April 24, 2007 at 1:29 pm Served the within Complaint on Barry M. Neff. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hammr Shff Hawkins costs pd by Edgar Snyder \$30.00	Fredric Joseph Ammerman
10/1/2007	⑮ Certificate of Readiness for Jury Trial, filed by s/ Gregory S. Olsavick, Esquire. No CC	Fredric Joseph Ammerman
10/15/2007	⑯ Motion For Summary Judgment, filed by s/ Stephen L. Dugas, Esquire. No CC	Fredric Joseph Ammerman

Date: 3/6/2008
Time: 03:54 PM
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Clearfield County Court of Common Pleas

User: GLKNISLEY

ROA Report

Case: 2007-00583-CD

Current Judge: Paul E. Cherry

Elizabeth L. Nelson, Kenneth A. Nelson vs. Barry M. Neff

Civil Other-COUNT

Date		Judge
10/15/2007	<p>(17) Praecipe to File Deposition Transcripts, Please file the transcripts of the depositions of Plaintiff Elizabeth L. Nelson and Defendant Barry M. Neff. These transcripts are being filed in connection with Defendant's Motion for Summary Judgment. (copies attached). Filed by s/ Stephen L. Dugas, Esquire. No CC</p>	Fredric Joseph Ammerman
	<p>(18) Order, this 15th day of Oct., 2007, it is Ordered that a pre-trial conference has been scheduled for Dec. 11, 2007 at 10:00 am. in Judges Chambers. By The Court, /s/ Paul E. cherry, Judge. 1CC Attys: Olsavick, Dugas /</p>	Paul E. Cherry
10/16/2007	<p>(19) Order, this 15th day of Oct., 2007, oral argument is scheduled on Defendant's Motion for summary Judgment for 1:30 p.m. on the 19th day of Nov., 2007, in Courtroom 2. By The court, /s/ Paul E. Cherry, Judge. 1CC / Atty. Dugas</p>	Paul E. Cherry
11/2/2007	<p>(20) Motion For Continuance, filed by s/Gregory S. Olsavick, Esquire. No CC</p>	Paul E. Cherry
11/8/2007	<p>(21) Order, this 8th day of Nov., 2007, upon consideration of the within Motion, it is Ordered that the above matter be continued to the 11th day of Dec., 2007 at 10:30 a.m. By the court, /s/ Paul E. Cherry, Judge. 1CC Atty. Olsavick</p>	Paul E. Cherry
11/15/2007	<p>(21) Notice of Service, on the 13th day of Nov., 2007, the Original Supplemental Response to Defendant's Interrogatories and Request for Production of Documents Directed to Defendants, and 1 copy of this Notice of Service were mailed by first Class Mail to Stephen L. Dugas, Esquire. Filed by s/ Gregory S. Olsavick, Esquire.</p>	Paul E. Cherry
	<p>(22) Plaintiffs' Response to Defendant's Motion for Summary Judgment, filed by s/ Gregory S. Olsavick, Esquire. No CC</p>	Paul E. Cherry
12/11/2007	<p>(23) Order, Jury Selection is scheduled for Jan. 3, 2008, at 9:00 a.m. in Courtroom 2. Trial is scheduled for Feb. 19, 20, 2008 at 9:00 a.m. in Courtroom 2. (see original) By The court, /s/ Paul E. Cherry, Judge. 1CC / Attys: Olsavick, Dugas; 1CC Judge Reilly (without memo)</p>	Paul E. Cherry
1/17/2008	<p>(24) Opinion and Order, this 2nd day of Jan., 2008, Defendant's Motion for Summary Judgment is granted and Summary Judgment entered in favor of the Defendant and against Plaintiffs. By the Court, /s/ John K. Reilly, Jr., Senior Judge. 2CC Attys: Olsavick, Dugas; 1CC D. Mikesell and Law Library (without memo)</p>	John K. Reilly Jr.
2/19/2008	<p>Filing: Appeal to High Court Paid by: Edgar Snyder & Associates Receipt number: 1922737 Dated: 2/19/2008 Amount: \$50.00 (Check)</p>	Paul E. Cherry
	<p>(25) Notice of Appeal, filed by s/ Gregory S. Olsavick Esq. 1CC & check to Superior Court and 5CC to Atty.</p>	Paul E. Cherry
	<p>(26) Request for Transcript filed by s/ Gregory S. Olsavick Esq. 1CC to Superior Court and 5CC Atty.</p>	Paul E. Cherry
2/22/2008	<p>(27) Order, this 22nd day of Feb., 2008, it is Ordered that Appellant shall, within 14 days from date hereof, file a concise statement of matters complained of on appeal in accordance with Pennsylvania Rule of Appellate Procedures 1925(b). By The Court, /s/ John K. Reilly, Jr., Senior Judge. 2CC Attys: Olsavick, Dugas</p>	John K. Reilly Jr.
2/28/2008	<p>(28) Appeal Docket Sheet, filed. No CC , 350 WDA 2008</p>	3 Paul E. Cherry
3/6/2008	<p>Application for Enlargement of Time, filed by Atty. Olsavick 2 Cert. to Atty.</p>	Paul E. Cherry