

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION LAW

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband and wife
Plaintiffs

vs.

NORMAN R. MARTIN and FLORANCE
MARTIN, husband and wife;
LEONARD THOMPSON and JANICE
THOMPSON, husband and wife;
CHARLES R. HENRY, CHARLES WILLIAM
HENRY; LISA A. McKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE AND
JANE DOE 1-999 and ALL THE HEIRS AND
ASSIGNS OF ALL THE DECEASED PERSONS
HAVING OR ONCE HAVING HAD AN
INTEREST BY DIRECT OR SUCCESSIVE
INHERITANCE IN THE ESTATES OF THEM
OR ANY OF THEM, AND ALL THE HEIRS,
DEVISEES, ADMINISTRATORS, EXECUTORS
AND ASSIGNS OF THE ABOVE MENTIONED
OR ANY OTHER PERSON, PERSONS, FIRMS,
PARTNERSHIPS, OR CORPORATE
ENTITIES IN INTEREST OR ANY ONE
CLAIMING BY, THROUGH OR UNDER
THEM OR ANY OF THEM

Defendants

: NO.: 2008 - 970 - CD.

FILED

MAY 27 2008
0 12:05 PM

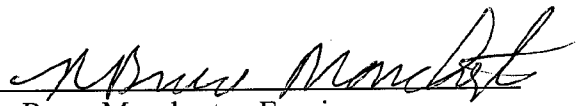
William A. Shaw
Prothonotary/Clerk of Courts
7 CENT TO P.F.F.

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 other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

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


R. Bruce Manchester, Esquire
Manchester and Associates
124 W. Bishop Street
Bellefonte, PA 16823
(814) 355-5421
ID# 28535

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION LAW

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband and wife
Plaintiffs : NO.:

vs.

NORMAN R. MARTIN and FLORANCE
MARTIN, husband and wife;
LEONARD THOMPSON and JANICE
THOMPSON, husband and wife;
CHARLES R. HENRY, CHARLES WILLIAM
HENRY; LISA A. McKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE AND
JANE DOE 1-999 and ALL THE HEIRS AND
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OR ANY OF THEM, AND ALL THE HEIRS,
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OR ANY OTHER PERSON, PERSONS, FIRMS,
PARTNERSHIPS, OR CORPORATE
ENTITIES IN INTEREST OR ANY ONE
CLAIMING BY, THROUGH OR UNDER
THEM OR ANY OF THEM
Defendants

COMPLAINT IN QUIET TITLE

1. Plaintiffs are Gerald M. Dufour and Madeline S. Dufour of 58 North Good Street, Houtzdale, Pennsylvania.

2. Defendants are Norman R. Martin and Florance Martin, husband and wife of 12 North Good Street, Houtzdale, Pennsylvania; Leonard Thompson and Janice Thompson, husband and wife of 70 North Good Street, Houtzdale, Pennsylvania; Charles R. Henry of 619 Elizabeth Street, Houtzdale, Pennsylvania, Charles William Henry and Anna M. Henry, husband

and wife of 806 Sue Street, Houtzdale, Pennsylvania; Lisa A. McKee n/k/a Lisa A. Noel and Jeffrey A. Noel, husband and wife of 75 N. McAteer Street, Houtzdale, Pennsylvania, and all the heirs and assigns of all the deceased persons having or once having had an interest by direct or successive inheritance in the estates of them or any of them, and all the heirs, devisees, administrators, executors and assigns of the above mentioned or any other person, persons, firms, partnerships, or corporate entities in interest or any one claiming by, through or under them or any of them.

3. Plaintiffs for in excess of 21 years openly, notoriously and hostile possessed that parcel as identified as the following description :

Land situate in the Township of Woodward, County of Clearfield, and State of Pennsylvania,

BEGINNING at a point on the south right-of-way line of a 20 foot alley (unopened), said point being the northeast corner of lands now or formerly of Gerald M. and Madeline Dufour, and said point being the southwest corner of the intersection of North Good Street and the 20 foot alley; thence crossing the right-of-way of said 20 foot alley North 14° 30' East 20.00 feet to a point; thence along the line of lands now or formerly of Norman R. and Florance Martin North 75° 30' West 100.00 feet to a point; thence crossing the right-of-way of said 20 foot alley South 14° 30' West 20.00 feet to a point; thence along the north line of lands now or formerly of Gerald M. and Madeline Dufour; South 75° 30' East 100.00 feet to a point and place of beginning. CONTAINING 2,000 sq. feet.

4. Plaintiffs have made a reasonable and diligent search to locate the Defendant heirs and assigns as well as John and/or Jane Doe 1 through 999 but are unable to do so.

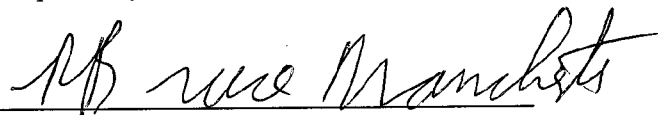
5. Plaintiffs have expended sums of money for the upkeep and maintenance of the premises continuously over the course of 21 plus years.

6. Plaintiffs have not received actual knowledge of any adverse claims to the subject property by the Defendants or by any other person other than the Defendants.

WHEREFORE, Plaintiffs request that this Court enter an Order declaring that the

Defendants, their heirs, successors, assigns and all persons claiming under, by or through the said Defendants to be forever barred from asserting any right, lien, title, claim or interest in the Plaintiffs' property inconsistent with the interest or claim of the Plaintiffs in said property and that the Plaintiffs are hereby vested with fee simple title to property described within.

Respectfully submitted,

A handwritten signature in cursive script, reading "R. Bruce Manchester". The signature is written in dark ink and is positioned above a horizontal line.

R. Bruce Manchester, Esquire
Attorney for Plaintiffs
Manchester and Associates
124 West Bishop Street
Bellefonte, PA 16823
(814) 355-5421

VERIFICATION

We, Gerald M. Dufour and Madeline S. Dufour verify that the statements made in the foregoing pleading are true and correct. We understand that false statements herein are made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

Gerald M. Dufour
Gerald M. Dufour

Madeline S. Dufour
Madeline S. Dufour

GERALD M. DUFOUR and MADELINE S. DUFOUR

vs

NORMAN R. MARTIN et al

SERVICE # 4 OF 5

COMPLAINT ACTION TO QUIET TITLE

SERVE BY: 06/26/2008

HEARING:

PAGE: 104212

DEFENDANT: CHARLES R. HENRY
 ADDRESS: 619 ELIZABETH ST.
HOUTZDALE, PA 16651

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS:

VACANT

OCCUPIED

ATTEMPTS

SHERIFF'S RETURN

NOW, 6-2-08 AT 1:43 AM / (P) **SERVED** THE WITHIN

COMPLAINT ACTION TO QUIET TITLE ON CHARLES R. HENRY, DEFENDANTBY HANDING TO Charles R. Henry, DotA TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO (HIM) HER THE CONTENTS THEREOF.

ADDRESS SERVED 619 Elizabeth St.
Houtzdale, Pa. 16651

NOW _____ AT _____ AM / PM **POSTED** THE WITHINCOMPLAINT ACTION TO QUIET TITLE FOR CHARLES R. HENRY

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO CHARLES R. HENRY

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

____ DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy Signature

James E. Davis

Print Deputy Name

FILED013:3161
JUN 02 2008William A. Shaw
Prothonotary/Clerk of Courts

#2

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-970-CD

GERALD M. DUFOUR and MADELINE S. DUFOUR
vs
NORMAN R. MARTIN et al

SERVICE # 2 OF 5

COMPLAINT ACTION TO QUIET TITLE

SERVE BY: 06/26/2008 HEARING: PAGE: 104212

DEFENDANT: LEONARD THOMPSON and JANICE THOMPSON
ADDRESS: 70 N. GOOD ST.
HOUTZDALE, PA 16651
ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT OCCUPIED

ATTEMPTS

SHERIFF'S RETURN

NOW, 6-2-08 AT 2:15 AM/PM **SERVED** THE WITHIN

COMPLAINT ACTION TO QUIET TITLE ON LEONARD THOMPSON and JANICE THOMPSON, DEFENDANT

BY HANDING TO Lenny Thompson, SON

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM HER THE CONTENTS THEREOF.

ADDRESS SERVED 70 N. Good St.
Houtzdale, Pa. 16651

NOW _____ AT _____ AM / PM **POSTED** THE WITHIN

COMPLAINT ACTION TO QUIET TITLE FOR LEONARD THOMPSON and JANICE THOMPSON

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO LEONARD THOMPSON and JANICE THOMPSON

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

_____ DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

James E. Davis
Deputy Signature

JAMES E. DAVIS
Print Deputy Name

FILED
03/31/08
JUN 02 2008
William A. Shaw
Prothonotary/Clerk of Courts

#3

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-970-CD

GERALD M. DUFOUR and MADELINE S. DUFOUR

vs

NORMAN R. MARTIN et al

SERVICE # 1 OF 5

COMPLAINT ACTION TO QUIET TITLE

SERVE BY: 06/26/2008

HEARING:

PAGE: 104212

DEFENDANT: NORMAN R. and FLORANCE MARTIN

ADDRESS: 12 N. GOOD ST.
HOUTZDALE, PA 16651

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS:

VACANT

OCCUPIED

ATTEMPTS

FILED
013:31/84
JUN 02 2008
William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF'S RETURN

NOW, June 2, 2008 AT 2:02 AM / PM SERVED THE WITHIN

COMPLAINT ACTION TO QUIET TITLE ON NORMAN R. and FLORANCE MARTIN, DEFENDANT

BY HANDING TO Florance Martin, Defd

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 12 N. Good Street
Houtzdale, Pa. 16651

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT ACTION TO QUIET TITLE FOR NORMAN R. and FLORANCE MARTIN

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF NOT FOUND AS TO NORMAN R. and FLORANCE MARTIN

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

_____ DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY: Dominic Morgello
Deputy Signature

Dominic Morgello
Print Deputy Name

#1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-970-CD

GERALD M. DUFOUR and MADELINE S. DUFOUR
vs
NORMAN R. MARTIN et al

SERVICE # 5 OF 5

COMPLAINT ACTION TO QUIET TITLE

SERVE BY: 06/26/2008 HEARING: PAGE: 104212

DEFENDANT: CHARLES W. and ANNA HENRY
ADDRESS: 806 SUE ST.
HOUTZDALE, PA 16651
ALTERNATE ADDRESS

FILED
08:39 AM '08
JUN 05 2008
William A. Shaw
Prothonotary/Clerk of Courts

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT OCCUPIED

ATTEMPTS 6-2-08-1:50 PM / 4 Left Note

SHERIFF'S RETURN

NOW, 6-4-08 AT 5:40 AM / PM SERVED THE WITHIN

COMPLAINT ACTION TO QUIET TITLE ON CHARLES W. and ANNA HENRY, DEFENDANT

BY HANDING TO Alex Henry / Son

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 806 Sue ST.
Houtzdale, Pa. 16651

NOW AT AM / PM POSTED THE WITHIN

COMPLAINT ACTION TO QUIET TITLE FOR CHARLES W. and ANNA HENRY

AT (ADDRESS)

NOW AT AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO CHARLES W. and ANNA HENRY

REASON UNABLE TO LOCATE

SWORN TO BEFORE ME THIS

DAY OF 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY: James E. Davis
Deputy Signature
James E. Davis
Print Deputy Name

#5

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-970-CD

GERALD M. DUFOUR and MADELINE S. DUFOUR

vs

SERVICE # 3 OF 5

NORMAN R. MARTIN et al

COMPLAINT ACTION TO QUIET TITLE

SERVE BY: 06/26/2008

HEARING:

PAGE: 104212

DEFENDANT: LISA A. McKEE nka LISA A. NOEL and JEFFREY A. NOEL

ADDRESS: 75 N. MCATEER ST.
HOUTZDALE, PA 16651

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS:

VACANT

OCCUPIED

ATTEMPTS

6-20-08-1:57^{pm} - N/A - Left Note - Home evening WORKS during Day

FILED

08:39 am CLK No CC.
JUN 05 2008

William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF'S RETURN

NOW, 6-4-08 AT 5:45 AM/PM SERVED THE WITHIN

COMPLAINT ACTION TO QUIET TITLE ON LISA A. McKEE nka LISA A. NOEL and JEFFREY A. NOEL, DEFENDANT

BY HANDING TO Lisa A. Noel, Det.

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM/HER THE CONTENTS THEREOF.

ADDRESS SERVED 75 N. MCATEER ST.
Houtzdale, Pa. 16651

NOW _____ AT _____ AM / PM **POSTED** THE WITHIN

COMPLAINT ACTION TO QUIET TITLE FOR LISA A. McKEE nka LISA A. NOEL and JEFFREY A. NOEL

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO LISA A. McKEE nka LISA A. NOEL and JEFFREY A. NOEL

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

_____ DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY: James E. Davis
Deputy Signature

James E. Davis
Print Deputy Name

#6

COUNT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

GERALD M. DUFOUR
MADELINE S. DUFOUR
(Plaintiff)

CIVIL ACTION

No. 2008-970-CD

(Street Address)

Type of Case:

(City, State ZIP)

Type of Pleading: objection
to claim

VS.

Filed on Behalf of:

NORMAN R. MARTIN et al
(Defendant)

NORMAN MARTIN / FLORENCE MARTIN
(Plaintiff/Defendant)

(Street Address)

(City, State ZIP)

FLORENCE MARTIN
(Filed by)

12 N GOOD ST HOUTZDALE PA
(Address) 16651

814-378-7784
(Phone)

Florence E. Martin
(Signature)

FILED

0 10:37 AM '08

JUN 16 2008

William A. Shaw
Prothonotary/Clerk of Courts

NO CC

GD

7

Norman Martin Florence Martin

12 N. Good St.

Houtzdale PA 16651

Been on this property since 9-10-1965 (9340)

Lot 12 bought 9-10-1965 - recorded 14th Feb 1966

Lot 11 bought 6-12-1967 received 9-9-72

Lots laid out 11-1-1960 at request of Grandmother and brother Charles Henry. Grandmother kept the ground for brother until he could take care of the ground. Father Melvin Henry bought in I think 1943 and put Charles Henry also on deed. Melvin Henry died in Burma June 1945 (MIA).

11-1-1960 ~~done~~ ^{done} by ALLEG Butler Eng. ER Lobb (Rome)

Done again for Norman and Florence Martin only to have our lots restaked as stakes were gone on Janet street side.

5-2-1970 done by EVK, VAN Kuren Eng.
Survivor of Lance

We ~~also~~ kept up the 20' alley between the properties. When we moved here it was all

2

grown with weeds and jagged bushes. Even an Outhouse. We had to make our own road to get to the property and haul our own shale to put on the road as Woodward township wouldn't help us. We thought the in between alley belong to both us and the Plaintiffs to use if needed. We never thought they would decided they had to have it. It's not on the deeds as sold to anyone but a part of the larger piece of ground off of which we and they bought their ground. They Plaintiffs want it all over to our property. We think it should be kept as is for us to use too or if we sell some one else has that option. Atleast half the ground.

Gerry Dufour ask me to move my dog from under the trees across the alley because hrs dogs needed shade and that's why the dog pens ended up there and mine was moved to this side on our property

I also told Gerry Dufour recently that since my 15 year old dog died two yrs ago I would be putting a basketball (free standing) up for my Autistic Grandson where we had taken down a big pine tree near the alley. I guess it would both the dog pens. But it was the only

place I could think of to put the basketball stand.

My brother Charles R. Hany ask Gerald Du four several times to move the dog pens from the alley but he never moved them.

Florence E. Martin wrote this up and these are true statements

Florence E. Martin
Norman Martin

Also our water line runs across said property. Gerald Du four is not on that line. I think it is on line that went to barn in forties. Is in front on his property.

Also on this side of said property we have ^{two} apple trees, lilac bush and three large, tall pine trees and a maple tree. Norman Martin also cuts the grass on the alley side and in and out of the trees.

Norman Martin has been on dialysis MON. Wed. and Fri. since Sept 12, 2002. He started in ~~Monte~~ and then started in Clearfield on turnpike Ave when it opened. On those days he can't mow as he leaves at 7:40 am is on dialysis 3 1/2 hrs and doesn't get home until any where between 1:00 and 2:00 ^{pm} sometimes later. Du four's mow sometimes on those days.

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. MCKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE
AND JANE DOE 1-999 and ALL THE
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OF THEM,

Defendants.

No. 08 - 970 - CD

FILED ICC A44
0/10:40Lm Naddeo
JUN 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

Type of Pleading:
**PRAECIPE FOR ENTRY OF
APPEARANCE**

Filed on behalf of:
Defendants
Counsel of Record for
this party:
James A. Naddeo, Esq.
Pa. I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: June 24, 2008

28

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

No. 08 - 970 - CD

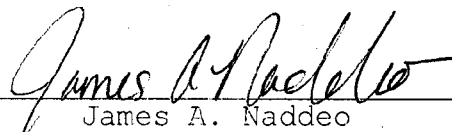
NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. MCKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE
and JANE DOE 1-999 and ALL THE
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OR ANY OTHER PERSON, PERSONS,
FIRMS, PARTNERSHIPS, OR
CORPORATE ENTITIES IN INTEREST
OR ANY ONE CLAIMING BY,
THROUGH OR UNDER THEM OR ANY
OF THEM,

Defendants

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of all of the above
named Defendants in the above-captioned matter.


James A. Naddeo

Attorney for Defendants

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

GERALD M. DUFOUR and *
MADELINE S. DUFOUR, husband *
and wife, *
Plaintiffs, *

v. *

No. 08 - 970 - CD

NORMAN R. MARTIN, and *
FLORANCE MARTIN, husband and *
wife; LEONARD THOMPSON and *
JANICE THOMPSON, husband and *
wife; CHARLES R. HENRY, *
CHARLES WILLIAM HENRY; LISA *
A. MCKEE n/k/a LISA A. NOEL *
and JEFFREY A. NOEL, JOHN DOE *
and JANE DOE 1-999 and ALL THE *
HEIRS AND ASSIGNS OF ALL THE *
DECEASED PERSONS HAVING OR *
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THEM OR ANY OF THEM, AND ALL *
THE HEIRS, DEVISEES, *
ADMINISTRATORS, EXECUTORS AND *
ASSIGNS OF THE ABOVE MENTIONED *
OR ANY OTHER PERSON, PERSONS, *
FIRMS, PARTNERSHIPS, OR *
CORPORATE ENTITIES IN INTEREST *
OR ANY ONE CLAIMING BY, *
THROUGH OR UNDER THEM OR ANY *
OF THEM, *
Defendants. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Praecipe for Entry of Appearance was served on
the following and in the following manner on the 24th day of June,
2008:

First-Class Mail, Postage Prepaid

R. Bruce Manchester, Esquire

Manchester and Associates
124 W. Bishop Street
Bellefonte, PA 16823

NADDEO & LEWIS, LLC

By:

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

James A. Naddeo
Attorney for Defendants

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. MCKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE
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OF THEM,

Defendants.

No. 08 - 970 - CD

Type of Pleading:
**FIRST AMENDED PRAECIPE
FOR ENTRY OF APPEARANCE**

Filed on behalf of:
Defendants
Counsel of Record for
this party:
James A. Naddeo, Esq.
Pa. I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: June 25, 2008

FILED ^{ICC}
011:2631 Amy Naddeo
JUN 25 2008
(610)

William A. Shaw
Prothonotary/Clerk of Courts

(10)

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

No. 08 - 970 - CD

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. MCKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE
and JANE DOE 1-999 and ALL THE
HEIRS AND ASSIGNS OF ALL THE
DECEASED PERSONS HAVING OR
ONCE HAVING HAD AN INTEREST BY
DIRECT OR SUCCESSIVE
INHERITANCE IN THE ESTATES OF
THEM OR ANY OF THEM, AND ALL
THE HEIRS, DEVISEES,
ADMINISTRATORS, EXECUTORS AND
ASSIGNS OF THE ABOVE MENTIONED
OR ANY OTHER PERSON, PERSONS,
FIRMS, PARTNERSHIPS, OR
CORPORATE ENTITIES IN INTEREST
OR ANY ONE CLAIMING BY,
THROUGH OR UNDER THEM OR ANY
OF THEM,


Defendants

FIRST AMENDED PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of only the
following above named Defendants: Norman R. Martin and Florance
Martin, Charles R. Henry, Charles William Henry, Lisa A. McKee
n/k/a Lisa A. Noel and Jeffrey A. Noel, in the above-captioned
matter. Please accept this as a revision of my previously filed

entry of appearance which included the named Defendants, Leonard Thompson and Janice Thompson.


James A. Naddeo
Attorney for Defendants

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

GERALD M. DUFOUR and *
MADELINE S. DUFOUR, husband *
and wife, *
Plaintiffs, *

v. *

No. 08 - 970 - CD

NORMAN R. MARTIN, and *
FLORANCE MARTIN, husband and *
wife; LEONARD THOMPSON and *
JANICE THOMPSON, husband and *
wife; CHARLES R. HENRY, *
CHARLES WILLIAM HENRY; LISA *
A. MCKEE n/k/a LISA A. NOEL *
and JEFFREY A. NOEL, JOHN DOE *
and JANE DOE 1-999 and ALL THE *
HEIRS AND ASSIGNS OF ALL THE *
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THE HEIRS, DEVISEES, *
ADMINISTRATORS, EXECUTORS AND *
ASSIGNS OF THE ABOVE MENTIONED *
OR ANY OTHER PERSON, PERSONS, *
FIRMS, PARTNERSHIPS, OR *
CORPORATE ENTITIES IN INTEREST *
OR ANY ONE CLAIMING BY, *
THROUGH OR UNDER THEM OR ANY *
OF THEM, *
Defendants. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of First Amended Praecipe for Entry of Appearance
was served on the following and in the following manner on the
25th day of June, 2008:

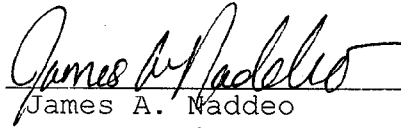
First-Class Mail, Postage Prepaid

R. Bruce Manchester, Esquire

Manchester and Associates
124 W. Bishop Street
Bellefonte, PA 16823

NADDEO & LEWIS, LLC

By:



James A. Naddeo
Attorney for Defendants

FILED

JUN 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,
Plaintiffs,

v.

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. McKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE
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CORPORATE ENTITIES IN INTEREST
OR ANY ONE CLAIMING BY,
THROUGH OR UNDER THEM OR ANY
OF THEM,

Defendants.

No. 08 - 970 - CD

FILED ¹⁰⁰
011:36 B11 Amy
JUN 25 2008 Naddeo

William A. Shaw
Prothonotary/Clerk of Courts

Type of Pleading:
ANSWER AND NEW MATTER

Filed on behalf of:
Defendants
Counsel of Record for
this party:
James A. Naddeo, Esq.
Pa. I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: June 25, 2008

#10

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

No. 08 - 970 - CD

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. MCKEE n/k/a LISA A. NOEL
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OF THEM,

Defendants.

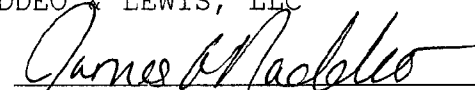
NOTICE TO PLEAD

TO THE PLAINTIFFS:

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

NADDEO & LEWIS, LLC

By


James A. Naddeo, Esquire
Attorney for Defendant

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

No. 08 - 970 - CD

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. MCKEE n/k/a LISA A. NOEL
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OR ANY ONE CLAIMING BY,
THROUGH OR UNDER THEM OR ANY
OF THEM,

Defendants

ANSWER AND NEW MATTER

The Defendants, Norma R. Martin and Florance Martin; Charles R. Henry; Charles William Henry; Lisa A. McKee-Noel and Jeffrey A. Noel, by and through their attorney, James A. Naddeo, hereby file the following Answer and New Matter, in accordance with the Pennsylvania Rules of Civil Procedure, and assert in support thereof as follows:

1. Admitted.

2. Admitted.

3. Denied. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied. To the contrary, Defendants incorporate by reference New Matter as set forth below as if set forth in full herein.

4. Denied. After reasonable investigation Defendants are without knowledge or information sufficient to form a belief as to the truth of said averment.

5. Denied. After reasonable investigation Defendants are without knowledge or information sufficient to form a belief as to the truth of said averment.

6. Denied. After reasonable investigation Defendants are without knowledge or information sufficient to form a belief as to the truth of said averment.

WHEREFORE, Defendants, Norma R. Martin and Florance Martin; Charles R. Henry; Charles William Henry; Lisa A. McKee-Noel and Jeffrey A. Noel, request judgment to be entered in their favor and against the Plaintiffs, Gerald M. Dufour and Madeline S. Dufour.

NEW MATTER

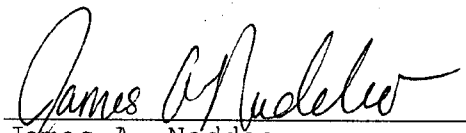
7. Plaintiffs' use of the alley and land as described at Paragraph 3 of Plaintiffs' Complaint, which is incorporated herein by reference and made a part hereof, was consensual in that Defendants gave permission to Plaintiffs to utilize said alley.

WHEREFORE, Defendants, Norma R. Martin and Florance Martin;
Charles R. Henry; Charles William Henry; Lisa A. McKee-Noel and
Jeffrey A. Noel, request judgment to be entered in their favor and
against the Plaintiffs, Gerald M. Dufour and Madeline S. Dufour.

Respectfully submitted,

NADDEO & LEWIS, LLC

By


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

James A. Naddeo
Attorney for Defendants

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared CHARLES R. HENRY, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer to Complaint are true and correct to the best of his knowledge, information and belief.


Charles R. Henry

SWORN and SUBSCRIBED before me this 11th day of June, 2008.

John C. Lewis

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2011

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

GERALD M. DUFOUR and *
MADELINE S. DUFOUR, husband *
and wife, *
Plaintiffs, *

v. *

No. 08 - 970 - CD

NORMAN R. MARTIN, and *
FLORANCE MARTIN, husband and *
wife; LEONARD THOMPSON and *
JANICE THOMPSON, husband and *
wife; CHARLES R. HENRY, *
CHARLES WILLIAM HENRY; LISA *
A. MCKEE n/k/a LISA A. NOEL *
and JEFFREY A. NOEL, JOHN DOE *
and JANE DOE 1-999 and ALL THE *
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OR ANY ONE CLAIMING BY, *
THROUGH OR UNDER THEM OR ANY *
OF THEM, *
Defendants. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Answer and New Matter was served on the
following and in the following manner on the 25th day of June,
2008:

First-Class Mail, Postage Prepaid

R. Bruce Manchester, Esquire

Manchester and Associates
124 W. Bishop Street
Bellefonte, PA 16823

NADDEO & LEWIS, LLC

By:

A handwritten signature in cursive script, appearing to read "James A. Naddeo", is written over a horizontal line.

James A. Naddeo
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION LAW

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband and wife
Plaintiffs

vs.

NORMAN R. MARTIN and FLORANCE
MARTIN, husband and wife;
LEONARD THOMPSON and JANICE
THOMPSON, husband and wife;
CHARLES R. HENRY, CHARLES WILLIAM
HENRY; LISA A. McKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE AND
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OR ANY OTHER PERSON, PERSONS, FIRMS,
PARTNERSHIPS, OR CORPORATE
ENTITIES IN INTEREST OR ANY ONE
CLAIMING BY, THROUGH OR UNDER
THEM OR ANY OF THEM

Defendants

:
:
: NO.: 08-970-CD
:
:
:
:
:
:
:Type of Pleading:
:
:Answer
:
:Filed on Behalf of: Plaintiffs
:Counsel of Record for this Party:
:
:R. Bruce Manchester, Esq.
:Manchester and Associates
:124 West Bishop Street
:Bellefonte, PA 16823
:(814) 355-5421
:
:

Dated: July 21, 2008

FILED ^{NO CC}
m 11:05 AM
JUL 25 2008 (6P)

William A. Shaw
Prothonotary/Clerk of Courts

(11)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION LAW

GERALD M. DUFOUR and :
MADELINE S. DUFOUR, husband and wife :
Plaintiffs : NO.: 08-970-CD


vs. :

NORMAN R. MARTIN and FLORANCE :
MARTIN, husband and wife; :
LEONARD THOMPSON and JANICE :
THOMPSON, husband and wife; :
CHARLES R. HENRY, CHARLES WILLIAM :
HENRY; LISA A. McKEE n/k/a LISA A. NOEL :
and JEFFREY A. NOEL, JOHN DOE AND :
JANE DOE 1-999 and ALL THE HEIRS AND :
ASSIGNS OF ALL THE DECEASED PERSONS :
HAVING OR ONCE HAVING HAD AN :
INTEREST BY DIRECT OR SUCCESSIVE :
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DEVISEES, ADMINISTRATORS, EXECUTORS :
AND ASSIGNS OF THE ABOVE MENTIONED :
OR ANY OTHER PERSON, PERSONS, FIRMS, :
PARTNERSHIPS, OR CORPORATE :
ENTITIES IN INTEREST OR ANY ONE :
CLAIMING BY, THROUGH OR UNDER :
THEM OR ANY OF THEM :
Defendants :

PLAINTIFF'S ANSWER TO NEW MATTER

7. Denied. Conclusion of law.


Respectfully submitted,

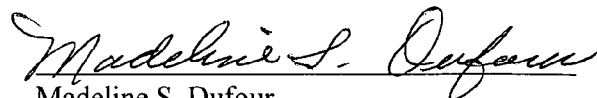


R. Bruce Manchester, Esquire
Manchester and Associates
124 West Bishop Street
Bellefonte, PA 16823

VERIFICATION

We, Gerald M. Dufour and Madeline S. Dufour verify that the statements made in the foregoing pleading are true and correct. We understand that false statements herein are made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.


Gerald M. Dufour


Madeline S. Dufour

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

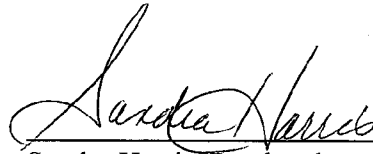
CIVIL DIVISION LAW

GERALD M. DUFOUR and	:
MADELINE S. DUFOUR, husband and wife	:
Plaintiffs	: NO.: 08-970-CD
	:
vs.	:
	:
NORMAN R. MARTIN and FLORANCE	:
MARTIN, husband and wife;	:
LEONARD THOMPSON and JANICE	:
THOMPSON, husband and wife;	:
CHARLES R. HENRY, CHARLES WILLIAM	:
HENRY; LISA A. McKEE n/k/a LISA A. NOEL	:
and JEFFREY A. NOEL, JOHN DOE AND	:
JANE DOE 1-999 and ALL THE HEIRS AND	:
ASSIGNS OF ALL THE DECEASED PERSONS	:
HAVING OR ONCE HAVING HAD AN	:
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OR ANY OF THEM, AND ALL THE HEIRS,	:
DEVISEES, ADMINISTRATORS, EXECUTORS	:
AND ASSIGNS OF THE ABOVE MENTIONED	:
OR ANY OTHER PERSON, PERSONS, FIRMS,	:
PARTNERSHIPS, OR CORPORATE	:
ENTITIES IN INTEREST OR ANY ONE	:
CLAIMING BY, THROUGH OR UNDER	:
THEM OR ANY OF THEM	:
Defendants	:

CERTIFICATE OF SERVICE

I, Sandra Harris, Paralegal for the Office of Manchester and Associates, hereby certify that service on the following individual, and in the stated manner, was made of copy and/or copies of Plaintiff's Answer to New Matter in the above captioned matter. Said service was made on July 23, 2008, by First Class Mail, postage prepaid:

James Naddeo, Esq.
Naddeo and Lewis, LLC
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830

A handwritten signature in cursive script, reading "Sandra Harris", is written over a horizontal line.

Sandra Harris, Paralegal
Manchester and Associates
124 West Bishop Street
Bellefonte, PA 16823
(814) 355-5421

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104212
NO: 08-970-CD
SERVICES 5
COMPLAINT ACTION TO QUIET TITLE

PLAINTIFF: GERALD M. DUFOUR and MADELINE S. DUFOUR

vs.

DEFENDANT: NORMAN R. MARTIN et al

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	G.DUFOUR	CASH	50.00
SHERIFF HAWKINS	G.DUFOUR	CASH	84.54

FILED

03/07/01
SEP 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,

Chester A. Hawkins

Chester A. Hawkins
Sheriff

#12

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
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CHARLES WILLIAM HENRY; LISA
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OF THEM,

Defendants.

No. 08 - 970 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendants
Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa. I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

0 3:35 PM. GK

SEP 25 2008

2cc Atty Naddeo

William A. Shaw
Prothonotary/Clerk of Courts

13

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

GERALD M. DUFOUR and *
MADELINE S. DUFOUR, husband *
and wife, *
Plaintiffs, *

v. *

No. 08 - 970 - CD

NORMAN R. MARTIN, and *
FLORANCE MARTIN, husband and *
wife; LEONARD THOMPSON and *
JANICE THOMPSON, husband and *
wife; CHARLES R. HENRY, *
CHARLES WILLIAM HENRY; LISA *
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OR ANY ONE CLAIMING BY, *
THROUGH OR UNDER THEM OR ANY *
OF THEM, *
Defendants. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
true and correct copy of Notice of Taking Deposition was served on
the following and in the following manner on the 25th day of
September, 2008:

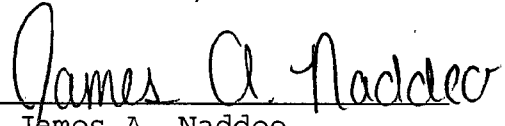
First-Class Mail, Postage Prepaid

R. Bruce Manchester, Esquire
Manchester and Associates
124 W. Bishop Street
Bellefonte, PA 16823

Maryann Cornelius, Court Reporter
339 Southmont Boulevard
Johnstown, PA 15905

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Defendants

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. MCKEE n/k/a LISA A. NOEL
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THROUGH OR UNDER THEM OR ANY
OF THEM,

Defendants.

No. 08 - 970 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendants
Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa. I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

03:35 P.M. CK

SEP 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

Naddeo

610

#14

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

GERALD M. DUFOUR and *
MADELINE S. DUFOUR, husband *
and wife, *

Plaintiffs, *

v. *

No. 08 - 970 - CD

NORMAN R. MARTIN, and *
FLORANCE MARTIN, husband and *
wife; LEONARD THOMPSON and *
JANICE THOMPSON, husband and *
wife; CHARLES R. HENRY, *
CHARLES WILLIAM HENRY; LISA *
A. MCKEE n/k/a LISA A. NOEL *
and JEFFREY A. NOEL, JOHN DOE *
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OF THEM, *

Defendants. *

CERTIFICATE OF SERVICE

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true and correct copy of Notice of Taking Deposition was served on
the following and in the following manner on the 25th day of
September, 2008:

First-Class Mail, Postage Prepaid

R. Bruce Manchester, Esquire
Manchester and Associates
124 W. Bishop Street
Bellefonte, PA 16823

Maryann Cornelius, Court Reporter
339 Southmont Boulevard
Johnstown, PA 15905

NADDEO & LEWIS, LLC

By:

James A. Naddeo

James A. Naddeo
Attorney for Defendants

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. McKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE
AND JANE DOE 1-999 and ALL THE
HEIRS AND ASSIGNS OF ALL THE
DECEASED PERSONS HAVING OR
ONCE HAVING HAD AN INTEREST BY
DIRECT OR SUCCESSIVE
INHERITANCE IN THE ESTATES OF
THEM OR ANY OF THEM, AND ALL
THE HEIRS, DEVISEES,
ADMINISTRATORS, EXECUTORS AND
ASSIGNS OF THE ABOVE MENTIONED
OR ANY OTHER PERSON, PERSONS,
FIRMS, PARTNERSHIPS, OR
CORPORATE ENTITIES IN INTEREST
OR ANY ONE CLAIMING BY,
THROUGH OR UNDER THEM OR ANY
OF THEM,

Defendants.

No. 08 - 970 - CD

Type of Pleading:
**MOTION FOR SUMMARY
JUDGMENT**

Filed on behalf of:
Defendants
Counsel of Record for
this party:
James A. Naddeo, Esq.
Pa. I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 2 CC
010:3884
MAY 01 2009

William A. Shaw
Prothonotary/Clerk of Courts

Dated: May 1, 2009

#15

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

GERALD M. DUFOUR and *
MADELINE S. DUFOUR, husband *
and wife, *

Plaintiffs, *

v. *

No. 08 - 970 - CD

NORMAN R. MARTIN, and *
FLORANCE MARTIN, husband and *
wife; LEONARD THOMPSON and *
JANICE THOMPSON, husband and *
wife; CHARLES R. HENRY, *
CHARLES WILLIAM HENRY; LISA *
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THROUGH OR UNDER THEM OR ANY *
OF THEM, *

Defendants. *

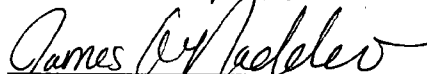
NOTICE TO PLEAD

TO THE PLAINTIFFS:

You are hereby notified to file a written response to
the enclosed Motion for Summary Judgment within twenty (30) days
from service hereof or a judgment may be entered against you.

NADDEO & LEWIS, LLC

By



James A. Naddeo, Esquire
Attorney for Defendants

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

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NORMAN R. MARTIN, and
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Defendants

MOTION FOR SUMMARY JUDGMENT

The Defendants, Norma R. Martin and Florance Martin; Charles R. Henry; Charles William Henry; Lisa A. McKee-Noel and Jeffrey A. Noel, by and through their attorney, James A. Naddeo, hereby file the following motion for summary judgment, and assert in support thereof as follows:

1. Plaintiffs' complaint alleges adverse possession of a 20 foot portion of an unopened alley which adjoins the properties of the parties.

2. Defendants have answered that the use was with permission and consensual.

3. The depositions of Gerald Dufour and Madeline Dufour were taken on November 7, 2008. True and correct copy of Deposition of Gerald Dufour is attached hereto as Exhibit "A." True and correct copy of Deposition of Madeline Dufour is attached hereto as Exhibit "B." True and correct copy of Map utilized at depositions is attached hereto as Exhibit "C."

4. That the depositions reveal and evidence that Plaintiffs will not be able to establish the elements of adverse possession.

5. Plaintiffs' depositions indicate that their use of the alley has been to initially clear briars and grass, thereafter plant grass, mow the grass, planted a fruit tree which is no longer present and possibly have a portion of one dog pen on the alley. Deposition of Gerald Dufour Page 23-25; Deposition of Madeline Dufour Page 11:Lines 12-19, Page 12:Line 19-22 (unsure if dog pen is on the alley), Page 13:Lines 13-17 (done nothing other than these acts upon the claimed property).

6. Plaintiffs' use does not constitute actual possession hostile to the owners as required by the law of the Commonwealth of Pennsylvania. (In this instance Defendants Martins would have a claim of title to one-half of the alley and all other Defendants

would have a private easement over the entire alley to which Plaintiffs claim to have acquired title.) Edmondson v. Dolinich, 307 Pa.Super. 335 (Pa.Super.Ct. 1982); Flannery v. Stump, 2001 Pa.Super. 307 (Pa.Super.Ct. 2001).

7. Plaintiffs' depositions demonstrate that the use was consensual with the surrounding landowners and was not hostile. See Deposition of Madeline Dufour Page 15:Lines 16-17 (Did not believe anyone in particular "owned" the alley.), Page 15:Lines 9-13 (Took no action when received letter to move a dog pen because they believed they had a right to use it ("it's an alley")), Page 16-17 (If any portion of the dog pen is on the claimed alley it is with the express consent of the Thompsons); depositions are absent of any subsequent (to permissive use) action of disseizin or open disavowal of the true owner's title. See Deposition of Gerald Dufour Page 25:Lines 13-18 (Never communicated to any of the Defendants that they were to stay off of the property).

8. Plaintiffs' use is admittedly sporadic and nonexclusive. Deposition of Gerald M. Dufour Page 42-43, Deposition of Madeline Dufour Page 13-14 (The Martins also have mowed, walk upon and use the alley along with the Plaintiffs.). See also Edmondson v. Dolinich, 307 Pa.Super. 335 (Pa.Super.Ct. 1982) (Held cleaning up an alley, planting grass, mowing grass and planting a peach tree did not constitute adverse possession.)

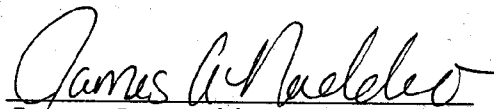
9. No material issue of fact exists and Defendants are entitled to judgment as a matter of law.

WHEREFORE, Defendants, Norma R. Martin and Florance Martin;
Charles R. Henry; Charles William Henry; Lisa A. McKee-Noel and
Jeffrey A. Noel, request the Court grant the herein motion for
summary judgment and dismiss the claims of Plaintiffs.

Respectfully submitted,

NADDEO & LEWIS, LLC

By



James A. Naddeo

Attorney for Defendants.

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

No. 08 - 970 - CD

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
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Defendants.

CERTIFICATE OF SERVICE

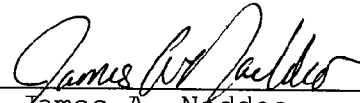
I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Motion for Summary Judgment was served on the
following and in the following manner on the 1st day of May, 2009:

First-Class Mail, Postage Prepaid

R. Bruce Manchester, Esquire
Manchester and Associates
124 W. Bishop Street
Bellefonte, PA 16823

NADDEO & LEWIS, LLC

By:

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

James A. Naddeo
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GERALD M. DUFOUR and MADELINE S.
DUFOUR, husband and wife,
Plaintiffs

-vs-

CIVIL DIVISION
NO. 2008 - 970 - CD

NORMAN R. MARTIN and FLORANCE
MARTIN, husband and wife;
LEONARD THOMPSON and JANICE
THOMPSON, husband and wife;
CHARLES R. HENRY, CHARLES
WILLIAM HENRY, LISA A. MCKEE
n/k/a LISA A. NOEL and JEFFREY A.
NOEL, JOHN DOE and JANE DOE 1-999
and ALL THE HEIRS AND ASSIGNS OF
ALL THE DECEASED PERSONS HAVING
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ENTITIES IN INTEREST OR ANYONE
CLAIMING BY, THROUGH OR UNDER
THEM OR ANY OF THEM,
Defendants

PROCEEDINGS: Deposition of
GERALD M. DUFOUR
DATE: Friday, November 7, 2009
10:42 - 11:30 a.m.
PLACE: Naddeo & Lewis, LLC
207 East Market Street
Clearfield, PA 16830
REPORTED BY: Maryann Cornelius
Freelance Court Reporter
Notary Public

MARYANN CORNELIUS (814) 536-7450

INDEX

DEPOSITION OF GERALD M. DUFOUR

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Certificate of Reporter 45

EXHIBITS

DESCRIPTION

PAGE

DuFour Ex. No. 1 - Outline 9

NOTE: Above Exhibit retained by Mr. Naddeo

MARYANN CORNELIUS (814) 536-7450

APPEARANCES

R. BRUCE MANCHESTER, ESQUIRE
Manchester and Associates
124 West Bishop Street
Belleville, PA 16823
Appearing on behalf of the Plaintiffs
Gerald M. DuFour and Madeline S. DuFour,
husband and wife

JAMES A. NADDEO, ESQUIRE
Naddeo & Lewis, LLC
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
Appearing on behalf of the Defendants
Norman R. Martin, et al.

MARYANN CORNELIUS (814) 536-7450

STIPULATION

It is hereby stipulated by and between counsel for
the respective parties that reading, signing, sealing,
certification, and filing are waived, and that all objections
except as to the form of the question are reserved to the time
of trial.

GERALD M. DUFOUR, called as a witness, being sworn,
testified as follows:

MR. NADDEO: Counsel, any stipulations, waive
objections as to the form?

MR. MANCHESTER: Yes.

MR. NADDEO: Is that what you consider the usual?

MR. MANCHESTER: Yes.

MR. NADDEO: That's what I do.

MR. MANCHESTER: Yes.

MR. NADDEO: All right. Fine. Let's just go off
before we start.

(Discussion held off record.)

EXAMINATION

BY MR. NADDEO:

Q Would you state your name, please.

MARYANN CORNELIUS (814) 536-7450

- 1 A Gerald DuFour.
 2 Q What is your address, Mr. DuFour?
 3 A 58 North Good Street, Houtzdale, PA, 16651.
 4 Q How long have you lived at that address?
 5 A Thirty-six years.
 6 Q Who lives at that address with you?
 7 A My wife.
 8 Q Her name, please.
 9 A Madeline, M-A-D-E-L-I-N-E.
 10 Q Are there any other members of that household?
 11 A My son's there with me right now, he just went
 12 through a divorce.
 13 Q So you have a son living at home?
 14 A Yeah.
 15 Q Okay. When did your son move in with you?
 16 A About a year.
 17 Q About a year ago?
 18 A Yeah.
 19 Q Okay. Prior to that, when did he leave home?
 20 A Oh, seven years, I think it was seven years.
 21 Q So there were seven years between his leaving home,
 22 getting married, and now he's back with his family, your
 23 family?
 24 A Right.
 25 Q Okay. Do you have any other children?

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- 1 Q -- surrounding your use of this area?
 2 A Yes.
 3 Q And David is currently living with you?
 4 A Yes.
 5 Q Where does James live?
 6 A Columbus, Ohio, Groveport, actually. It's in the
 7 Columbus city limits.
 8 Q And Gerald?
 9 A Philadelphia.
 10 Q Do you have addresses for them?
 11 A Yes. But I won't be able to give them to you right
 12 off the top of my head.
 13 Q Well, that was my next question.
 14 A Yeah.
 15 Q You have addresses --
 16 A Oh, yes.
 17 Q -- you don't have them memorized?
 18 A No.
 19 Q Okay. Now, Mr. DuFour, you have caused a Complaint
 20 to be filed against various neighbors concerning an unopened
 21 alley that adjoins your property, is that correct?
 22 A Yes.
 23 Q And in your Complaint you have a description of the
 24 area that you are claiming to own?
 25 A Yes.

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- 1 A Yes.
 2 Q When is the last time those children have resided in
 3 your household?
 4 A Well, Jerry left when he was 18 for college and the
 5 same for Jim.
 6 Q Okay. So you have two children, James and Jerry?
 7 A James and Gerald, Jr.
 8 Q Would either James or Gerald be familiar with any of
 9 the facts and circumstances surrounding your use of the area
 10 that you are claiming?
 11 A Uh-huh.
 12 Q They would both be familiar?
 13 A Yes.
 14 Q Good. Now, I'm sorry, which one is living with you
 15 at the present?
 16 A David.
 17 Q Oh, so there are three boys?
 18 A Three boys.
 19 Q Have we covered them all?
 20 A Yes.
 21 Q Are we missing anyone?
 22 A No.
 23 Q Okay. Would David also have some knowledge of the
 24 facts and circumstances --
 25 A Yes.

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- 1 Q Can you tell me where you got that description?
 2 A Through searching at the courthouse there to gain my
 3 knowledge.
 4 Q All right. But when I say -- my question in your
 5 Complaint, you have what appears to be a meets and bounds
 6 description of the area. Was that done by a surveyor?
 7 A I had -- the ground was surveyed. Well, there was
 8 marks on my ground and I had it surveyed later.
 9 Q My question is not very good. You have a
 10 description in your Complaint of the area that you are
 11 claiming to own?
 12 A Uh-huh.
 13 Q Are you aware of that?
 14 A Yes.
 15 Q Okay. Let me show you a copy of that description
 16 (indicating). Can you tell me who prepared that description?
 17 A Well, Bruce here, along with the information I got
 18 from the --
 19 Q Okay. Your Counsel prepared it, is that right? I
 20 mean, that's a --
 21 A I don't understand what you're --
 22 MR. MANCHESTER: If we can go off the record.
 23 MR. NADDEO: Yeah.
 24 (Discussion held off record.)
 25 BY MR. NADDEO:

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- 1 Q My question is -- well, let me go back.
 2 When we were briefly off record I asked you who
 3 prepared the description of the area that you are claiming for
 4 the purpose of drafting your Complaint. Now, do you have an
 5 answer?
 6 A Yes.
 7 Q Who did that?
 8 A Mr. Opaliski.
 9 Q Mr. Opaliski is a surveyor?
 10 A Yes.
 11 Q So you had the area that you are claiming surveyed
 12 by a professional engineer?
 13 A Yes.
 14 (Outline marked as DuFour Exhibit No. 1.)
 15 BY MR. NADDEO:
 16 Q All right. I'm going to show you what has been
 17 marked as Exhibit I, and I have attempted on Exhibit 1 to
 18 outline what I believe is described in your Complaint.
 19 A Yes.
 20 Q Yes. Okay. That's what I tried to do.
 21 A Uh-uh.
 22 Q Now my question is, have I properly outlined that
 23 area?
 24 A Yes.
 25 Q Okay. So I have properly --

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- 1 that you are claiming? Do you understand my question?
 2 A Can you repeat it, please.
 3 Q Okay. My question is, can you tell me in what
 4 manner you have appropriated the area marked on Exhibit 1?
 5 A Okay. I originally cleared it when I bought the
 6 land to clear my home, and I have maintained it --
 7 Q You cleared it --
 8 A Yes.
 9 Q I'm sorry, let's take it one at a time.
 10 A Okay.
 11 Q The first thing you did was to clear the alley or
 12 what appears as an alley?
 13 A Yeah.
 14 Q And when you say you cleared it, can you be more
 15 specific, what did you do?
 16 A Used a scythe and lawn mowers.
 17 Q Did you have to remove any -- anything other than
 18 grass from the area?
 19 A There was some briars probably, you know.
 20 Q So that when you cleared the right of way, that
 21 would have -- the right of way would have been covered with
 22 grass and briars?
 23 A Yes.
 24 Q Were there any trees?
 25 A Not on that particular spot.

MARYANN CORNELIUS (814) 536-7450

- 1 A It all depends -- actually you go up into this
 2 ground here (indicating) somewhat too.
 3 Q Oh, they do?
 4 A Yes.
 5 Q Okay. Can you show me where you --
 6 A 'Cause I had other draw pegs before.
 7 Q Okay. Can you show me on the map where -- the area
 8 that you are claiming?
 9 A It's right here (indicating), the fifth and sixth
 10 lines there.
 11 Q So you are claiming ownership to the alley which
 12 adjoins your property?
 13 A Yes.
 14 Q Okay. And there is a notation on Exhibit 1 which
 15 says, DuFour?
 16 A Uh-huh.
 17 Q And that notation appears on lots numbered 5 and 6?
 18 A Yes.
 19 Q Are those your lots?
 20 A That's mine.
 21 Q And are those the lots where you have been living
 22 for the past 36 years?
 23 A Yes.
 24 Q Now, can you please tell me in what manner you have
 25 appropriated the area that we have identified as the property

MARYANN CORNELIUS (814) 536-7450

- 1 Q Okay. Any other type of shrubbery?
 2 A No.
 3 Q All right. And the manner in which you cleared the
 4 area was to use a scythe or sickle?
 5 A A scythe.
 6 Q A scythe. All right.
 7 A And a lawn mower.
 8 Q And a lawn mower.
 9 A Uh-huh.
 10 Q Do you recall when you did that?
 11 A After I purchased the ground in 1969.
 12 Q Okay. Well, here is what I -- you purchased the
 13 property in 1969?
 14 A Yes.
 15 Q Did you do the clearing also in 1969?
 16 A Yeah, uh-huh.
 17 Q You cleared it the same year you bought it?
 18 A Basically, yes.
 19 Q Okay. Now in addition to clearing the property and
 20 cutting the vegetation consisting of grasses and briars, what
 21 else have you done with that particular section?
 22 A You mean as far as cleaning it and that?
 23 Q Yes.
 24 A Well, there was a barn on there and different
 25 garbage and stuff that needed to be cleaned off.

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- 1 Q So you did more than clear grass?
 2 A Yes.
 3 Q Okay. There was a barn built on the property?
 4 A Yes.
 5 Q Do you know who the barn belonged to?
 6 A I'm not sure.
 7 Q Can you describe the barn?
 8 A Two story barn at the one end and it had a small
 9 shed off the -- built onto the end.
 10 Q Are there any remnants of that barn today?
 11 A No.
 12 Q Okay. And was that barn removed in 1969?
 13 A That's when it was started.
 14 Q When did you finish?
 15 A I'd say 1970.
 16 Q So it took you awhile to tear down the barn?
 17 A Yes.
 18 Q What type of construction was the barn?
 19 A Wood.
 20 Q Can you show me on the map where the barn was
 21 located?
 22 A It would have been in this area here (indicating).
 23 Q Would you mark that barn, please.
 24 A (Witness complies).
 25 Q Okay. Now we've been miscommunicating. My question

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- 1 Q -- the right of way?
 2 A No.
 3 Q Has anyone ever used the right of way?
 4 A No.
 5 Q Do you use the right of way?
 6 A No.
 7 Q Now, when we say "use the right of way," you're
 8 assuming I mean vehicles?
 9 A Right.
 10 Q Okay. So you've never driven a vehicle over the
 11 unopened right of way?
 12 A Oh, I might have backed a truck up once or twice to
 13 my dog pen or something.
 14 Q Okay. All right. Now after you cleared the area
 15 that you are claiming, did you continue to maintain that area?
 16 A Yes.
 17 Q How did you maintain it?
 18 A With the mower.
 19 Q Did you do anything besides mow grass?
 20 A Well, to maintain it I used fertilizer, you know,
 21 stuff like that to keep the grass, you know, and put some
 22 grass seed actually on some of it.
 23 Q So you've cleared it, you've mowed it, you've
 24 planted grass in this unopened area (indicating)?
 25 A Yeah.

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- 1 was did you remove anything else from the area that you are
 2 claiming and you mentioned the barn, but you have the barn
 3 down on your land.
 4 A Oh, boy, I just thought you meant the property,
 5 period.
 6 Q No, no, I'm sorry. Let's just keep -- let's
 7 restrict -- my questions at all times will be restricted
 8 simply to this area (indicating) --
 9 A Okay.
 10 Q -- that we've identified as the area that you're
 11 claiming.
 12 A Okay.
 13 Q All right. Now, did you remove anything from that
 14 area other than grass and briars?
 15 A No.
 16 Q There was no barn on that --
 17 A No.
 18 Q -- right of way?
 19 A No.
 20 Q Since the time you bought your property has that
 21 alley ever been open?
 22 A No.
 23 Q So, when you bought the property, there was no
 24 vehicular traffic or no one using --
 25 A No.

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- 1 Q The unopened right of way?
 2 A Uh-huh.
 3 Q And you've regularly cut the grass?
 4 A Yes.
 5 Q Now I've never seen your property. If I were to go
 6 to your property, would the area that you are claiming appear
 7 to be part of your lawn?
 8 A Yes.
 9 Q All right. Are there any markings on the ground to
 10 demonstrate or show where the unopened easement is located?
 11 A Just my survey pegs on my particular piece of
 12 ground.
 13 Q Other than survey pegs, I wouldn't be able to look
 14 at the ground and know that there was supposed to be an
 15 easement?
 16 A No.
 17 Q All right. When were the survey pegs put in?
 18 A I can't give you an exact date on that.
 19 Q Well, can you give me a year?
 20 A No, because it's been quite some time.
 21 Q Would it be more than 20 years ago?
 22 A I'm thinking it would be, yes.
 23 Q Were those survey pegs put in by the same engineer
 24 who surveyed --
 25 A No.

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1 Q -- the area?
 2 A No.
 3 Q Somebody else?
 4 A Yes.
 5 Q Do you remember who that was?
 6 A Allen Martin.
 7 Q And Mr. Martin, I believe, is also a registered
 8 surveyor?
 9 A Yes.
 10 Q Did Mr. Martin survey your lots or did he survey the
 11 unopened alley?
 12 A He surveyed my lots.
 13 Q He didn't survey the unopened alley?
 14 A No.
 15 Q Okay. Now your second surveyor, did he survey the
 16 unopened alley?
 17 MR. MANCHESTER: Only if he lets me.
 18 THE WITNESS: Pardon me.
 19 MR. MANCHESTER: Only if he lets me.
 20 MR. NADDEO: That's okay.
 21 THE WITNESS: Because I don't quite know how to
 22 answer that, you know.
 23 MR. MANCHESTER: Just repeat the question.
 24 BY MR. NADDEO:
 25 Q Did your recent surveyor, the gentleman who prepared

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1 Q Okay. How many dog pens?
 2 A Two.
 3 Q Can you describe them for me?
 4 A Just a wooden box at the back with a wire -- wire
 5 around the front.
 6 Q Could you show me on our Exhibit 1 where those dog
 7 pens are located?
 8 A It would be right in here (indicating) by this peg,
 9 the first one, and then the second one is in here
 10 (indicating).
 11 Q Now, do I understand that the dog pens are located
 12 outside of the area that is described in your Complaint?
 13 A These two (indicating), yes. But I'm not sure
 14 exactly how close this (indicating) is. It might be totally
 15 on this side (indicating), I'm not sure. You know, it kind of
 16 interacts with both pieces of property here (indicating).
 17 Q Are you telling me that the one dog pen --
 18 A But the one is definitely up in -- on this side
 19 (indicating) of Janet's portion of the alley.
 20 Q Okay. Who is Janet?
 21 A She would be on these two lots here (indicating),
 22 Janet and Leonard Thompson.
 23 Q But you're not claiming ownership of the alley
 24 adjoining the Thompson property?
 25 A No.

MARYANN CORNELIUS (814) 536-7450

1 the description that you identified in your Complaint, okay,
 2 did he put in survey stakes where the unopened alley is?
 3 A He didn't put stakes in.
 4 Q He did not?
 5 A He didn't put stakes in, no.
 6 Q Okay. So the stakes you are referring to are stakes
 7 at the corners of your lot?
 8 A Yes.
 9 Q Okay. There are no stakes at the corners of the
 10 area that you are claiming?
 11 A No.
 12 Q And the stakes on your lot were put in many years
 13 ago by Mr. Martin?
 14 A Yes.
 15 Q Now in addition to mowing the area that you're
 16 claiming --
 17 A Uh-huh.
 18 Q -- have you done anything else to appropriate that
 19 area; have you placed any construction, for instance?
 20 A Just my dog pens.
 21 Q Okay. So you have some dog pens that are in the
 22 area --
 23 A Uh-huh.
 24 Q -- that you are claiming?
 25 A Yes.

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1 Q Although you have dog pens built on that area?
 2 A Yeah.
 3 Q Okay. And the one dog pen is built partially on the
 4 area adjoining the Thompson property and partially on the area
 5 adjoining your property?
 6 A Yeah. I think it's pretty close, you know, both
 7 ways here (indicating), but it's probably more on her side,
 8 but I can't remember exactly how I have it.
 9 Q Okay.
 10 A Because I had others there besides those before.
 11 Q The dog pens, you've described them for me. How big
 12 are they?
 13 A I would say approximately eight feet.
 14 Q In length?
 15 A Yes. Three feet in width.
 16 Q Okay. Now, if we were to put an imaginary center
 17 line down the alley, which side of the alley would the dog
 18 pens be located?
 19 A They're pretty much in the middle of it.
 20 Q In the middle of the right of way?
 21 A Yeah, like so (indicating).
 22 Q The reason I ask, when you originally diagrammed it,
 23 it appears as though the dog pens are on the -- what I would
 24 call the southern side of the easement?
 25 A Oh, no.

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- 1 Q That was just artistic license, right?
- 2 A Yeah.
- 3 Q Okay. So the dog pens are right in the middle --
- 4 A Middle of the alley.
- 5 Q -- of the alley?
- 6 A Yes.
- 7 Q When did you first construct the dog pens?
- 8 A Those particular two? I mean, I've had others
- 9 besides. Actually from the time I moved up there, I've had
- 10 them.
- 11 Q Let's start with the first dog pen.
- 12 A 1969.
- 13 Q Was it the same type of dog pen?
- 14 A Yes.
- 15 Q Eight feet long, three feet wide?
- 16 A Basically.
- 17 Q All right. And were the original dog pens in the
- 18 same location as the dog pens that you have constructed today?
- 19 A In that same area, yes.
- 20 Q Okay. And do I understand that these dog pens have
- 21 been replaced --
- 22 A Yes.
- 23 Q -- periodically over the years?
- 24 A Yes.
- 25 Q So the original dog pens are no longer there?

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- 1 A (Witness complies).
- 2 Q Now there would be no mistaking the dog pens that
- 3 you've just diagrammed for the dog pens that are on the right
- 4 of way area; I mean, they're not close to that area?
- 5 A Oh, no.
- 6 Q Okay. Have you placed anything else in the right of
- 7 way besides the dog pens?
- 8 A When my kids were young, and the neighbors -- in
- 9 these trees (indicating) here, I had a tree house in there for
- 10 the kids and some swings.
- 11 Q Okay. But now you're not pointing to the area --
- 12 A No.
- 13 Q -- you're claiming?
- 14 A No.
- 15 Q You're pointing to a different area?
- 16 A Yeah. They were in the trees amongst here
- 17 (indicating).
- 18 Q Okay. Again, I just want to relate to the area
- 19 you're claiming.
- 20 A Yes.
- 21 Q Okay. Now so far here is where -- where I think we
- 22 are. When you moved into the property in 1969, you cleared
- 23 the area that -- to which you are claiming title?
- 24 A Yes.
- 25 Q You did that with a scythe and a lawn mower?

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- 1 A No.
- 2 Q When did you replace them the first time?
- 3 A I couldn't give you an exact answer on that.
- 4 Q Don't try. How many times have they been replaced?
- 5 A I'm going to say, roughly, three times. There,
- 6 again, that's -- that might not be accurate, you know.
- 7 Q That's okay. Now the current dog pens --
- 8 A Uh-huh.
- 9 Q -- how long have those specific dog pens been in the
- 10 location you've diagrammed?
- 11 A I'm going to say at least twelve years, maybe.
- 12 Q So they haven't been replaced for something like
- 13 twelve years?
- 14 A I have some others down at -- I have -- not in the
- 15 sense they've been replaced, no. I have other dog pens on my
- 16 property.
- 17 Q Okay. Are those dog pens --
- 18 A But not in that area.
- 19 Q Where are your other dog pens?
- 20 A Well, they're on my property.
- 21 Q Can you show me, please.
- 22 A Let's see here. That would be down in here
- 23 (indicating), in this area here (indicating).
- 24 Q Okay. Could you just maybe put a DP on there for
- 25 dog pen?

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- 1 A Yes.
- 2 Q You then planted grass and continued to use that
- 3 area as an extension to your yard?
- 4 A Yes.
- 5 Q All right. You also have a dog pen built partially
- 6 onto that area?
- 7 A Yeah.
- 8 Q Can you tell me how much of the dog pen is within
- 9 the area that you're claiming?
- 10 A It might be a foot, I don't know. You know, I'm not
- 11 -- I never paid that much attention, you know, I just had them
- 12 there.
- 13 Q Right. So in order to know that we'd probably have
- 14 to get the survey and the stakes and sort of eyeball and
- 15 measure it?
- 16 A Uh-huh.
- 17 Q But you do believe that part of the dog pen is
- 18 within the area to which you are claiming title?
- 19 A I think.
- 20 Q But you're not sure?
- 21 A I'm not positive. That might be totally on Janet's,
- 22 but I'm not positive.
- 23 Q All right. Now, have you done anything to
- 24 appropriate or to claim the area which is the subject of this
- 25 lawsuit besides clearing the ground, planting grass, and

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- 1 possibly putting a part of a dog pen on it?
- 2 A I originally had put a fruit tree on there one time,
- 3 but that accidentally got cut with a lawn mower from my boy so
- 4 I never bothered after.
- 5 Q So the fruit tree is gone?
- 6 A Gone.
- 7 Q Anything else?
- 8 A No, I don't -- I don't think.
- 9 Q Did you ever fence the area?
- 10 A No.
- 11 Q Did you ever put up no trespassing signs?
- 12 A No.
- 13 Q Did you ever do anything to indicate that your
- 14 adjoining landowners were not welcome to enter upon that area?
- 15 A No.
- 16 Q Did you ever communicate to any of the Defendants in
- 17 this case that they were to stay off of that ground?
- 18 A No.
- 19 Q Did you ever discuss the construction of the dog pen
- 20 with any of the Defendants?
- 21 A No.
- 22 Q Specifically did you ever discuss that question with
- 23 Mr. Henry?
- 24 A No.
- 25 Q Are you sure?

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- 1 property?
- 2 A Janet and her son.
- 3 Q And have you seen them maintaining the property?
- 4 A Yes.
- 5 Q How do they maintain it?
- 6 A With a mower.
- 7 Q They mow the grass?
- 8 A Yes.
- 9 Q Anything else?
- 10 A I've helped them at times with that.
- 11 Q Are there any structures in the area next to the --
- 12 by the area I'm talking in the easement area next to the
- 13 Thompson property.
- 14 A Yes. The Henrys have a couple of pieces of privacy
- 15 fences there on the one part that they just erected here last
- 16 year.
- 17 Q Okay. Other than those fences, is there anything in
- 18 this easement area (indicating) next to the Thompsons?
- 19 A No. Just some of their vehicles, or something like
- 20 that they might pull in there and a trailer.
- 21 Q Okay. So, are you telling me that the part of the
- 22 easement that adjoins the Thompson property is used for
- 23 vehicular traffic?
- 24 A No.
- 25 Q To park vehicles?

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- 1 A Yeah.
- 2 Q Okay. When you built your dog houses adjacent to
- 3 the Thompson property, did you discuss that with the
- 4 Thompsons?
- 5 A Not really.
- 6 Q You just put it there?
- 7 A Yeah.
- 8 Q Did the Thompsons ever question you?
- 9 A No.
- 10 Q Say, what are you doing?
- 11 A No, no.
- 12 Q Okay. The area adjacent to the Thompson property,
- 13 now I'm asking beyond the area you're claiming --
- 14 A Okay.
- 15 Q -- has that also been cleared?
- 16 A Yeah. There are some trees in there. Oh, there's
- 17 trees in there, yeah. I mean, it's not clear open grass like
- 18 my two sections.
- 19 Q Okay.
- 20 A There are some trees in there, yes.
- 21 Q So your section is clear open grass?
- 22 A Yes.
- 23 Q But the Thompson section is grass and trees?
- 24 A Yes.
- 25 Q Who maintains the area next to the Thompson

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- 1 A There have been some parked there, different ones
- 2 from time to time.
- 3 Q So in order to park them though, you have to drive
- 4 onto the area?
- 5 A Yes.
- 6 Q All right. But it's not used as a vehicular
- 7 thoroughfare?
- 8 A No.
- 9 Q All right. And to your knowledge the people who
- 10 have parked in that area are whom?
- 11 A The Henrys and different kids that's up there.
- 12 Q Okay. So the Thompsons are not the only ones who
- 13 use this area (indicating) between their property and the
- 14 Henry property?
- 15 A It was the Thompsons that have always taken care of
- 16 it, yes.
- 17 Q Mowed it?
- 18 A Yes.
- 19 Q But they're not the ones who have always used it?
- 20 A Well, that hasn't been the case until just -- until
- 21 they put the garage up up there.
- 22 Q Okay. Well, you mentioned --
- 23 A They had -- they had, I guess you could call some of
- 24 it junk, and I believe a van or a trailer one time up there.
- 25 But the junk was more or less next to the alley and the van

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- 1 next to it. And there was a trailer up in there which had
 2 been removed a long time ago, and they have a pop-up up there
 3 now.
- 4 Q Okay. When you say they --
 5 A But that's on the property --
 6 Q Now, when you say --
 7 A The Henrys.
 8 Q The Henrys. Now let me be clear. It's your
 9 testimony that the Thompsons maintained the area to the north
 10 of their lots?
 11 A Yes.
 12 Q And I'm referring to the area which appears -- which
 13 shows a 20 foot easement?
 14 A Yes.
 15 Q All right. And by caring for it you're telling me
 16 they've cut the grass?
 17 A Yes.
 18 Q But somebody also parks vehicles, various types of
 19 vehicles in this area (indicating)?
 20 A Uh-huh.
 21 Q And the Thompsons have done that --
 22 A No.
 23 Q -- through the years?
 24 A No.
 25 Q Oh, the Thompsons have never parked vehicles?

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- 1 A Yeah.
 2 Q You can't see through it?
 3 A Oh, not from a distance you're not going to see
 4 through it. You have to be up on top of it to look through a
 5 crack, you know.
 6 Q Okay. So this is a wooden fence?
 7 A Yes.
 8 Q And it's your belief that this wooden fence was
 9 constructed by the Henrys so that they could go to the
 10 bathroom on the fence?
 11 A Inside that fence. It's constructed like a box.
 12 Q How long have the Henrys been parking various types
 13 of vehicles on the easement area to the north of the Thompson
 14 property?
 15 A Well, the garage has been there about four years, so
 16 from that time on, approximately. You know, not right off the
 17 bat, but I'd say, like probably three years 'cause he works on
 18 vehicles in the garage.
 19 Q Prior to that time did anyone park in the area to
 20 the north of the Thompson property?
 21 A No.
 22 Q So that area would have been clear except for grass
 23 and trees?
 24 A Yeah.
 25 Q Until three or four years ago?

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- 1 A They just keep that as grass.
 2 Q All right. But somebody else has been parking
 3 vehicles in this area (indicating)?
 4 A Yeah. At the edge of the alley they'll -- they'll
 5 have stuff parked, but they don't -- yeah, they park at the
 6 edge of the alley.
 7 Q Okay. And what do they park there, what have you
 8 seen parked in there?
 9 A Vehicles that they'll tear apart. There is a jeep
 10 there now that's partially disassembled. He has a trailer
 11 parked there right now that is used for vehicles.
 12 Q Anything else?
 13 A Well, just like I said, that privacy fence thing
 14 there.
 15 Q Okay. Well, I understand the privacy fence has been
 16 fairly recent?
 17 A Yeah, from last year there. I mean, it's not
 18 constructed there for the purpose -- as a privacy fence
 19 though.
 20 Q Do you know why it was constructed; if it wasn't a
 21 privacy fence, why was it constructed?
 22 A They have it put up there, they go to the bathroom
 23 there.
 24 Q Now let me understand. This (indicating) is a solid
 25 fence?

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- 1 A Yeah. But the Henrys, like I did say before, they
 2 did have some junk there next to the alley there on the
 3 property before.
 4 Q Junk?
 5 A (Witness nods head).
 6 Q Now junk is a -- it takes in a wide variety of
 7 things in my mind.
 8 A Uh-huh.
 9 Q What do you mean by junk, can you be more specific?
 10 A It looked like the one thing there might have been
 11 -- appeared to be like an old rabbit pen or something, maybe a
 12 basketball thing, partial --
 13 Q A rabbit pen, a basketball thing. Do you mean a
 14 pole with a backboard and a net and basket on it?
 15 A Not the entire thing, no, no.
 16 Q Just part of it?
 17 A And just other stuff that I couldn't identify.
 18 Q But a rabbit pen and some type of basketball device?
 19 A Partial, yeah.
 20 Q Now you said something else.
 21 A There was a van they had parked there years --
 22 awhile back and -- but that was removed. I think they had a
 23 boat in there before next to it, and there was also a camper
 24 up on the property up in the one -- towards the one corner
 25 there (indicating), but that's no longer there. They have a

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1 pop-up camper there now.

2 Q All right. So, if we were to go back four years
3 before the items that are on the property now, someone, the
4 Henrys, or someone have had a rabbit pen, basketball debris, a
5 van, a boat, and a camper parked somewhere in this area
6 (indicating)?

7 A Yeah. I would say probably -- probably in this area
8 here (indicating).

9 Q Okay. Now let's go back, I'm talking just the
10 easement area.

11 A Right.

12 Q What was in the easement area?

13 A That there was open, that Janet and Leonard took
14 care of.

15 Q So all of these things you're talking about were
16 never placed on the easement, these items were on somebody's
17 property?

18 A Yeah.

19 Q Okay. So let me go back. Is there now a fence in
20 the easement area?

21 A No fences.

22 Q Where is the wooden fence, can you show me?

23 A I believe the fence is in this area here
24 (indicating).

25 Q Now you have the fence diagrammed out into the

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1 were parked in the easement area?

2 A From before, no. You know, as best as I can
3 remember, no.

4 Q Okay. Now I think I asked you at one point, did
5 anyone park in this area (indicating) and your answer was yes,
6 and by this area I'm talking about the 20 feet between the
7 Thompsons -- to the north of the Thompson property and to the
8 south of the Henry property. Did I misunderstand your answer?

9 A You must have.

10 Q Okay.

11 A I mean, there was nobody that was just parking there
12 to use the alley, you know what I'm saying? They don't park
13 there. When they come up to do something, they don't park
14 there.

15 Q But they do drive up the alley?

16 A No.

17 Q Oh. Does anybody drive on the alley?

18 A No.

19 Q Well, when you say they come up there, what do you
20 mean?

21 A What do you mean when I say they come up there?

22 Q Well, you said they come up here (indicating) and
23 you pointed to the alley. Who comes up the alley?

24 A I'm talking the property in general. Whenever they
25 come up to the property in general, they don't use the alleys.

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1 easement.

2 A Yeah, it goes into these trees here (indicating),
3 yeah. It seems to me this might not be exact, but I think
4 this is the one right here (indicating).

5 Q All right. But this boxed-in area is partially into
6 the easement which lies to north of the Thompson property?

7 A Yes.

8 Q And that's been there -- do I understand it's been
9 there for three to four years?

10 A No. That's probably since last year.

11 Q All right. Now you've talked about some debris.
12 Where was the debris in the easement, or if it was in the
13 easement, where?

14 A I believe that was in this area here (indicating).

15 Q Okay. So that would not be in the easement?

16 A No.

17 Q How about the trailers and the rabbit pen, the boat,
18 and the --

19 A That would be part of the junk and that. That's all
20 the same area right there (indicating) except for that one
21 camper/trailer that they had. That was up in this corner here
22 (indicating).

23 Q All right.

24 A And that's where the pop-up is now, a different one.

25 Q Okay. But none of those -- none of those vehicles

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1 Q Okay. So nobody uses the alleys shown on this map
2 (indicating)?

3 A No.

4 Q Whether it's Pine Alley or the 20 foot alley?

5 A No.

6 Q Other than to mow the grass or whatever --

7 A Right.

8 Q -- within that alley, right?

9 A Right.

10 Q And, apparently, to some extent people construct
11 things in the alley?

12 A I have dog pens there.

13 Q You have dog pens up there --

14 A Yeah.

15 Q -- and the Henrys have a fenced-in area --

16 A Bathroom, yeah.

17 Q -- that extends into the alleyway?

18 A Uh-huh.

19 Q All right. Have the Thompsons ever fenced the alley
20 off?

21 A No.

22 Q Have they ever put no trespassing signs there?

23 A No.

24 Q Okay. And when you built your dog pens in the alley
25 adjoining their property, they didn't tell you to remove them?

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- 1 A Years -- let's see. Chuck, I can't remember exactly
 2 how long it would have been, but Chuck and his former wife,
 3 Diane, had sent me a letter one time to remove the dog pens.
 4 Q From the alley next to their property?
 5 A Yeah, from where I have them, from where I have them
 6 at.
 7 Q When was that, please.
 8 A Oh, man, 30 years ago, I'm not sure.
 9 Q Okay. That would be -- and I understand you're
 10 doing your best, that would be, roughly, six years after you
 11 moved into the area?
 12 A Yeah.
 13 Q Does that sound right?
 14 A Approximately.
 15 Q That the dog pens have been there awhile --
 16 A Oh, yes.
 17 Q -- before somebody told you to move them?
 18 A Yes.
 19 Q You didn't move them?
 20 A No.
 21 Q Why didn't you move them?
 22 A I didn't think it was necessary to.
 23 Q Did you think you owned the alley?
 24 A No, no, I didn't think I owned it.
 25 Q Okay. Now I'm talking about when you got the

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- 1 A No.
 2 Q -- sent to you by the Henrys?
 3 A No.
 4 Q Okay. Did the letter come from the Henrys or from
 5 their attorney?
 6 A No, from the Henrys.
 7 Q Now, do you remember, was it signed by both Henrys
 8 or one of them, do you recall?
 9 A Oh, you mean both --
 10 Q Yeah. Was the letter --
 11 A Chuck Jr. or Chuck, Sr., is that what you're
 12 referring to?
 13 Q No. Let me rephrase it. You got a letter from --
 14 A Chuck, Sr.
 15 Q Specifically from Chuck, Sr.?
 16 A Right.
 17 Q So the letter would have been signed by Chuck, Sr.?
 18 A I don't even know if he had his signature on it, you
 19 know, but -- you know, at the end, you know, it was Chuck, Sr.
 20 and so forth. I can't recall exactly what was on it.
 21 Q When you received that letter, you had been
 22 maintaining the area that you are claiming for, again,
 23 approximately five to six years --
 24 A Uh-huh.
 25 Q -- if we take from the time --

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- 1 letter, I'm not talking about today.
 2 A Uh-huh.
 3 Q Let's make sure we get our time frames.
 4 A Uh-huh.
 5 Q So, when you got the letter from Mr. Thompson --
 6 A No.
 7 Q I'm sorry.
 8 A From Mr. Henry.
 9 Q From Mr. Henry to move --
 10 A Senior, yeah.
 11 Q Okay. At that point you did not think that you
 12 owned the alley?
 13 A No.
 14 Q When did you decide that you owned the alley?
 15 A Recently for maintaining it; you know, that's why I
 16 maintained it.
 17 Q So your belief or realization that you might own the
 18 alley was a fairly recent phenomenon, something that --
 19 A No. I mean, I thought -- it was with the intention,
 20 well, if I maintain it, you know, that I would eventually own
 21 it.
 22 Q Did anyone else ever tell you to stay out of the
 23 alley besides Mr. Henry?
 24 A No.
 25 Q Do you have a copy of the letter that was --

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- 1 A Uh-huh.
 2 Q -- you bought the property until you got this letter
 3 of approximately 30 years ago?
 4 A Yes.
 5 Q Okay. And I believe I asked you this question, but
 6 I want to be sure. Did any of the other neighbors complain
 7 about the dog pens?
 8 A No.
 9 Q Mr. Henry was the only one?
 10 A Yes.
 11 Q Now you mentioned that your children would have some
 12 information concerning your use of the alleyway that you are
 13 claiming?
 14 A Yeah, they lived there.
 15 Q Okay. Well, for instance, did they mow the grass on
 16 occasion when --
 17 A Yes.
 18 Q -- they were young --
 19 A Yes.
 20 Q -- and things like that?
 21 A Yes.
 22 Q Okay. Would they know about the dog pens?
 23 A Yes.
 24 Q And that they were constructed, maybe, maybe not on
 25 the area?

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- 1 A Right.
- 2 Q Other than that, would they have any knowledge of
- 3 this, what happened or what went on, what transpired with
- 4 respect to the area you are claiming?
- 5 A They know now what I'm doing, but --
- 6 Q They know there's a lawsuit?
- 7 A Yeah.
- 8 Q You discussed it with them?
- 9 A Somewhat.
- 10 Q Okay. Have you discussed the possibility of them
- 11 appearing as witnesses in this case?
- 12 A No.
- 13 Q Mrs. DuFour --
- 14 A Uh-huh.
- 15 Q -- she's been Mrs. DuFour since the time you bought
- 16 the house?
- 17 A Uh-huh.
- 18 Q So Mrs. DuFour would also have information
- 19 concerning --
- 20 A Yes.
- 21 Q -- the use of the easement area that you're
- 22 claiming?
- 23 A Yes.
- 24 Q According to Exhibit 1, the property to the north of
- 25 the area that you are claiming is noted as the Martins?

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- 1 Q They also walk in this area?
- 2 A Yeah, we've walked back and forth with one another,
- 3 associating with one another.
- 4 Q So you know the Martins?
- 5 A Oh, yeah.
- 6 Q Neighbors, friends?
- 7 A Yeah, up till this point.
- 8 Q Well, okay.
- 9 A What can I say, you know.
- 10 Q I don't know. Are you not friends anymore?
- 11 A I consider them friends.
- 12 Q Okay.
- 13 A I do, most definitely.
- 14 Q But there is no question that now and then that the
- 15 Martins take a swipe with the lawn mower and have -- you have
- 16 gone back and forth between the properties at least on foot?
- 17 A Maybe foot, more so now, yeah, than from before.
- 18 Q But that was common practice?
- 19 A Yeah, to a point, I guess, yeah.
- 20 Q And that's been common practice since you moved in?
- 21 A I don't know if it was common practice, he pretty
- 22 much stayed within his boundaries.
- 23 Q Well, but that's my problem, trying to figure out
- 24 whose boundaries we're staying within.
- 25 A Yeah.

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- 1 A Yes.
- 2 Q Are lots 11 and 12 owned by the Martins?
- 3 A Yes.
- 4 Q Okay. How long have the Martins lived at that
- 5 location?
- 6 A It would be a guess, but I'm thinking probably a
- 7 year or two, probably, before I moved there, but I can't be
- 8 exact on that.
- 9 Q But the Martins lived there before you moved in?
- 10 A Yes.
- 11 Q Have the Martins ever entered upon this area that
- 12 you've marked -- that we've established as the area you're
- 13 claiming?
- 14 A How do you mean enter?
- 15 Q Well, I mean, do they walk on it, mow it, do they do
- 16 anything to maintain it?
- 17 A No. But walked on it, yeah. As far as mowing, not
- 18 like I have, no.
- 19 Q But they have mowed?
- 20 A Yeah.
- 21 Q All right. So they --
- 22 A They might have had a couple swipes on it, yeah.
- 23 Q Okay. So they take a couple of swipes now and then
- 24 also?
- 25 A Yeah.

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- 1 Q I'm talking about the no man's land here
- 2 (indicating), this 20 feet.
- 3 A No, he's pretty much stayed within his boundaries,
- 4 really, I mean --
- 5 Q You mean on his lot?
- 6 A Yeah.
- 7 Q So now does that mean he doesn't -- he didn't take
- 8 -- he didn't go in there with his lawn mower?
- 9 A He has somewhat on occasions, yes.
- 10 Q So he didn't stay within his boundaries, on occasion
- 11 he would go in with his mower?
- 12 A Yeah.
- 13 Q All right. And he certainly walked on the area?
- 14 A Oh, yeah.
- 15 Q No question about that?
- 16 A No.
- 17 Q Did Mrs. Martin do that also?
- 18 A No.
- 19 Q Just Mr. Martin?
- 20 A Oh, I mean, as far as walking, yeah.
- 21 Q Yeah.
- 22 A Yeah.
- 23 Q So both neighbors walked on this area?
- 24 A Yeah.
- 25 MR. NADDEO: That's all the questions I have.

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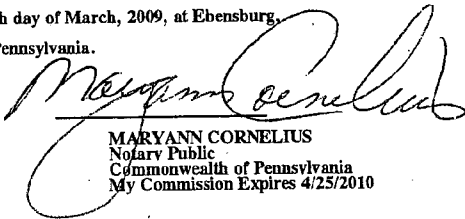
1 COMMONWEALTH OF PENNSYLVANIA :
2 ss:
3 COUNTY OF CAMBRIA :

4 I, MARYANN CORNELIUS, Freelance Court Reporter and Notary
5 Public, Commonwealth of Pennsylvania,

6 DO HEREBY CERTIFY, that the foregoing deposition was
7 taken before me at the time and place stated herein; that I
8 administered unto the deponent his oath to testify to the
9 truth, the whole truth, and nothing but the truth; that he was
10 there and then orally examined and testified as herein set
11 forth; that I reported said examination and testimony
12 stenographically, and that this transcript of deposition
13 constitutes a true and correct transcription of the shorthand
14 report of said deposition.

15 I FURTHER CERTIFY that I am neither related to nor
16 employed by any counsel or party to the cause pending, nor
17 interested in the event thereof.

18 IN WITNESS WHEREOF, I have hereunto affixed my hand and
19 official seal this 27th day of March, 2009, at Ebensburg,
20 Cambria County, Pennsylvania.

21 
22
23 MARYANN CORNELIUS
24 Notary Public
25 Commonwealth of Pennsylvania
My Commission Expires 4/25/2010

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GERALD M. DUFOUR and MADELINE S.
DUFOUR, husband and wife,
Plaintiffs

-vs-

CIVIL DIVISION

NO. 2008 - 970 - CD

NORMAN R. MARTIN and FLORANCE
MARTIN, husband and wife;
LEONARD THOMPSON and JANICE
THOMPSON, husband and wife;
CHARLES R. HENRY, CHARLES
WILLIAM HENRY; LISA A. McKEE
w/k/a LISA A. NOEL and JEFFREY A.
NOEL, JOHN DOE and JANE DOE 1-999
and ALL THE HEIRS AND ASSIGNS OF
ALL THE DECEASED PERSONS HAVING
OR ONCE HAVING HAD AN INTEREST BY
DIRECT OR SUCCESSIVE INHERITANCE
IN THE ESTATES OF THEM OR ANY OF
THEM AND ALL THE HEIRS, DEVISEES,
ADMINISTRATORS, EXECUTORS AND
ASSIGNS OF THE ABOVE MENTIONED OR
ANY OTHER PERSON, PERSONS, FIRMS,
PARTNERSHIPS, OR CORPORATE
ENTITIES IN INTEREST OR ANYONE
CLAIMING BY, THROUGH OR UNDER
THEM OR ANY OF THEM,
Defendants

PROCEEDINGS: Deposition of
MADELINE S. DUFOUR
DATE: Friday, November 7, 2009
11:40 a.m. - 12:10 p.m.
PLACE: Naddeo & Lewis, LLC
207 East Market Street
Clearfield, PA 16830
REPORTED BY: Maryann Cornelius
Freelance Court Reporter
Notary Public

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APPEARANCES

R. BRUCE MANCHESTER, ESQUIRE
Manchester and Associates
124 West Bishop Street
Bellefonte, PA 16823
Appearing on behalf of the Plaintiffs
Gerald M. DuFour and Madeline S. DuFour,
husband and wife

JAMES A. NADDEO, ESQUIRE
Naddeo & Lewis, LLC
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
Appearing on behalf of the Defendants
Norman R. Martin, et al.

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STIPULATION

It is hereby stipulated by and between counsel for
the respective parties that reading, signing, sealing,
certification, and filing are waived, and that all objections
except as to the form of the question are reserved to the time
of trial.

MADELINE S. DuFOUR, called as a witness, being
sworn, testified as follows:

EXAMINATION

BY MR. NADDEO:

Q Your name, please.
A Madeline DuFour.
Q Where do you reside, Mrs. DuFour?
A 58 North Good Street.
Q How long have you lived at that address?
A Thirty-six years.
Q All right. I understand that you are married to
Gerald M. DuFour?
A Yes, I am.
Q All right. I've had the benefit of getting some of
the family history. I understand you and Mr. DuFour have
three children?

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Exhibit "B"

- 1 A Yes, I do.
 2 Q They are all boys --
 3 A Yes, they are.
 4 Q -- correct?
 5 A Yes.
 6 Q And those children are James, Gerald and David?
 7 A Yes. David is the youngest, James is the middle
 8 one.
 9 Q All right. I understand one of your children is
 10 currently living in the household with you?
 11 A Yes.
 12 Q Now that I don't remember. Would that be James?
 13 A No, that's David.
 14 Q David, sorry. Okay. And the other two boys are
 15 living, one in Columbus, Ohio, and one in Philadelphia?
 16 A Uh-huh.
 17 Q Is that right?
 18 A Yes, it is.
 19 Q Okay. Just to be clear. How long has Gerald been
 20 out of the house, and by that I mean out on his own?
 21 A Since he was 18. He went to college.
 22 Q How long ago was that?
 23 A Well, he's going to be 40,
 24 Q Twenty-two years. Now, when he was in college, did
 25 he still live at home and go to school; I mean, he would come

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- 1 Q So it would actually be a year this month --
 2 A Yes.
 3 Q -- correct?
 4 A Yes.
 5 Q And your other son is living in Columbus, Ohio?
 6 A Yes, he is.
 7 Q How long has he lived there?
 8 A Since he went to school down to De Vry, so he was
 9 like 18, 19 when he left and went to college.
 10 Q How old is he now?
 11 A He is -- he just turned 39.
 12 Q All right. So that would be about 20 years --
 13 A Right.
 14 Q -- plus or minus?
 15 A Right.
 16 Q Since he's been home?
 17 A Right.
 18 Q And when I say home --
 19 A Right.
 20 Q -- I mean living at home?
 21 A Right.
 22 Q Your children regularly visit you still?
 23 A Yes.
 24 Q All of them?
 25 A Yes. Well, yes, they do, but not James as much

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- 1 back and forth?
 2 A Well, he came on the weekends, or whatever, but --
 3 Q Right.
 4 A -- he did not stay there.
 5 Q And after college did he relocate?
 6 A Yes, he did.
 7 Q Where did he relocate after college?
 8 A He's in Philadelphia.
 9 Q So he's been in Philadelphia?
 10 A Right, he has been.
 11 Q Okay. Now David, when did he originally leave home?
 12 A He was probably 22, 23.
 13 Q And how long ago would that have been?
 14 A He just turned 36.
 15 Q Twelve, 13 years?
 16 A Yes.
 17 Q And he was away from home until recently?
 18 A Yes.
 19 Q And I understand -- I believe that your husband
 20 indicated he has been living at home for approximately a year?
 21 A Yes.
 22 Q Does that sound right to you?
 23 A Yes. November, yes.
 24 Q Mothers are always better at that stuff.
 25 A Uh-huh.

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- 1 because, like I said, he has -- he works -- the way he works,
 2 he comes home a couple of times a year, yes.
 3 Q Is James married?
 4 A He was.
 5 Q Okay. Gerald?
 6 A No.
 7 Q And David is no longer married, I understand?
 8 A Right. That's why he's with us.
 9 Q Now I'm going to show you what has been marked as
 10 Exhibit 1 (indicating), which I believe is a survey plat of
 11 the properties in your general neighborhood.
 12 A Okay.
 13 Q Would you look at that (indicating), please, and
 14 confirm that it is a plat, or a general plat of the properties
 15 in your neighborhood?
 16 A Yes, it is.
 17 Q All right. And one of the properties noted on
 18 Exhibit 1 would be marked here (indicating) as DuFour?
 19 A Yes.
 20 Q And DuFour is written across lots 5 and 6?
 21 A Yes.
 22 Q Are those the properties or lots owned by you and
 23 your husband?
 24 A Yes, they are.
 25 Q Do you recall when you acquired title to those

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1 properties?

2 A We purchased it in 1969.

3 Q Was there a home built on the property at that time?

4 A No, there was not.

5 Q You built the home?

6 A We built the home in '72.

7 Q After you bought the property, did you maintain it
8 or do any work on the property prior to building the home in
9 1972?

10 A Yes, we did.

11 Q What type of work did you do on the property?

12 A Well, there was a barn there where his garden is at
13 right now, he ripped the barn down. There was barbed wire
14 there from -- they had it on the one side. It was all up the
15 -- it was on the poles. There was, like poles there with
16 barbed wire. There was all kind of bushes and shrubs, and he
17 cut them down with a scythe, a sickle, and he cut them down
18 and we planted grass. He worked on it until we built the
19 house.

20 Q When you say on it, you're referring to the lots?

21 A The lots, yes. On the property, yes.

22 Q Now, are you familiar with the Complaint that you
23 filed in this case?

24 A Yes.

25 Q That Complaint contains a meets and bounds

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1 Q My question is, have I properly identified the
2 property that you are claiming?

3 A Yes, by the two lots.

4 Q Yes. Okay. And that area would consist of a strip
5 of land 20 feet wide and approximately 100 feet long?

6 A Yes.

7 Q Commencing at Good Street and ending at the corner
8 of the property identified as Thompson?

9 A Right.

10 Q Is that correct?

11 A Correct.

12 Q Okay. Now after you and your husband acquired the
13 two lots identified as 5 and 6, what, if anything, did you do
14 to appropriate the use of the area that you are claiming?

15 A We treated it, like we cut the grass, we did
16 everything we did to our own property.

17 Q All right. Now I understand "cut the grass" --

18 A Okay. We fertilized the ground, we cut the grass,
19 we maintained it like our own.

20 Q Is there anything in this 20 foot -- within that 20
21 foot strip other than grass?

22 A Right now my husband's dog pens.

23 Q Okay. Well, let's just --

24 A But there is nothing else, no, just ground.

25 Q Okay. Well, there was some confusion.

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1 description of the area to which you are claiming title --

2 A Right.

3 Q -- does it not?

4 A Yes.

5 Q Who prepared that description?

6 A This right here (indicating)?

7 Q Yes.

8 A We had a surveyor.

9 Q And that was who, Skyco Engineering?

10 A I'm trying to think of -- the first surveyor that
11 did our first ground was Martin. Opaliski.

12 Q Curwensville, right?

13 A Yes.

14 Q Do you know when Mr. Opaliski performed that survey
15 for you?

16 A It was last year sometime.

17 Q 2007?

18 A Yes.

19 Q Okay. Now I've tried to take that description and
20 relate it to the map identified as Exhibit 1, and to the best
21 of my ability I believe your Complaint describes the area that
22 has been outlined in black?

23 A Yes.

24 Q In dark color?

25 A Yes.

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1 A Yes.

2 Q Would you mind, could you show me -- I asked your
3 husband to diagram the dog pens --

4 A Okay.

5 Q -- and he placed them here (indicating) and here
6 (indicating).

7 A Yeah, they are. They're like -- Janet's property is
8 here (indicating), so if --

9 Q Excuse me. Janet being Mrs. Thompson?

10 A Right, Mrs. Thompson.

11 Q Her property is to the south of the alley?

12 A Yeah, her property is right behind us. Like right
13 here (indicating) is -- we are right here (indicating), and

14 this alley runs up through here (indicating), okay, so the dog
15 pens would be here (indicating) and here (indicating). It's

16 like partly on the ground there where Janet has the alley, by
17 Janet's and ours and it goes -- 'cause the alley runs all the
18 way up (indicating).

19 Q Okay. Now your husband wasn't sure whether the one
20 dog pen extended into the area you are claiming. Do you know
21 whether it does?

22 A I don't really know.

23 Q So neither of you are sure --

24 A No.

25 Q -- whether the dog pen extends --

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- 1 A No. Because he had --
 2 Q Excuse me.
 3 A I'm just trying to --
 4 (Discussion held off record.)
 5 BY MR. NADDEO:
 6 Q Let me go back. You agree that the dog pens are in
 7 the general location where they were placed by your husband on
 8 Exhibit 1, where he's diagramed it?
 9 A Right. Yes, I do.
 10 Q My next question is do either of those dog pens
 11 extend into the area to which you are claiming title?
 12 A I am not sure.
 13 Q All right. Other than clear the 20 foot strip,
 14 plant grass and mow grass, have you done anything else within
 15 that strip of ground to evidence your title or ownership?
 16 A We've planted, you know, we planted the grass, we
 17 fertilized it and we maintained it.
 18 Q Now Mr. DuFour indicated that he -- strike that.
 19 Are you acquainted with the Martins who live to the
 20 -- who have lots to the north of the disputed area?
 21 A Yes.
 22 Q All right. And the Martin lots do adjoin the same
 23 strip of ground that you are claiming?
 24 A Yes.
 25 Q All right. Now Mr. DuFour told us that Mr. Martin

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- 1 Q Do you remember that letter?
 2 A Yes.
 3 Q Do you know who wrote that letter?
 4 A Mr. Henry, Sr. when he was living with his wife.
 5 Q Okay. Do you recall approximately how long ago it
 6 was that you received that letter?
 7 A Oh, probably about 15 years. I really don't know
 8 how long they've been divorced.
 9 Q When you and your husband received the letter, did
 10 you take any -- or make any effort to remove the dog pens?
 11 A No, we did not.
 12 Q Why not?
 13 A Because it's an alley.
 14 Q Well, when you received the letter --
 15 A Uh-huh.
 16 Q -- did you believe that you owned the alley?
 17 A We believed right then that no one did.
 18 Q And that would have been 15 years ago or possibly
 19 longer?
 20 A Or less. I'm not really sure because I can't really
 21 recall that time.
 22 Q Okay. Is the real answer you want to give me that
 23 you don't remember when you got that letter?
 24 A I can't really distinguish the amount of years, yes.
 25 Q Okay. But you do know that at that point in time

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- 1 would occasionally mow in this area (indicating) also. Do you
 2 agree with that?
 3 A Yes.
 4 Q He also told us that the Martins would routinely
 5 walk through this area as you did, you and your husband, would
 6 you agree with that?
 7 A Right.
 8 Q And that you have been neighborly with the Martins
 9 since the time that you moved in?
 10 A Correct.
 11 Q Okay. But that the Martins were there before you
 12 and your husband bought your lots, is that true?
 13 A Yes, because we bought in '69 so --
 14 Q Okay. But you have throughout that -- since the
 15 time you moved in in '69, you have maintained a neighborly
 16 type of relationship --
 17 A Yes.
 18 Q -- with the Martins?
 19 A Yes.
 20 Q So that you both have to some extent mowed, walked,
 21 talked in this disputed area?
 22 A Yes.
 23 Q Now Mr. DuFour recalls receiving a letter at some
 24 point from one of the neighbors to move your dog pens?
 25 A Yes.

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- 1 you thought, well, this is an alley, you know, it was
 2 basically nobody's business?
 3 A Well, I didn't understand why they sent us a letter
 4 to begin with, they never did nothing afterwards.
 5 Q All right. Did the Thompsons ever make any
 6 objection to your placing the dog pens in the alley to the
 7 north of their property?
 8 A No, they did not.
 9 Q Did you ever discuss the construction of those dog
 10 pens with the Thompsons?
 11 A Jerry had mentioned that we were going to abut them
 12 up because the trees -- there's trees there, and that's why we
 13 had the pens there.
 14 Q Right.
 15 A We also had a tree house for the kids and we had
 16 swings when the kids were small -- when the children were
 17 small.
 18 Q But you're talking about that portion of the --
 19 A Right.
 20 Q -- alley next to the Thompsons --
 21 A Right.
 22 Q -- and not the area that you're claiming?
 23 A Right. Because there's no trees there, that is
 24 cleaned out.
 25 Q Okay. So you did talk to the Thompsons --

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1 A Right.
 2 Q -- about those activities?
 3 A Yes, she knew, yes.
 4 Q And she didn't --
 5 A No.
 6 Q Did she tell you that was okay with her?
 7 A She did not say a word, yes, it was fine.
 8 Q So you told her what you were going to do and she
 9 said that --
 10 A Yes.
 11 Q -- she didn't care?
 12 A Right.
 13 Q She approved?
 14 A Right.
 15 Q Thank you. Did you talk to any of the other
 16 neighbors who adjoined the alley to see if they cared what you
 17 did?
 18 A No, I did not.
 19 Q Just the Thompsons?
 20 A Yes.
 21 Q Okay. Since you acquired your two lots, have you
 22 ever seen any vehicular traffic in the area which is
 23 identified on Exhibit 1 as a 20 foot alley?
 24 A Just -- I don't know, it was maybe, approximately
 25 two months ago when Chuck come up the alley.

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1 A No.
 2 Q -- strip that you are claiming?
 3 A Well, up where the Henrys go -- they don't go on the
 4 alley because there's junk on the alley, so they go up around,
 5 but I don't think they're directly on the alley, they're on
 6 their side of their property, but they have all kind of stuff
 7 here (indicating) on the alley.
 8 Q Okay. All right. What kind of stuff do the Henrys
 9 have on the alley?
 10 A Well, right now there is a jeep that is sitting
 11 there that there's no wheels on it or anything, it's just
 12 ripped apart. He has a cart, like that you haul things on.
 13 There is a grill. There was another car, but they moved that.
 14 Oh, there is a fence, like a fence line. Like there is --
 15 well, I would say it's like four pieces, like this way
 16 (indicating), this way (indicating), this way (indicating),
 17 that they have these faces drawn on facing me and Janet. They
 18 are faces with tongues sticking out and that's where they go
 19 to the bathroom.
 20 Q Okay. Now your husband diagrammed that area and he
 21 placed it here (indicating). Would you agree to the general
 22 location of the fence with the faces and things?
 23 A Yes, yes, it would be -- it would be about right in
 24 there (indicating).
 25 Q And he diagrammed it to show that the structure

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1 Q Who went up the alley?
 2 A Mr. Henry.
 3 Q In a truck, in a vehicle?
 4 A In a vehicle, yes. He come up the alley, he went
 5 around, like up around (indicating).
 6 Q So, when he went up the alley, he would have driven
 7 over the grass that you planted?
 8 A Right.
 9 Q Okay. And it's the same question I asked your
 10 husband, one of the questions. If I were to come and look at
 11 your lots, would I be able to distinguish from looking at your
 12 lawn the 20 foot strip of land from the rest of your lot?
 13 A No.
 14 Q Would it all look the same?
 15 A Yes, it would.
 16 Q And since it's grass it isn't a place where I would
 17 normally expect to drive my vehicle?
 18 A Right.
 19 Q Would you agree?
 20 A Right.
 21 Q Okay. Is any part of the 20 foot alley worn down
 22 from vehicular use, and by that I mean the area extending
 23 beyond --
 24 A Up here (indicating)?
 25 Q Yes. The area extending beyond the --

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1 extends out into the 20 foot alleyway?
 2 A Yes. It's on -- it's against the trees, it's on the
 3 trees.
 4 Q How long has that structure been in the alleyway?
 5 A They put it up last year.
 6 Q All right.
 7 A Because before they put this up, they were going to
 8 the bathroom right outside the garage.
 9 Q All right. Do you know whether any of the adjoining
 10 landowners have ever told them or asked them to remove that
 11 structure?
 12 A No.
 13 Q Did you and your husband ever make that request?
 14 A No.
 15 Q How about the various vehicles that they have placed
 16 in the alley, have you asked them to move them?
 17 A No, I did not.
 18 Q Do you know whether the Thompsons have asked them to
 19 move those vehicles?
 20 A I think we've talked, I'm not sure, but -- no, I
 21 can't speak for Janet, she'll have to tell you that.
 22 Q Okay. So you don't know whether she did or didn't?
 23 A No, I don't know if she did.
 24 Q Okay.
 25 A But we have asked them -- we have talked to them,

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- 1 but it doesn't do any good.
- 2 Q Okay. When you say "we have talked to them," are
- 3 you referring to --
- 4 A My husband.
- 5 Q -- your husband?
- 6 A Yes.
- 7 Q Now, when did you first discuss their -- when did
- 8 you first discuss the Henrys use of the 20 foot strip of
- 9 ground? I mean, when did you feel it necessary to talk to
- 10 them?
- 11 A About the ground?
- 12 Q Yes.
- 13 A Well, they put the garage up about four years ago.
- 14 Until then there was no problem.
- 15 Q All right. Had the Henrys ever placed any vehicles,
- 16 debris, or other articles within that 20 foot strip prior to
- 17 the construction of the garage?
- 18 A There might have been a boat or something up there
- 19 on the property, boat and some trash.
- 20 Q So it wasn't untoward or unusual for the Henrys to
- 21 have something sitting in this alleyway?
- 22 A Well, it wasn't actually. It was on -- it was on
- 23 their -- up by where their thing was. It was probably -- they
- 24 put the garage up four years ago. The garage has been erected
- 25 four years ago. And they might have -- they had some stuff,

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- 1 A Yes.
- 2 Q Who else did that?
- 3 A Well, Janet has, but she has a garbage can that I
- 4 think is on her property by her shed.
- 5 Q Who is Janet?
- 6 A Janet Thompson.
- 7 Q You mentioned Janet Thompson and you pointed --
- 8 A Janet Thompson is here (indicating).
- 9 Q Right. Where is her garbage can?
- 10 A Well, it would be probably -- there is -- it's
- 11 probably like up in this area (indicating). That's where she
- 12 has her shed that she has a thing right in here (indicating).
- 13 Q So her garage can is --
- 14 A Is on her property. It's like in between there
- 15 (indicating).
- 16 Q So it could be in the alley?
- 17 A It could be, I don't know.
- 18 Q Okay. But if it's in the alley it would be in --
- 19 are you telling me it's in the alley in front of the -- who is
- 20 the next two property owners there?
- 21 A Jeff Noel and Lisa.
- 22 Q I'm sorry, what's the last name?
- 23 A Lisa Coleman, Lisa Noel.
- 24 Q Coleman?
- 25 A Yes.

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- 1 like not in the alley. They had, like a boat and a grill,
- 2 like old garage tires sitting there, like on their property
- 3 like by the alley. Like it wasn't all on the alley, it was
- 4 partially maybe on it and on theirs.
- 5 Q Okay.
- 6 A It was in between.
- 7 Q So for at least four years the Henrys have been
- 8 partially placing objects within the 20 foot alley, is that
- 9 what you're telling me?
- 10 A The last, past four years?
- 11 Q Yes.
- 12 A Some of it's on, some of it's not.
- 13 Q Right.
- 14 A Like the jeep, I do not think is on the alley. Part
- 15 of the cart is, I think, on the alley. They don't have all of
- 16 it on the alley.
- 17 Q Now prior to building the garage was it the custom
- 18 of the Henrys or any other neighbors to place objects, whether
- 19 vehicles, junk, grills, things of that nature within the
- 20 alley?
- 21 A Prior to?
- 22 Q Prior to the time that the garage was constructed.
- 23 A There was items up there prior to that.
- 24 Q Okay. Were the Henrys the only ones that ever
- 25 placed objects in the -- within the 20 foot strip of ground?

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- 1 Q Would the Thompson garbage can be in the strip of
- 2 land to the north of the -- I'm sorry, the Coleman property,
- 3 is that what you're telling me?
- 4 A Yeah. Well, the Coleman property is right here
- 5 (indicating), and they have a fence up. They have a fence
- 6 across here (indicating), so the Coleman property starts here
- 7 (indicating), and there's a fence across here (indicating).
- 8 And Janet's thing is like right in here (indicating), it's on
- 9 her property.
- 10 Q Okay. Now there is another alleyway there
- 11 identified as Pine Alley.
- 12 A Correct.
- 13 Q And it appears as though Pine Alley bisects the
- 14 Thompson property?
- 15 A Yes, it does.
- 16 Q Do you know who maintains that area known as Pine
- 17 Alley between the two Thompson lots?
- 18 A The Thompsons.
- 19 Q And how do they maintain it?
- 20 A They cut the grass. It is right in between their
- 21 two lots. You can't even tell there's an alley there.
- 22 Q Is there anything in that area besides grass?
- 23 A There might be a tree, but I think the tree is off,
- 24 you know, off to the side, but that's it, yes.
- 25 Q There may be a tree?

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- 1 A But it might not be directly on the alley.
 2 Q I understand.
 3 A It might be on the side.
 4 Q Okay. Let me finish my sentence. There may be a
 5 tree, and the answer?
 6 A Yes, there may be.
 7 Q But for sure there is grass?
 8 A Yes, there is grass.
 9 Q Okay. And to your knowledge it's the Thompsons who
 10 cut this grass?
 11 A Correct.
 12 Q Now, as opposed to the strip of ground between your
 13 property and the Martins where the Martins have on occasion
 14 cut in that area also --
 15 A Correct.
 16 Q -- nobody cuts in the Pine Alley area other than the
 17 Thompsons?
 18 A Correct.
 19 Q Okay. Now, again, referring to the area that you
 20 are claiming, have you and your husband ever erected a fence
 21 to keep people off of that strip of ground?
 22 A No, we did not.
 23 Q Have you ever put up no trespassing signs?
 24 A No, we did not.
 25 Q Have you ever complained if one of the other

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- 1 husband are claiming title?
 2 A Well, they cannot go from here (indicating) to here
 3 (indicating) because there's trees so they can't go up the
 4 alley.
 5 Q How about the other end that borders --
 6 A From here to --
 7 Q -- let me finish.
 8 A Okay.
 9 Q -- that borders on McInteer Street?
 10 A No, there is -- there is nothing. I think for the
 11 first -- where Colemans -- well, Noels live now, there is not
 12 -- no trees, no.
 13 Q There are no trees?
 14 A No.
 15 Q So that would be passable for vehicles?
 16 A It could be passable.
 17 Q Does anybody use it?
 18 A No, not that I know of.
 19 Q How about the upper, I'm going to call the northern
 20 part of Pine Alley, is that open?
 21 A No, that's where the Henrys' garage is at.
 22 Q Okay. It's Henrys' garage. Are you telling me it's
 23 built on the alley?
 24 A No, it is not on the alley. The garage is
 25 approximately, like right in here (indicating). The garage is

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- 1 property owners along this alley went through this area
 2 (indicating)?
 3 A No, we did not.
 4 Q Okay. With respect to the 20 foot alley as it
 5 adjoins the north of the Thompson property, is that also grass
 6 and cleared area?
 7 A Do you mean from here (indicating) up to the
 8 Thompsons?
 9 Q Yes.
 10 A Yes, it is, it is grass, but there's trees there and
 11 they cut the grass where they can cut under because of the
 12 stuff sitting there.
 13 Q Does anybody else cut the grass?
 14 A No, they do not.
 15 Q Are you sure?
 16 A As far as I know, no.
 17 Q Do the Henrys cut grass in there?
 18 A The Henrys don't even cut their own grass, it's a
 19 race track.
 20 Q Okay. But I understand that the Henrys not only
 21 don't cut their grass, they occasionally place debris in this
 22 alleyway (indicating) to the north of the Thompson property?
 23 A Yes, they do.
 24 Q Okay. Have you observed any vehicular traffic on
 25 the 20 foot strip of land beyond the point where you and your

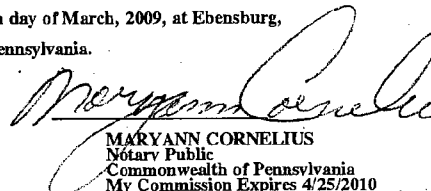
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- 1 adjacent to the Martin house, the Martins, the two Martins.
 2 The lot here (indicating) and their lot is here (indicating).
 3 And their garage is like on this piece here (indicating), and
 4 the alley runs in front of their garage.
 5 Q Okay. Now the area marked as Pine Alley, okay,
 6 which lies to the north of the 20 foot strip, is that area
 7 open, and by that I mean is -- does it appear to be a roadway
 8 of some type?
 9 A You mean in front of the Henry garage?
 10 Q Anywhere.
 11 A No, it is not open nowhere. The only ones that use
 12 this (indicating) are the Henrys because it's right there
 13 (indicating).
 14 Q Okay. When you say "use it," you mean they use the
 15 alley to drive into the garage?
 16 A Right. Correct.
 17 Q So, if I were to take a look at the upper end of
 18 Pine Alley, I would see signs of vehicles going over that road
 19 -- or that area into the garage owned by the Henrys?
 20 A Correct.
 21 Q Okay. As opposed to nothing but grass?
 22 A Correct.
 23 Q Does anybody maintain the northern part of Pine
 24 Alley?
 25 A You mean where the Henrys' garage is at?

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- 1 Q Yes.
- 2 A No, just the Henrys. Like I said, it's -- there's
- 3 not much grass there because of the cars and the traffic and
- 4 they park on there and --
- 5 Q All right. So that would be -- let me see. Would
- 6 that be an obvious roadway?
- 7 A Yes.
- 8 Q So, if I went up and looked at the area, I would see
- 9 a road on the northern part though I would not see any road on
- 10 the 20 foot strip?
- 11 A Right.
- 12 Q Okay. The 20 foot strip is either grass or trees?
- 13 A Correct.
- 14 Q Is that --
- 15 A Correct.
- 16 Q Have you ever informed any of the surrounding
- 17 neighbors, and that would be the Thompsons, the Colemans, the
- 18 Henrys, the Martins or --
- 19 A That's the Henrys too.
- 20 Q Yeah.
- 21 A Okay.
- 22 Q -- that they are not to enter upon the area that you
- 23 and your husband are claiming?
- 24 A No, I did not.
- 25 Q Okay. And other than the letter that you received

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- 1 COMMONWEALTH OF PENNSYLVANIA :
2 COUNTY OF CAMBRIA :
3
4 I, MARYANN CORNELIUS, Freelance Court Reporter and Notary
5 Public, Commonwealth of Pennsylvania,
6 DO HEREBY CERTIFY, that the foregoing deposition was
7 taken before me at the time and place stated herein; that I
8 administered unto the deponent his oath to testify to the
9 truth, the whole truth, and nothing but the truth; that he was
10 there and then orally examined and testified as herein set
11 forth; that I reported said examination and testimony
12 stenographically, and that this transcript of deposition
13 constitutes a true and correct transcription of the shorthand
14 report of said deposition.
15 I FURTHER CERTIFY that I am neither related to nor
16 employed by any counsel or party to the cause pending, nor
17 interested in the event thereof.
18 IN WITNESS WHEREOF, I have hereunto affixed my hand and
19 official seal this 27th day of March, 2009, at Ebensburg,
20 Cambria County, Pennsylvania.
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23
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- 
MARYANN CORNELIUS
Notary Public
Commonwealth of Pennsylvania
My Commission Expires 4/25/2010

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- 1 from Henry sometime in the past, no one has ever complained
- 2 about the location of the dog pens?
- 3 A No, they did not.
- 4 Q Okay.
- 5 MR. NADDEO: That's all I have. Thank you.
- 6 THE WITNESS: Okay. Thank you.
- 7 (The deposition was concluded at 12:40 p.m.)
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 15:9; 16:6; 17:21; 18:9, 11, 12; 19:20; 20:13;
 21:5; 25:9, 12, 20; 26:25; 29:23

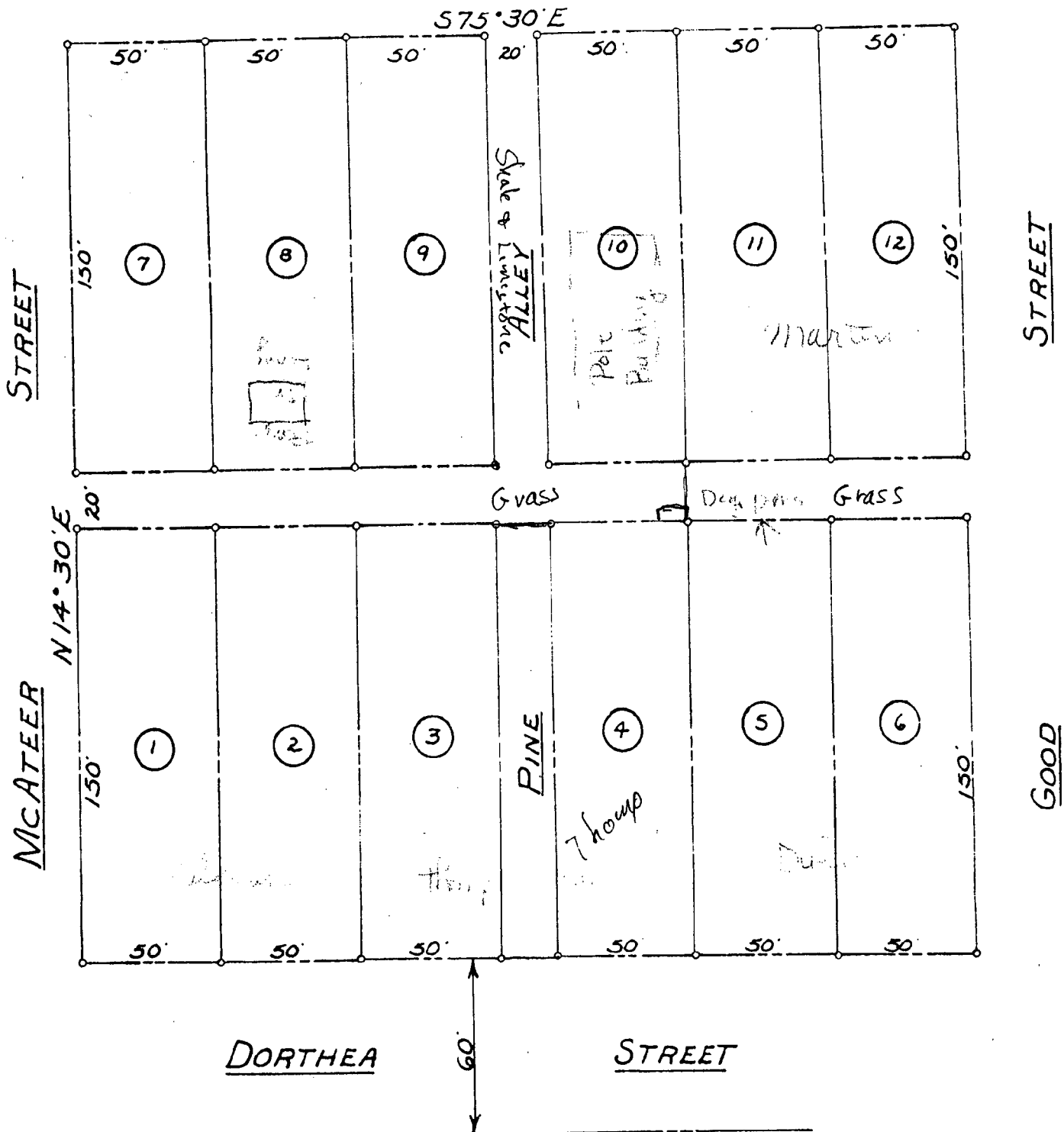


Exhibit "C"

FLORENCE NESBIT		
Plot of survey in Woodward Twp, Clearfield Co., Pa.		
Scale: 1"=50'	Date: 11-1-60	By: E.R. Lobb
ALLEN G. BUTLER, ENG		No. 50106

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

No. 08 - 970 - CD

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. McKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE
and JANE DOE 1-999 and ALL THE
HEIRS AND ASSIGNS OF ALL THE
DECEASED PERSONS HAVING OR
ONCE HAVING HAD AN INTEREST BY
DIRECT OR SUCCESSIVE
INHERITANCE IN THE ESTATES OF
THEM OR ANY OF THEM, AND ALL
THE HEIRS, DEVISEES,
ADMINISTRATORS, EXECUTORS AND
ASSIGNS OF THE ABOVE MENTIONED
OR ANY OTHER PERSON, PERSONS,
FIRMS, PARTNERSHIPS, OR
CORPORATE ENTITIES IN INTEREST
OR ANY ONE CLAIMING BY,
THROUGH OR UNDER THEM OR ANY
OF THEM,

Defendants.

^S FILED

MAY 05 2009

William A. Shaw
Prothonotary/Clerk of Courts

2 cc Amy Naddeo

ORDER

AND NOW this 5th day of MAY, 2009, upon
consideration of Defendants' Motion for Partial Summary Judgment
filed by James A. Naddeo, attorney of record for Defendants, it is
the Order of this Court that this case will be heard before the
Court on the 10th day of June, 2009, at 9:00 A.M., at
the Clearfield County Courthouse, Clearfield, Pennsylvania,
Courtroom No. 1.

BY THE COURT,

Judith J. Cunningham
Judge

(#16)

FILED
MAY 05 2009
William A. Straw
Prothonotary/Clerk of Courts

5-5-09
DATE: _____
X You are responsible for serving all appropriate parties.
The Prothonotary's office has provided service to the following parties:
____ Plaintiff(s) Attorney _____ Other
____ Plaintiff(s) Defendant(s) Attorney
____ Defendant(s) Defendant(s)
____ Special Institutions

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. MCKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE
AND JANE DOE 1-999 and ALL THE
HEIRS AND ASSIGNS OF ALL THE
DECEASED PERSONS HAVING OR
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FIRMS, PARTNERSHIPS, OR
CORPORATE ENTITIES IN INTEREST
OR ANY ONE CLAIMING BY,
THROUGH OR UNDER THEM OR ANY
OF THEM,

Defendants.

No. 08 - 970 - CD

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on behalf of:
Defendants
Counsel of Record for
this party:
James A. Naddeo, Esq.
Pa. I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED *NO EC*
013:3430
MAY 06 2009
William A. Shaw
Prothonotary/Clerk of Courts

17

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, husband
and wife,

Plaintiffs,

v.

No. 08 - 970 - CD

NORMAN R. MARTIN, and
FLORANCE MARTIN, husband and
wife; LEONARD THOMPSON and
JANICE THOMPSON, husband and
wife; CHARLES R. HENRY,
CHARLES WILLIAM HENRY; LISA
A. MCKEE n/k/a LISA A. NOEL
and JEFFREY A. NOEL, JOHN DOE
and JANE DOE 1-999 and ALL THE
HEIRS AND ASSIGNS OF ALL THE
DECEASED PERSONS HAVING OR
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OR ANY OTHER PERSON, PERSONS,
FIRMS, PARTNERSHIPS, OR
CORPORATE ENTITIES IN INTEREST
OR ANY ONE CLAIMING BY,
THROUGH OR UNDER THEM OR ANY
OF THEM,

Defendants.

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Order dated May 5, 2009 was served on the
following and in the following manner on the 6th day of May, 2009:

First-Class Mail, Postage Prepaid

R. Bruce Manchester, Esquire
Manchester and Associates
124 W. Bishop Street
Bellefonte, PA 16823

NADDEO & LEWIS, LLC

By:

James A. Naddeo
James A. Naddeo
Attorney for Defendants

FILED

MAY 06 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR

VS.

NO. 08-970-CD

NORMAN R. MARTIN and
FLORANCE MARTIN, et al

ORDER

NOW this 10th day of June, 2009, following argument on the Motion for Partial Summary Judgment, it is the ORDER of this Court that counsel for both parties have no more than twenty (20) days from this date in which to submit letter brief to the Court. Counsel shall, upon receipt of the same, have no more than five (5) days thereafter to submit a reply, if desired.

BY THE COURT,

Judith J. Cameron
President Judge

4 FILED
013:29371
JUN 10 2009

William A. Shaw
Prothonotary/Clerk of Courts

2CC Atty's: Manchester
Naddeo

1CC - Leonard Thompson
Janice Thompson
70 North Good St.
Houtzdale, PA 16851

#18

FILED

JUN 10 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/10/09

 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

 X Thompson Defendant(s) X Defendant(s) Attorney

 Special Instructions:

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

GERALD M. DUFOUR, and
MADELINE S. DUFOUR, his wife

Plaintiffs

vs.

NORMAN R. MARTIN, and FLORANCE
MARTIN, his wife; et al.,

Defendants

No. 2008-970-CD

OPINION

A dispute over the ownership and use of an unopened alley brings the Plaintiffs and Defendants before this Court. Plaintiffs, thirty-six (36) year residents of a property which has as its northern border an unopened alley, seek to quiet title to the full width of that portion of the alley which runs the length of Plaintiffs' northern border, unencumbered by any easements or other rights of the Defendants. The Defendants' property is opposite the alley from the Plaintiffs'; the alley forms the southern border of the Defendants' property for the same length as it serves as the Plaintiffs' northern boundary. Following discovery, the Defendants moved for summary judgment, asserting that the Plaintiffs cannot satisfy the Commonwealth's definition of adverse possession, that Plaintiff's may only take title in fee simple to one-half of the width of the alley (with the Defendants also taking title in fee simple to the other one-half of the width of the alley), and that the Defendants retain a private easement over the entire width of the alley. Following argument and the submission of briefs, this Court has no choice but to GRANT the Defendants' Motion for Summary Judgment.

FILED

JUL 17 2009

William A. Shaw
Prothonotary/Clerk of Courts

2CC Attys: Manchester
Naddeo

1CC Leonard & Janice Thompson
70 N. Good St.
Houtzdale, PA 16651

1CC D.M. Kesell 1CC Law Library

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Summary judgment is appropriate when there is no genuine issue as to any material fact as to a necessary element of the cause of action. Pa. R. Civ. P. 1035.2(1). All facts and inferences are viewed in the light most favorable to the non-moving party. Pa. State Univ. v. County of Centre, 532 Pa. 142, 145, 615 A.2d 303, 304 (1992). The granting of summary judgment is only appropriate when such granting is clear and free from doubt. Marks v. Tasman, 527 Pa. 132, 134-35, 589 A.2d 205, 206 (1991).

In the instant case, Plaintiffs allege that they have acquired title to the entire width of the alley running the length of their property by adverse possession. Adverse possession of real property confers title of the property to the adverse possessor, provided such possessor can prove he had actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of the land for twenty-one years. Conneaut Lake Park, Inc. v. Klingensmith, 362 Pa. 592, 594, 66 A.2d 828, 829 (1949). Each element of adverse possession must exist for the title to transfer to the possessor. Id.

Plaintiffs' adverse possession claim fails, because they have adduced no evidence that their possession of the alley was hostile or exclusive. To satisfy the hostility element of adverse possession, rights of ownership adverse to the true owner and all others must be asserted, though not necessarily through actual malice or ill will. Brennan v. Manchester Crossings, Inc., 708 A.2d 815, 818 (Pa. Super. Ct. 1998). This can be demonstrated by actions or possession which is inconsistent with the "possession or right of possession of another." Hutchison v. Little Four Oil & Gas Co., 275 Pa. 380, 387-88, 119 A. 534, 536 (1923). Here, Plaintiffs assert that they originally cleared some briars out of the alley with a scythe and a lawnmower; they thereafter maintained the alley by planting and mowing grass and maintaining the alley as an extension of their yard. Deposition of Gerald M. Dufour,

11/07/2008 ("Deposition 1") at 23-24; Deposition of Madeline S. Dufour, 11/07/2008 ("Deposition 2") at 13. Plaintiffs planted a tree, which was mowed down at an apparently early stage in its development by one of Plaintiffs' sons, Deposition 1 at 25, and had for some time a dog pen which may have been partly on the alley, Deposition 1 at 24. Plaintiffs did not post any "No Trespassing" signs or tell any neighbors (including the Defendants) to stay off of the alley, nor did they install any fence or other obstruction to segregate the area of the alley they were treating as an extension of their yard. Deposition 1 at 25. Plaintiffs admit that Defendants would walk upon and use the alley, and that the Defendants also helped to maintain the alley. Deposition 1 at 42; Deposition 2 at 13-14. As the Defendants were not excluded by the Plaintiffs, the possession of the alley by the Plaintiffs cannot be hostile or exclusive. The adverse possession claim must fail.

This is not to say that the Plaintiffs have acquired no title to any additional land. The alley in question has not been opened for over twenty-one (21) years since originally planned. As the public has not accepted the alley, the two abutting landowners take title to the mid-point of the alley. 36 Pa. Cons. Stat. § 1961; Rahn v. Hess, 378 Pa. 264, 270, 106 A.2d 461, 464 (1954). Therefore, both Plaintiffs and Defendants (the Martins) have acquired title to one half of the width of the alley for the length of their properties.

The title to land is not the only right of access to land, however. Despite a municipality's failure to open a street originally on a plan after twenty-one (21) years giving title to the abutting landowners, all property owners in the community retain private rights of easement for ingress and egress over the unopened streets. Estojak v. Mazsa, 522 Pa. 353, 359, 562 A.2d 271, 274 (1989). Such an easement may be extinguished by adverse possession, with the definition as set out in Conneaut Lake Park, *supra*, but with a use of the

land inconsistent with the use and rights of the easement holder. Estojak, 522 Pa. at 360, 562 A.2d at 275. A complete lack of use or the passage of time is not sufficient to extinguish this private easement over the alley. Riek v. Binnie, 352 Pa. Super. 246, 249, 507 A.2d 865, 867 (1986). The Plaintiffs have adduced no evidence, in their depositions or otherwise, showing that their use of the alley was adverse to the purpose of the Defendant's private easement over the same, namely, providing for ingress and egress. The fact that the Defendants may not have used the alley for such purposes ever, or until recently, is of no importance; Defendants' easement cannot be extinguished by mere non-use. Id.

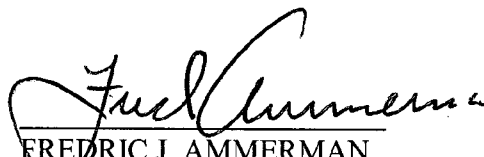
Viewing all of the evidence presented by the Plaintiffs (as the non-moving party) as true, and taking all valid inferences in favor of the Plaintiffs, Pa. State. Univ., supra, this Court sees no dispute as to any material fact that would prevent judgment being granted to the Defendants as a matter of law. No rational fact finder could find that the Plaintiffs had acquired title to the entire width of the alley nor extinguished the Defendant Martins' private right of easement over the same.

ORDER

AND NOW, this 16th day of July, 2009, it is the Order of this Court that the Defendants' Motion for Summary Judgment be and hereby is GRANTED. Plaintiffs and Defendant Martins each take title to one-half of the width of the alley which abuts their respective properties, said alley being that alley immediately north of Dorthea Street, Houtzdale, Clearfield County, Pennsylvania, and running west from Good Street, running for the length of both parties' properties, namely, 100.00 feet.

FURTHERMORE it is the Order of this Court that both Plaintiffs and Defendants shall continue to enjoy private easement rights over the full width of said alley for ingress and egress.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

For the Court

FILED

JUL 17 2009

William A. Shaw
Prothonotary/Clerk of Courts

Date: July 13, 2009

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

GEARLD M. DUFOUR, and
MADELINE S. DUFOUR, his wife

Plaintiffs

No. 2008-970-CD

Vs.

NORMAN R. MARTIN, and FLORANCE
MARTIN, his wife; et al.,

Defendants

NOTICE OF APPEAL

Notice is hereby given that Gerald M. Dufour and Madeline S. Dufour above named, hereby appeals to the Superior Court of Pennsylvania from the Opinion and Order of Summary Judgment dated on July 16, 2009 and filed on July 17, 2009.

Respectfully Submitted,



R. Bruce Manchester, ESQ.
Attorney ID Number 28535
Attorney Plaintiffs/Appellant
124 W. Bishop St.
Belleville, Pa 16823
814-355-5421

Filed:
Office of the Prothonotary
Court of Common Pleas
Clearfield, Pa 16830

FILED

AUG 14 2009

0/11:45/2

William A. Shaw
Prothonotary/Clerk of Courts

1 cert to Suprem
court w/60.-

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

GERALD M. DUFOUR, and :
Madeline S. Dufour, his wife :

Plaintiffs : No. 2008-970-CD

Vs.

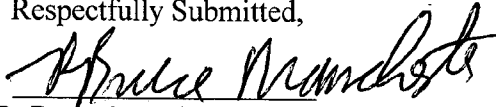
Norman R. Martin, Florence :
Martin, his wife; et al. :

Defendants :

REQUEST FOR TRANSCRIPT UNDER PENNSYLVANIA RULE OF APPELLATE
PROCEDURE 1911

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

Respectfully Submitted,



R. Bruce Manchester, Esq.
Attorney ID Number: 28535
Attorney for Plaintiffs/Appellant
124 W. Bishop St.
Bellefonte, Pa 16823
Telephone: 814-355-5421

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

GERALD M. DUFOUR, and
MADELINE S. DUFOUR, his wife

Plaintiffs

vs.

NORMAN R. MARTIN, and FLORANCE
MARTIN, his wife; et al.,

Defendants

No. 2008-970-CD

OPINION

A dispute over the ownership and use of an unopened alley brings the Plaintiffs and Defendants before this Court. Plaintiffs, thirty-six (36) year residents of a property which has as its northern border an unopened alley, seek to quiet title to the full width of that portion of the alley which runs the length of Plaintiffs' northern border, unencumbered by any easements or other rights of the Defendants. The Defendants' property is opposite the alley from the Plaintiffs'; the alley forms the southern border of the Defendants' property for the same length as it serves as the Plaintiffs' northern boundary. Following discovery, the Defendants moved for summary judgment, asserting that the Plaintiffs cannot satisfy the Commonwealth's definition of adverse possession, that Plaintiff's may only take title in fee simple to one-half of the width of the alley (with the Defendants also taking title in fee simple to the other one-half of the width of the alley), and that the Defendants retain a private easement over the entire width of the alley. Following argument and the submission of briefs, this Court has no choice but to GRANT the Defendants' Motion for Summary Judgment.

Summary judgment is appropriate when there is no genuine issue as to any material fact as to a necessary element of the cause of action. Pa. R. Civ. P. 1035.2(1). All facts and inferences are viewed in the light most favorable to the non-moving party. Pa. State Univ. v. County of Centre, 532 Pa. 142, 145, 615 A.2d 303, 304 (1992). The granting of summary judgment is only appropriate when such granting is clear and free from doubt. Marks v. Tasman, 527 Pa. 132, 134-35, 589 A.2d 205, 206 (1991).

In the instant case, Plaintiffs allege that they have acquired title to the entire width of the alley running the length of their property by adverse possession. Adverse possession of real property confers title of the property to the adverse possessor, provided such possessor can prove he had actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of the land for twenty-one years. Conneaut Lake Park, Inc. v. Klingensmith, 362 Pa. 592, 594, 66 A.2d 828, 829 (1949). Each element of adverse possession must exist for the title to transfer to the possessor. Id.

Plaintiffs' adverse possession claim fails, because they have adduced no evidence that their possession of the alley was hostile or exclusive. To satisfy the hostility element of adverse possession, rights of ownership adverse to the true owner and all others must be asserted, though not necessarily through actual malice or ill will. Brennan v. Manchester Crossings, Inc., 708 A.2d 815, 818 (Pa. Super. Ct. 1998). This can be demonstrated by actions or possession which is inconsistent with the "possession or right of possession of another." Hutchison v. Little Four Oil & Gas Co., 275 Pa. 380, 387-88, 119 A. 534, 536 (1923). Here, Plaintiffs assert that they originally cleared some briars out of the alley with a scythe and a lawnmower; they thereafter maintained the alley by planting and mowing grass and maintaining the alley as an extension of their yard. Deposition of Gerald M. Dufour,

11/07/2008 ("Deposition 1") at 23-24; Deposition of Madeline S. Dufour, 11/07/2008 ("Deposition 2") at 13. Plaintiffs planted a tree, which was mowed down at an apparently early stage in its development by one of Plaintiffs' sons, Deposition 1 at 25, and had for some time a dog pen which may have been partly on the alley, Deposition 1 at 24. Plaintiffs did not post any "No Trespassing" signs or tell any neighbors (including the Defendants) to stay off of the alley, nor did they install any fence or other obstruction to segregate the area of the alley they were treating as an extension of their yard. Deposition 1 at 25. Plaintiffs admit that Defendants would walk upon and use the alley, and that the Defendants also helped to maintain the alley. Deposition 1 at 42; Deposition 2 at 13-14. As the Defendants were not excluded by the Plaintiffs, the possession of the alley by the Plaintiffs cannot be hostile or exclusive. The adverse possession claim must fail.

This is not to say that the Plaintiffs have acquired no title to any additional land. The alley in question has not been opened for over twenty-one (21) years since originally planned. As the public has not accepted the alley, the two abutting landowners take title to the mid-point of the alley. 36 Pa. Cons. Stat. § 1961; Rahn v. Hess, 378 Pa. 264, 270, 106 A.2d 461, 464 (1954). Therefore, both Plaintiffs and Defendants (the Martins) have acquired title to one half of the width of the alley for the length of their properties.

The title to land is not the only right of access to land, however. Despite a municipality's failure to open a street originally on a plan after twenty-one (21) years giving title to the abutting landowners, all property owners in the community retain private rights of easement for ingress and egress over the unopened streets. Estojak v. Mazsa, 522 Pa. 353, 359, 562 A.2d 271, 274 (1989). Such an easement may be extinguished by adverse possession, with the definition as set out in Conneaut Lake Park, *supra*, but with a use of the

land inconsistent with the use and rights of the easement holder. Estojak, 522 Pa. at 360, 562 A.2d at 275. A complete lack of use or the passage of time is not sufficient to extinguish this private easement over the alley. Riek v. Binnie, 352 Pa. Super. 246, 249, 507 A.2d 865, 867 (1986). The Plaintiffs have adduced no evidence, in their depositions or otherwise, showing that their use of the alley was adverse to the purpose of the Defendant's private easement over the same, namely, providing for ingress and egress. The fact that the Defendants may not have used the alley for such purposes ever, or until recently, is of no importance; Defendants' easement cannot be extinguished by mere non-use. Id.


Viewing all of the evidence presented by the Plaintiffs (as the non-moving party) as true, and taking all valid inferences in favor of the Plaintiffs, Pa. State. Univ., supra, this Court sees no dispute as to any material fact that would prevent judgment being granted to the Defendants as a matter of law. No rational fact finder could find that the Plaintiffs had acquired title to the entire width of the alley nor extinguished the Defendant Martins' private right of easement over the same.

ORDER

AND NOW, this 16th day of July, 2009, it is the Order of this Court that the Defendants' Motion for Summary Judgment be and hereby is GRANTED. Plaintiffs and Defendant Martins each take title to one-half of the width of the alley which abuts their respective properties, said alley being that alley immediately north of Dortha Street, Houtzdale, Clearfield County, Pennsylvania, and running west from Good Street, running for the length of both parties' properties, namely, 100.00 feet.

FURTHERMORE it is the Order of this Court that both Plaintiffs and Defendants shall continue to enjoy private easement rights over the full width of said alley for ingress and egress.

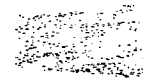
BY THE COURT,

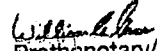

FREDRIC J. AMMERMAN
President Judge

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

JUL 17 2009

Attest.




Prothonotary/
Clerk of Courts

Civil Other-COUNT

Date		Judge
5/27/2008	New Case Filed.	No Judge
	Filing: Quiet Title Action (Property located in Woodward Twp.) Paid by: Dufour, Gerald M. (plaintiff) Receipt number: 1924215 Dated: 5/27/2008 Amount: \$105.00 (Cash) 7 Cert. to Plaintiff.	No Judge
6/2/2008	Sheriff Return, Now, 6/2/08 at 1:43 pm Served the within Complaint Action t Quiet Title on Charles R. Henry by handing to Charles R. Henry. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
	Sheriff Return, Now, 6/2/08 at 2:15 pm Served the within Complaint Action t Quiet Title on Leonard Thompson and Janice Thompson by handing to Lenr Thompson. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
	Sheriff Return, Now, June 2, 2008 at 2:02 pm Served the within Complaint Action to Quiet Title on Norman R. and Florance Martin by handing to Florance Martin. So Answers, Chester A. Hawkins, Sheriff by s/Dominic Morgillo, deputy.	No Judge
6/5/2008	Sheriff Return, Now, 6-4-08 at 5:40 pm Served the within Complaint Action t Quiet Title on Charles W. and Anna Henry by handing to Alex Henry. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
	Sheriff Return, Now, 6-4-08 at 5:45 pm Served the within Complaint Action t Quiet Title on Lisa A. McKee nka Lisa A. Noel and Jeffrey A. Noel by handing to Lisa A. Noel. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
6/16/2008	Response, filed by s/ Florence Martin, Defendant. no cc	No Judge
6/24/2008	Praecipe for Entry of Appearance, filed. Kindly enter my appearance on behalf of all of the above named defendants in the above-captioned matter, filed by s/ James A. Naddeo Esq. 1CC Atty Naddeo.	No Judge
6/25/2008	First Amended Praecipe For Entry of Appearance, on behalf of Norman R. Martin and Florance Martin, Charles R. Henry, charles William Henry, Lisa A. McKee n/k/a Lisa A. Noel and Jeffrey A. Noel, enter appearance of Jame A. Naddeo, Esquire. Please accept this as a revision of my previosly filed entry of appearance which included the named Defendants, Leonard Thompson and Janice Thompson. Filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
	Answer and New Matter, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
7/25/2008	Plaintiff's Answer to New Matter, filed by s/ R. Bruce Manchester, Esquire. No CC	No Judge
9/25/2008	Sheriff Return, RETURN COSTS So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by G. DuFour \$134.54	No Judge
	Certificate of Service, a copy of Notice of Taking Deposition was served on the 25th day of Sept., 2008, upon R. Bruce Manchester, Esquire, and Maryann Cornelius, Court Reporter, by First-Class Mail. filed by s/ James A Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
9/29/2008	Certificate of Service, a copy of Notice of Taking Deposition was served on the 25th day of Sept., 2008, upon R. Bruce Manchester, Esquire, and Maryann Cornelius, Court Reporter, by First-Class Mail. filed by s/ James A Naddeo, Esquire. 2CC Atty. Naddeo	No Judge

Civil Other-COUNT

Date	Judge
5/1/2009	Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. 2CC No Judge Atty. Naddeo
5/5/2009	Order AND NOW, this 5th day of May 2009, upon consideration of Defendants' Motion for Partial Summary Judgment filed by James A. Naddeo Esq. it is the Order of this Court that this case will be heard before the Court on the 10th day of June 2009 at 9:00 a.m. in courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman. P. Judge. 2CC Atty Naddeo. Fredric Joseph Ammerman
5/6/2009	Certificate of Service, filed. That a certified copy of Order dated May 5, 2009 was served on the 6th day of May 2009 by first class mail to R. Bruce Manchester Esq., filed by s/ James A. Naddeo Esq. NO CC. Fredric Joseph Ammerman
6/10/2009	Order, this 10th day of June, 2009, following argument on the Motion for Partial Summary Judgment, it is Ordered that counsel for both parties have no more than 20 days from this date in which to submit letter brief to the Court. Counsel shall, upon receipt of the same, have no more than 5 days to submit a reply, if desired. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Fredric Joseph Ammerman Manchester, Naddeo; 1CC Leonard Thompson, Janice Thompson - 70 North Good St., Houtzdale PA 16651
7/17/2009	Opinion and Order, AND NOW, this 16th day of July, 2009, Order that Defendants' Motion for Summary Judgment is Granted. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys Manchester and Naddeo One CC Leonard and Janice Thompson One CC D. Mikesell and Law Librarian Fredric Joseph Ammerman

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

AUG 12 2009

Attest.

William L. Brown
Prothonotary/
Clerk of Courts

CERTIFICATION OF SERVICE

It is hereby certified that on this date, August 14, 2009, copies of the foregoing Notice of Appeal were served on the following individuals and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

SERVICE BY FIRST CLASS MAIL:

James A. Naddeo, Esq.
207 E. Market St.
P. O. Box 522
Clearfield, Pa 16830

SERVICE IN PERSON:

Honorable Frederic J. Ammerman
Court of Common Pleas of Clearfield County
Clearfield County Courthouse
230 E. Market St.
Clearfield, Pa 16830

Court Reporter's Office
Court of Common Pleas of Centre County
Clearfield County Courthouse
230 E. Market St.
Clearfield, Pa 16830

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Catherine Manchester', is written over a horizontal line.

Catherine Manchester
Legal Assistant
124 W. Bishop St.
Bellefonte, Pa 16823

CA

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

GERALD M. DUFOUR and
MADELINE S. DUFOUR, his wife,

vs.

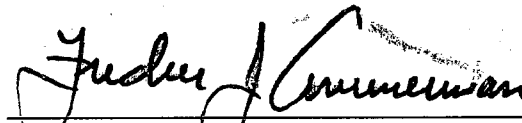
NORMAN R. MARTIN and FLORANCE
MARTIN, his wife, et al,

No. 08-970-CD

ORDER

NOW, this 14th day of August, 2009, this Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter; it is the ORDER of this Court that Gerald M. DuFour and Madeline S. DuFour, Appellants, file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
AUG 14 2009
William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty's:
Manchester
Naddeo
ICC Leonard Thompson
Janice Thompson
70 N. Good St.
Houtzdale, PA 16851

FILED

AUG 14 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/14/09

 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
 X Defendant(s) X Defendant(s) Attorney
 Special Instructions:

22

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

GERALD M. DUFOUR, and :
Madeline S. Dufour, his wife :

Plaintiffs : No. 2008-970-CD

Vs.

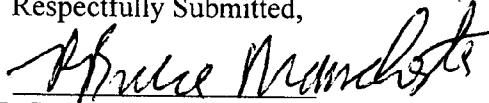
Norman R. Martin, Florence :
Martin, his wife; et al. :

Defendants :

REQUEST FOR TRANSCRIPT UNDER PENNSYLVANIA RULE OF APPELLATE
PROCEDURE 1911

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

Respectfully Submitted,



R. Bruce Manchester, Esq.
Attorney ID Number: 28535
Attorney for Plaintiffs/Appellant
124 W. Bishop St.
Bellefonte, Pa 16823
Telephone: 814-355-5421

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

GERALD M. DUFOUR, and
MADELINE S. DUFOUR, his wife

Plaintiffs

vs.

NORMAN R. MARTIN, and FLORANCE
MARTIN, his wife; et al.,

Defendants

No. 2008-970-CD

OPINION

A dispute over the ownership and use of an unopened alley brings the Plaintiffs and Defendants before this Court. Plaintiffs, thirty-six (36) year residents of a property which has as its northern border an unopened alley, seek to quiet title to the full width of that portion of the alley which runs the length of Plaintiffs' northern border, unencumbered by any easements or other rights of the Defendants. The Defendants' property is opposite the alley from the Plaintiffs'; the alley forms the southern border of the Defendants' property for the same length as it serves as the Plaintiffs' northern boundary. Following discovery, the Defendants moved for summary judgment, asserting that the Plaintiffs cannot satisfy the Commonwealth's definition of adverse possession, that Plaintiff's may only take title in fee simple to one-half of the width of the alley (with the Defendants also taking title in fee simple to the other one-half of the width of the alley), and that the Defendants retain a private easement over the entire width of the alley. Following argument and the submission of briefs, this Court has no choice but to GRANT the Defendants' Motion for Summary Judgment.

Summary judgment is appropriate when there is no genuine issue as to any material fact as to a necessary element of the cause of action. Pa. R. Civ. P. 1035.2(1). All facts and inferences are viewed in the light most favorable to the non-moving party. Pa. State Univ. v. County of Centre, 532 Pa. 142, 145, 615 A.2d 303, 304 (1992). The granting of summary judgment is only appropriate when such granting is clear and free from doubt. Marks v. Tasman, 527 Pa. 132, 134-35, 589 A.2d 205, 206 (1991).

In the instant case, Plaintiffs allege that they have acquired title to the entire width of the alley running the length of their property by adverse possession. Adverse possession of real property confers title of the property to the adverse possessor, provided such possessor can prove he had actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of the land for twenty-one years. Conneaut Lake Park, Inc. v. Klingensmith, 362 Pa. 592, 594, 66 A.2d 828, 829 (1949). Each element of adverse possession must exist for the title to transfer to the possessor. Id.

Plaintiffs' adverse possession claim fails, because they have adduced no evidence that their possession of the alley was hostile or exclusive. To satisfy the hostility element of adverse possession, rights of ownership adverse to the true owner and all others must be asserted, though not necessarily through actual malice or ill will. Brennan v. Manchester Crossings, Inc., 708 A.2d 815, 818 (Pa. Super. Ct. 1998). This can be demonstrated by actions or possession which is inconsistent with the "possession or right of possession of another." Hutchison v. Little Four Oil & Gas Co., 275 Pa. 380, 387-88, 119 A. 534, 536 (1923). Here, Plaintiffs assert that they originally cleared some briars out of the alley with a scythe and a lawnmower; they thereafter maintained the alley by planting and mowing grass and maintaining the alley as an extension of their yard. Deposition of Gerald M. Dufour,

11/07/2008 ("Deposition 1") at 23-24; Deposition of Madeline S. Dufour, 11/07/2008 ("Deposition 2") at 13. Plaintiffs planted a tree, which was mowed down at an apparently early stage in its development by one of Plaintiffs' sons, Deposition 1 at 25, and had for some time a dog pen which may have been partly on the alley, Deposition 1 at 24. Plaintiffs did not post any "No Trespassing" signs or tell any neighbors (including the Defendants) to stay off of the alley, nor did they install any fence or other obstruction to segregate the area of the alley they were treating as an extension of their yard. Deposition 1 at 25. Plaintiffs admit that Defendants would walk upon and use the alley, and that the Defendants also helped to maintain the alley. Deposition 1 at 42; Deposition 2 at 13-14. As the Defendants were not excluded by the Plaintiffs, the possession of the alley by the Plaintiffs cannot be hostile or exclusive. The adverse possession claim must fail.

This is not to say that the Plaintiffs have acquired no title to any additional land. The alley in question has not been opened for over twenty-one (21) years since originally planned. As the public has not accepted the alley, the two abutting landowners take title to the mid-point of the alley. 36 Pa. Cons. Stat. § 1961; Rahn v. Hess, 378 Pa. 264, 270, 106 A.2d 461, 464 (1954). Therefore, both Plaintiffs and Defendants (the Martins) have acquired title to one half of the width of the alley for the length of their properties.

The title to land is not the only right of access to land, however. Despite a municipality's failure to open a street originally on a plan after twenty-one (21) years giving title to the abutting landowners, all property owners in the community retain private rights of easement for ingress and egress over the unopened streets. Estojak v. Mazsa, 522 Pa. 353, 359, 562 A.2d 271, 274 (1989). Such an easement may be extinguished by adverse possession, with the definition as set out in Conneaut Lake Park, supra, but with a use of the

land inconsistent with the use and rights of the easement holder. Estojak, 522 Pa. at 360, 562 A.2d at 275. A complete lack of use or the passage of time is not sufficient to extinguish this private easement over the alley. Riek v. Binnie, 352 Pa. Super. 246, 249, 507 A.2d 865, 867 (1986). The Plaintiffs have adduced no evidence, in their depositions or otherwise, showing that their use of the alley was adverse to the purpose of the Defendant's private easement over the same, namely, providing for ingress and egress. The fact that the Defendants may not have used the alley for such purposes ever, or until recently, is of no importance; Defendants' easement cannot be extinguished by mere non-use. Id.


Viewing all of the evidence presented by the Plaintiffs (as the non-moving party) as true, and taking all valid inferences in favor of the Plaintiffs, Pa. State. Univ., supra, this Court sees no dispute as to any material fact that would prevent judgment being granted to the Defendants as a matter of law. No rational fact finder could find that the Plaintiffs had acquired title to the entire width of the alley nor extinguished the Defendant Martins' private right of easement over the same.

ORDER

AND NOW, this 16th day of July, 2009, it is the Order of this Court that the Defendants' Motion for Summary Judgment be and hereby is GRANTED. Plaintiffs and Defendant Martins each take title to one-half of the width of the alley which abuts their respective properties, said alley being that alley immediately north of Dorthea Street, Houtzdale, Clearfield County, Pennsylvania, and running west from Good Street, running for the length of both parties' properties, namely, 100.00 feet.

FURTHERMORE it is the Order of this Court that both Plaintiffs and Defendants shall continue to enjoy private easement rights over the full width of said alley for ingress and egress.

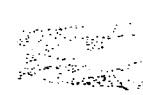
BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

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

JUL 17 2009

Attest.



William L. Shaw
Prothonotary/
Clerk of Courts

Gerald M. Dufour, et alvs. Norman R. Martin, et al

Civil Other-COUNT

Date		Judge
5/27/2008	New Case Filed.	No Judge
	Filing: Quiet Title Action (Property located in Woodward Twp.) Paid by: Dufour, Gerald M. (plaintiff) Receipt number: 1924215 Dated: 5/27/2008 Amount: \$105.00 (Cash) 7 Cert. to Plaintiff.	No Judge
6/2/2008	Sheriff Return, Now, 6/2/08 at 1:43 pm Served the within Complaint Action t Quiet Title on Charles R. Henry by handing to Charles R. Henry. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
	Sheriff Return, Now, 6/2/08 at 2:15 pm Served the within Complaint Action t Quiet Title on Leonard Thompson and Janice Thompson by handing to Lenr Thompson. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
	Sheriff Return, Now, June 2, 2008 at 2:02 pm Served the within Complaint Action to Quiet Title on Norman R. and Florance Martin by handing to Florance Martin. So Answers, Chester A. Hawkins, Sheriff by s/Dominic Morgillo, deputy.	No Judge
6/5/2008	Sheriff Return, Now, 6-4-08 at 5:40 pm Served the within Complaint Action t Quiet Title on Charles W. and Anna Henry by handing to Alex Henry. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
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6/16/2008	Response, filed by s/ Florence Martin, Defendant. no cc	No Judge
6/24/2008	Praeipe for Entry of Appearance, filed. Kindly enter my appearance on behalf of all of the above named defendants in the above-captioned matter, filed by s/ James A. Naddeo Esq. 1CC Atty Naddeo.	No Judge
6/25/2008	First Amended Praeipe For Entry of Appearance, on behalf of Norman R. Martin and Florance Martin, Charles R. Henry, charles William Henry, Lisa A. McKee n/k/a Lisa A. Noel and Jeffrey A. Noel, enter appearance of Jame A. Naddeo, Esquire. Please accept this as a revision of my previosly filed entry of appearance which included the named Defendants, Leonard Thompson and Janice Thompson. Filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
	Answer and New Matter, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
7/25/2008	Plaintiff's Answer to New Matter, filed by s/ R. Bruce Manchester, Esquire. No CC	No Judge
9/25/2008	Sheriff Return, RETURN COSTS So Answers, Chester A. Hawkins, Sherifi by s/Marilyn Hamm Shff Hawkins costs pd by G. DuFour \$134.54	No Judge
	Certificate of Service, a copy of Notice of Taking Deposition was served on the 25th day of Sept., 2008, upon R. Bruce Manchester, Esquire, and Maryann Cornelius, Court Reporter, by First-Class Mail. filed by s/ James A Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
9/29/2008	Certificate of Service, a copy of Notice of Taking Deposition was served on the 25th day of Sept., 2008, upon R. Bruce Manchester, Esquire, and Maryann Cornelius, Court Reporter, by First-Class Mail. filed by s/ James A Naddeo, Esquire. 2CC Atty. Naddeo	No Judge

Civil Other-COUNT

Date	Judge
5/1/2009	Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. 2CC No Judge Atty. Naddeo
5/5/2009	Order AND NOW, this 5th day of May 2009, upon consideration of Fredric Joseph Ammerman Defendants' Motion for Partial Summary Judgment filed by James A. Nadde Esq. it is the Order of this Court that this case will be heard before the Court on the 10th day of June 2009 at 9:00 a.m. in courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman. P. Judge. 2CC Atty Naddeo.
5/6/2009	Certificate of Service, filed. That a certified copy of Order dated May 5, 2009 Fredric Joseph Ammerman was served on the 6th day of May 2009 by first class mail to R. Bruce Manchester Esq., filed by s/ James A. Naddeo Esq. NO CC.
6/10/2009	Order, this 10th day of June, 2009, following argument on the Motion for Fredric Joseph Ammerman Partial Summary Judgment, it is Ordered that counsel for both parties have no more than 20 days from this date in which to submit letter brief to the Court. Counsel shall, upon receipt of the same, have no more than 5 days t submit a reply, if desired. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Manchester, Naddeo; 1CC Leonard Thompson, Janice Thompson - 70 Nort Good St., Houtzdale PA 16651
7/17/2009	Opinion and Order, AND NOW, this 16th day of July, 2009, Order that Fredric Joseph Ammerman Defendants' Motion for Summary Judgment is Granted. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys Manchester and Naddeo One CC Leonard and Janice Thompson One CC D. Mikesell and Law Libra

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

AUG 12 2009

Attest.

William L. Brown
Prothonotary/
Clerk of Courts

CERTIFICATION OF SERVICE

It is hereby certified that on this date, August 14, 2009, copies of the foregoing Notice of Appeal were served on the following individuals and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

SERVICE BY FIRST CLASS MAIL:

James A. Naddeo, Esq.
207 E. Market St.
P. O. Box 522
Clearfield, Pa 16830

SERVICE IN PERSON:

Honorable Frederic J. Ammerman
Court of Common Pleas of Clearfield County
Clearfield County Courthouse
230 E. Market St.
Clearfield, Pa 16830

Court Reporter's Office
Court of Common Pleas of Centre County
Clearfield County Courthouse
230 E. Market St.
Clearfield, Pa 16830

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Catherine Manchester', is written over a horizontal line.

Catherine Manchester
Legal Assistant
124 W. Bishop St.
Bellefonte, Pa 16823

ORIGINAL

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

LEONARD THOMPSON & JANICE THOMPSON)

VS.)

NO. 08-971-CD)

NORMAN R. MARTIN & FLORANCE MARTIN)

and

GERALD M. DUFOUR & MADELINE S.)
DUFOUR)

VS.)

NO. 08-970-CD)

NORMAN R. MARTIN & FLORANCE MARTIN)

TRANSCRIPT OF PROCEEDINGS
MOTION FOR PARTIAL SUMMARY JUDGMENT

HELD BEFORE THE HONORABLE

PAUL E. CHERRY, JUDGE

on Wednesday, June 10, 2009

A P P E A R A N C E S:

FOR THE PLAINTIFF:

R. BRUCE MANCHESTER, ESQUIRE

FOR THE DEFENDANT:

JAMES A. NADDEO, ESQUIRE

Reported by: Cathy Warrick Provost, RMR

Official Court Reporter

FILED

01/23860
SEP 04 2009

William A. Shaw
Prothonotary/Clerk of Courts

original filed
to 08-971-CD

#23

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1464 WDA 2009

Page 1 of 4

September 4, 2009

Secure



CAPTION

Gerald M. DuFour And Madeline S. Dufour, Husband And Wife,
Appellants

08-970-CD

v.

Norman R. Martin And Florance Martin, Husband And Wife; Leonard Thompson And Janice Thompson, Husband And Wife; Charles R. Henry, Charles William Henry; Lisa A. McKee n/k/a Lisa A. Noel And Jeffrey A. Noel, John Doe And Jane Doe 1-999 And All The Heirs And Assigns Of All the Deceased Persons Having Or Once Having Had An Interest By Direct Or Successive Inheritance In the Estates Of them Or Any Of Them, And All The Heirs, Devisees, Administrators, Executors And Assigns Of The Above Mentioned Or Any Other Person, Persons, Firms, Partnerships, Or Corporate Entities In Interest Or any One Claiming By, Through Or Under Them Or Any Of Them.

CASE INFORMATION

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: August 26, 2009 Awaiting Original Record

Journal Number:

Case Category: Civil Case Type(s): Quiet Title

CONSOLIDATED CASES

RELATED CASES

Docket Number	Type
1465 WDA 2009	Related
Same Issue(s)	

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: September 18, 2009

Next Event Type: Original Record Received

Next Event Due Date: October 26, 2009

COUNSEL INFORMATION

Appellant Dufour, Gerald M.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Manchester, Robert Bruce

Bar No: 028535

Address: 124 W Bishop St
Bellefonte, PA 16823

Phone No: (814) 355-5421

Fax No: (814) 355-1499

Receive Mail: Yes

Receive EMail: No EMail Address: bmann44@aol.com

FILED

m110:5481
SEP 08 2009William A. Shaw
Prothonotary/Clerk of CourtsCorrection letter
sent 9/8/09

#24

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1464 WDA 2009**Page 2 of 4****September 4, 2009****Secure****COUNSEL INFORMATION****Appellant Defour, Madeline S.**

Pro Se: No Appoint Counsel Status: Represented

IFP Status:

Attorney: Manchester, Robert Bruce
Bar No: 028535
Address: 124 W Bishop St
Bellefonte, PA 16823
Phone No: (814) 355-5421 Fax No: (814) 355-1499
Receive Mail: Yes
Receive EMail: No EMail Address: bmann44@aol.com

Appellee Thompson, Leonard

Pro Se: No Appoint Counsel Status: Represented

IFP Status:

Attorney: Naddeo, James A.
Bar No: 006820
Address: 207 E MARKET ST
PO BOX 552
CLEARFIELD, PA 16830
Phone No: (814) 765-1601 Fax No: (814) 765-8142
Receive Mail: Yes
Receive EMail: No EMail Address:

Appellee Thompson, Janice

Pro Se: No Appoint Counsel Status: Represented

IFP Status:

Attorney: Naddeo, James A.
Bar No: 006820
Address: 207 E MARKET ST
PO BOX 552
CLEARFIELD, PA 16830
Phone No: (814) 765-1601 Fax No: (814) 765-8142
Receive Mail: Yes
Receive EMail: No EMail Address:

Appellee Noel, Jeffrey A.

Pro Se: No Appoint Counsel Status: Represented

IFP Status:

Attorney: Naddeo, James A.
Bar No: 006820
Address: 207 E MARKET ST
PO BOX 552
CLEARFIELD, PA 16830
Phone No: (814) 765-1601 Fax No: (814) 765-8142
Receive Mail: Yes
Receive EMail: No EMail Address:

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1464 WDA 2009

Page 3 of 4

September 4, 2009

Secure



COUNSEL INFORMATION

Appellee McKee, Lisa A.

Pro Se: No Appoint Counsel Status: Represented

IFP Status:

Attorney: Naddeo, James A.
Bar No: 006820
Address: 207 E MARKET ST
PO BOX 552
CLEARFIELD, PA 16830
Phone No: (814) 765-1601 Fax No: (814) 765-8142
Receive Mail: Yes
Receive EMail: No EMail Address:

Appellee Martin, Norman R.

Pro Se: No Appoint Counsel Status: Represented

IFP Status:

Attorney: Naddeo, James A.
Bar No: 006820
Address: 207 E MARKET ST
PO BOX 552
CLEARFIELD, PA 16830
Phone No: (814) 765-1601 Fax No: (814) 765-8142
Receive Mail: Yes
Receive EMail: No EMail Address:

Appellee Martin, Florance

Pro Se: No Appoint Counsel Status: Represented

IFP Status:

Attorney: Naddeo, James A.
Bar No: 006820
Address: 207 E MARKET ST
PO BOX 552
CLEARFIELD, PA 16830
Phone No: (814) 765-1601 Fax No: (814) 765-8142
Receive Mail: Yes
Receive EMail: No EMail Address:

Appellee Henry, Charles William

Pro Se: No Appoint Counsel Status: Represented

IFP Status:

Attorney: Naddeo, James A.
Bar No: 006820
Address: 207 E MARKET ST
PO BOX 552
CLEARFIELD, PA 16830
Phone No: (814) 765-1601 Fax No: (814) 765-8142
Receive Mail: Yes
Receive EMail: No EMail Address:

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1464 WDA 2009**Page 4 of 4****September 4, 2009****Secure****COUNSEL INFORMATION****Appellee Henry, Charles R.****Pro Se:** No **Appoint Counsel Status:** Represented**IFP Status:****Attorney:** Naddeo, James A.**Bar No:** 006820**Address:** 207 E MARKET ST
PO BOX 552
CLEARFIELD, PA 16830**Phone No:** (814) 765-1601**Fax No:** (814) 765-8142**Receive Mail:** Yes**Receive EMail:** No **Email Address:****FEE INFORMATION**

Date	Name	Receipt Number	Fee Amt	Paid Amt
08/26/2009	Notice of Appeal	2009-SPR-W-000838 \$	60.00 \$	60.00

AGENCY/TRIAL COURT INFORMATION**Court Below:** Clearfield County Court of Common Pleas**County:** Clearfield**Division:**

Clearfield County Civil Division

Order Appealed From: July 16, 2009**Judicial District:**

46

Documents Received: August 27, 2009**Notice of Appeal Filed:**

August 26, 2009

Order Type: Order**Judge, Title:** Ammerman, Fredric J., President Judge**Lower Court Docket No****OTN**

No. 2008-970-CD

ORIGINAL RECORD CONTENT

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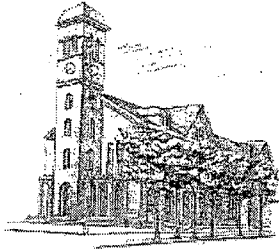
Date of Remand of Record:**BRIEFING SCHEDULE**

None

None

DOCKET ENTRY

Filed Date	Docket Entry	Participant Type	Filed By
August 26, 2009	Notice of Appeal Docketed	Appellant	Defour, Madeline S.
September 2, 2009	Related Cases - Same Issue(s)		Superior Court of Pennsylvania
September 4, 2009	Docketing Statement Exited (Civil)		Valecko, Eleanor R.



COPY

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

September 8, 2009

Superior Court of Pennsylvania
310 Grant St., Ste. 600
Pittsburgh, PA 15219-2297

In Re: 1464 WDA 2009
Gerald M. DuFour et al vs. Norman R. Martin et al

Dear Ms. Eleanor R. Valecko:

Upon review of the Appeal Docket Sheet for the above-referenced case, I have noted that Attorney James A. Naddeo is listed as representing all the defendants. Attorney Naddeo filed an entry of appearance on behalf of all defendants June 24, 2008, but amended it June 25, 2008. The amended entry of appearance excludes Leonard and Janice Thompson from his representation. If you have any questions, please contact me at (814) 765-2641, ext. 1331.

Sincerely,

William A. Shaw
Prothonotary

AMENDED COVER PAGE

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

FILED
013:50
SEP 14 2009
William A. Smith
Prothonotary/Clerk

LEONARD THOMPSON & JANICE THOMPSON)

VS.)

NO. 08-971-CD

NORMAN R. MARTIN & FLORANCE MARTIN)

and

GERALD M. DUFOUR & MADELINE S.)
DUFOUR)

VS.)

NO. 08-970-CD

NORMAN R. MARTIN & FLORANCE MARTIN)

TRANSCRIPT OF PROCEEDINGS

MOTION FOR PARTIAL SUMMARY JUDGMENT

HELD BEFORE THE HONORABLE

FREDRIC J. AMMERMAN, PRESIDENT JUDGE

on Wednesday, June 10, 2009

A P P E A R A N C E S:

FOR THE PLAINTIFF:

R. BRUCE MANCHESTER, ESQUIRE

FOR THE DEFENDANT:

JAMES A. NADDEO, ESQUIRE

Reported by: Cathy Warrick Provost, RMR

Official Court Reporter

#25

In the Superior Court of
Pennsylvania

Sitting at Pittsburgh

FILED

OCT 08 2009
m/w/c
William A. Shaw
Prothonotary/Clerk of Courts

No. 1464 WDA 2009

Gerald M. DuFour and Madeline S. Dufour,
husband and wife,
Appellants

v.

Norman R. Martin and Florance Martin,
husband and wife, Leonard Thompson and
Janice Thompson, husband and wife, etc.,
et al.

Appeal from the order entered in this matter
by the Honorable Fredric J. Ammerman, P.J.,
on July 16, 2009, Court of Common Pleas,
Civil Division of the County of Clearfield at
NO. 2008-970-CD

CERTIFIED FROM THE RECORD

October 6, 2009 – Praecipe for Discontinuance filed. Appeal

Discontinued

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

this

6th

Day of

October

2009

Eleanor P. Valicich
Deputy Prothonotary

Prothonotary/Clerk of Courts
William A. Shaw

OCT 08 2009

FILED



Superior Court of Pennsylvania

Western District

Karen Reid Bramblett, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
(412) 565-7592
www.superior.court.state.pa.us

October 6, 2009

NOTICE OF DISCONTINUANCE OF ACTION

RE: Dufour, G. v. Martin, N.
1464 WDA 2009
Appeal of: Gerald M. Dufour
Madeline S. Defour
Initiating Document: Notice of Appeal
Trial Court: Clearfield County Court of Common Pleas
Associated Case(s): 1465 WDA 2009 Related
Trial Court Docket No: No. 2008-970-CD

FILED

OCT 08 2009
m/11:00
William A. Shaw
Prothonotary/Clerk of Courts

The above-captioned matter has been marked "Discontinued" with this court. Certification is being sent to the lower court.

Attorney Name	Participant Name	Participant Type
Robert Bruce Manchester, Esq.	Janice Thompson	Appellee
Robert Bruce Manchester, Esq.	Gerald M. Dufour	Appellant
Robert Bruce Manchester, Esq.	Madeline S. Defour	Appellant
Robert Bruce Manchester, Esq.	Mr. Leonard Thompson	Appellee
James A. Naddeo, Esq.	Lisa A. McKee	Appellee
James A. Naddeo, Esq.	Florance Martin	Appellee
James A. Naddeo, Esq.	Jeffrey A. Noel	Appellee
James A. Naddeo, Esq.	Charles R. Henry	Appellee
James A. Naddeo, Esq.	Norman R. Martin	Appellee
James A. Naddeo, Esq.	Charles William Henry	Appellee



Superior Court of Pennsylvania

Western District

Karen Reid Bramblett, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
(412) 565-7592
www.superior.court.state.pa.us

October 6, 2009

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Dufour, G. v. Martin, N.
1464 WDA 2009
Associated Case(s): 1465 WDA 2009. Related
Trial Court Docket No: No. 2008-970-CD

Dear Mr. Shaw:

OCT. 8, 2009, received from the Superior Court of Pennsylvania, Western District Office, the certificate of discontinuance of the court, in the above entitled case.

Return to: Superior Court of Pennsylvania
Office of the Prothonotary
310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592

/bnl

Date: 8/27/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 01:28 PM

ROA Report

Page 1 of 2

Case: 2008-00970-CD

Current Judge: Fredric Joseph Ammerman

Gerald M. Dufour, et alvs. Norman R. Martin, et al

Civil Other-COUNT

Date		Judge
5/27/2008	New Case Filed.	No Judge
	(1) Filing: Quiet Title Action (Property located in Woodward Twp.) Paid by: Dufour, Gerald M. (plaintiff) Receipt number: 1924215 Dated: 5/27/2008 Amount: \$105.00 (Cash) 7 Cert. to Plaintiff.	No Judge 6
6/2/2008	(2) Sheriff Return, Now, 6/2/08 at 1:43 pm Served the within Complaint Action to Quiet Title on Charles R. Henry by handing to Charles R. Henry. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge 1
	(3) Sheriff Return, Now, 6/2/08 at 2:15 pm Served the within Complaint Action to Quiet Title on Leonard Thompson and Janice Thompson by handing to Leni Thompson. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge 1
	(4) Sheriff Return, Now, June 2, 2008 at 2:02 pm Served the within Complaint Action to Quiet Title on Norman R. and Florance Martin by handing to Florance Martin. So Answers, Chester A. Hawkins, Sheriff by s/Dominic Morgillo, deputy.	No Judge 1
6/5/2008	(5) Sheriff Return, Now, 6-4-08 at 5:40 pm Served the within Complaint Action to Quiet Title on Charles W. and Anna Henry by handing to Alex Henry. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge 1
	(6) Sheriff Return, Now, 6-4-08 at 5:45 pm Served the within Complaint Action to Quiet Title on Lisa A. McKee nka Lisa A. Noel and Jeffrey A. Noel by handing to Lisa A. Noel. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge 1
6/16/2008	(7) Response, filed by s/ Florence Martin, Defendant. no cc	No Judge 3
6/24/2008	(8) Praecipe for Entry of Appearance, filed. Kindly enter my appearance on behalf of all of the above named defendants in the above-captioned matter, filed by s/ James A. Naddeo Esq. 1CC Atty Naddeo.	No Judge 4
6/25/2008	(9) First Amended Praecipe For Entry of Appearance, on behalf of Norman R. Martin and Florance Martin, Charles R. Henry, Charles William Henry, Lisa A. McKee n/k/a Lisa A. Noel and Jeffrey A. Noel, enter appearance of James A. Naddeo, Esquire. Please accept this as a revision of my previously filed entry of appearance which included the named Defendants, Leonard Thompson and Janice Thompson. Filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge 5
	(10) Answer and New Matter, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge 8
7/25/2008	(11) Plaintiff's Answer to New Matter, filed by s/ R. Bruce Manchester, Esquire. No CC	No Judge 5
9/25/2008	(12) Sheriff Return, RETURN COSTS So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by G. DuFour \$134.54	No Judge 1
	(13) Certificate of Service, a copy of Notice of Taking Deposition was served on the 25th day of Sept., 2008, upon R. Bruce Manchester, Esquire, and Maryann Cornelius, Court Reporter, by First-Class Mail. filed by s/ James A Naddeo, Esquire. 2CC Atty. Naddeo	No Judge 3
9/29/2008	(14) Certificate of Service, a copy of Notice of Taking Deposition was served on the 25th day of Sept., 2008, upon R. Bruce Manchester, Esquire, and Maryann Cornelius, Court Reporter, by First-Class Mail. filed by s/ James A Naddeo, Esquire. 2CC Atty. Naddeo	No Judge 3

Date: 8/27/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 01:28 PM

ROA Report

Page 2 of 2

Case: 2008-00970-CD

Current Judge: Fredric Joseph Ammerman

Gerald M. Dufour, et alvs. Norman R. Martin, et al

Civil Other-COUNT

Date		Judge
5/1/2009	(15) Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. 2CC No Judge Atty. Naddeo	40
5/5/2009	(16) Order AND NOW, this 5th day of May 2009, upon consideration of Defendants' Motion for Partial Summary Judgment filed by James A. Naddeo Esq. it is the Order of this Court that this case will be heard before the Court on the 10th day of June 2009 at 9:00 a.m. in courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman. P. Judge. 2CC Atty Naddeo.	Fredric Joseph Ammerman 1
5/6/2009	(17) Certificate of Service, filed. That a certified copy of Order dated May 5, 2009 was served on the 6th day of May 2009 by first class mail to R. Bruce Manchester Esq., filed by s/ James A. Naddeo Esq. NO CC.	Fredric Joseph Ammerman 3
6/10/2009	(18) Order, this 10th day of June, 2009, following argument on the Motion for Partial Summary Judgment, it is Ordered that counsel for both parties have no more than 20 days from this date in which to submit letter brief to the Court. Counsel shall, upon receipt of the same, have no more than 5 days to submit a reply, if desired. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Manchester, Naddeo; 1CC Leonard Thompson, Janice Thompson - 70 North Good St., Houtzdale PA 16651	Fredric Joseph Ammerman 1
7/17/2009	(19) Opinion and Order, AND NOW, this 16th day of July, 2009, Order that Defendants' Motion for Summary Judgment is Granted. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorneys Manchester and Naddeo One CC Leonard and Janice Thompson One CC D. Mikesell and Law Librarian	Fredric Joseph Ammerman 5
8/14/2009	(20) Filing: Appeal to High Court, filed by Atty. Manchester Paid by: Dufour, Madeline S. (plaintiff) Receipt number: 1930748 Dated: 8/14/2009 Amount: \$50.00 (Check) For: Dufour, Gerald M. (plaintiff) 1 Cert. to Superior Court with \$60.00 Check and 5 cert. to Plaintiff.	Fredric Joseph Ammerman 10
	(21) Order, this 14th day of August 2009, this Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter it is the ORDER of this Court that Gerald M. DuFour and Madeline S. DuFour, Appellants, file a concise statement of the matter complaint of on Appeal no later than twenty-one (21) days herefrom, as set forth in Rule 1925(b) of the Rule of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Manchester and Naddeo and 1CC Leonard Thompson & Janice Thompson @ 70 N. Good St., Houtzdale, PA 16651	Fredric Joseph Ammerman 1
8/20/2009	(22) Received letter with Cert. copy of Appeal & \$60.00 check from Superior Court. Counsel to amend appeal and return.	Fredric Joseph Ammerman X
8/26/2009	(23) Notice of Appeal, filed by Atty. Manchester 1 Cert. to Superior Court with \$60.00 Check	Fredric Joseph Ammerman 10

Date: 9/10/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 01:04 PM

ROA Report

Page 1 of 1

Case: 2008-00970-CD

Current Judge: Fredric Joseph Ammerman

Gerald M. Dufour, et alvs.Norman R. Martin, et al

Civil Other-COUNT

Date	Selected Items	Judge
9/4/2009	<div>#23</div> Transcript of Proceedings, filed. Motion for Partial Summary Judgment, held before the Honorable Paul E. Cherry, Judge, on June 10, 2009. <u>Original file</u> to 08-971-CD <div>copy</div>	Fredric Joseph Ammerman 1
9/8/2009	<div>#24</div> Appeal Docket Sheet, filed. 1464 WDA 2009. Correction letter sent 9/8/09	Fredric Joseph Ammerman 5



The Superior Court of Pennsylvania
Office of the Prothonotary

GRANT BUILDING
310 GRANT STREET, SUITE 600
PITTSBURGH, PA 15219-2297

RECEIVED
PROTHONOTARY'S OFFICE
8-20-09
WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS
2008-970-CD

KAREN REID BRAMBLETT, ESQUIRE
PROTHONOTARY

ELEANOR R. VALECKO
DEPUTY PROTHONOTARY

(412) 565-7592
FAX: (412) 565-7711
WEBSITE: www.superior.pacourts.us

August 18, 2009

William A. Shaw, Prothonotary
Court House
Second & Market Streets
Clearfield, Pa. 16830

In Re: Thompson v Martin
No. 2008-970-CD

Dear Mr. Shaw:

The use of "et al" is not permitted in Superior Court. The caption on the notice of appeal must be identical to the caption on the original complaint. When counsel amends his appeal to reflect the full caption, kindly return this appeal to our office.

Very truly yours,

Eleanor R. Valecko

DEPUTY PROTHONOTARY

ERV/smc
Cc: R. Bruce Manchester, Esquire

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

GEARLD M. DUFOUR, and
MADELINE S. DUFOUR, his wife

Plaintiffs

No. 2008-970-CD

Vs.

NORMAN R. MARTIN, and FLORANCE :
MARTIN, his wife; et al., :

Defendants :

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

AUG 14 2009

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

NOTICE OF APPEAL

Notice is hereby given that Gerald M. Dufour and Madeline S. Dufour above named, hereby appeals to the Superior Court of Pennsylvania from the Opinion and Order of Summary Judgment dated on July 16, 2009 and filed on July 17, 2009.

Respectfully Submitted,

R. Bruce Manchester

R. Bruce Manchester, ESQ.
Attorney ID Number 28535
Attorney Plaintiffs/Appellant
124 W. Bishop St.
Bellefonte, Pa 16823
814-355-5421

Filed:
Office of the Prothonotary
Court of Common Pleas
Clearfield, Pa 16830

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

GERALD M. DUFOUR, and
Madeline S. Dufour, his wife

Plaintiffs

:
:

No. 2008-970-CD

Vs.

Norman R. Martin, Florence
Martin, his wife; et al.

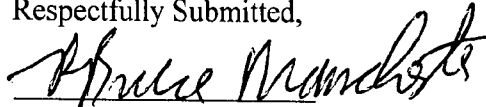
Defendants

:
:

REQUEST FOR TRANSCRIPT UNDER PENNSYLVANIA RULE OF APPELLATE
PROCEDURE 1911

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

Respectfully Submitted,



R. Bruce Manchester, Esq.
Attorney ID Number: 28535
Attorney for Plaintiffs/Appellant
124 W. Bishop St.
Bellefonte, Pa 16823
Telephone: 814-355-5421

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

GERALD M. DUFOUR, and
MADELINE S. DUFOUR, his wife

Plaintiffs

vs.

NORMAN R. MARTIN, and FLORANCE
MARTIN, his wife; et al.,

Defendants

No. 2008-970-CD

OPINION

A dispute over the ownership and use of an unopened alley brings the Plaintiffs and Defendants before this Court. Plaintiffs, thirty-six (36) year residents of a property which has as its northern border an unopened alley, seek to quiet title to the full width of that portion of the alley which runs the length of Plaintiffs' northern border, unencumbered by any easements or other rights of the Defendants. The Defendants' property is opposite the alley from the Plaintiffs'; the alley forms the southern border of the Defendants' property for the same length as it serves as the Plaintiffs' northern boundary. Following discovery, the Defendants moved for summary judgment, asserting that the Plaintiffs cannot satisfy the Commonwealth's definition of adverse possession, that Plaintiff's may only take title in fee simple to one-half of the width of the alley (with the Defendants also taking title in fee simple to the other one-half of the width of the alley), and that the Defendants retain a private easement over the entire width of the alley. Following argument and the submission of briefs, this Court has no choice but to GRANT the Defendants' Motion for Summary Judgment.

Summary judgment is appropriate when there is no genuine issue as to any material fact as to a necessary element of the cause of action. Pa. R. Civ. P. 1035.2(1). All facts and inferences are viewed in the light most favorable to the non-moving party. Pa. State Univ. v. County of Centre, 532 Pa. 142, 145, 615 A.2d 303, 304 (1992). The granting of summary judgment is only appropriate when such granting is clear and free from doubt. Marks v. Tasman, 527 Pa. 132, 134-35, 589 A.2d 205, 206 (1991).

In the instant case, Plaintiffs allege that they have acquired title to the entire width of the alley running the length of their property by adverse possession. Adverse possession of real property confers title of the property to the adverse possessor, provided such possessor can prove he had actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of the land for twenty-one years. Conneaut Lake Park, Inc. v. Klingensmith, 362 Pa. 592, 594, 66 A.2d 828, 829 (1949). Each element of adverse possession must exist for the title to transfer to the possessor. Id.

Plaintiffs' adverse possession claim fails, because they have adduced no evidence that their possession of the alley was hostile or exclusive. To satisfy the hostility element of adverse possession, rights of ownership adverse to the true owner and all others must be asserted, though not necessarily through actual malice or ill will. Brennan v. Manchester Crossings, Inc., 708 A.2d 815, 818 (Pa. Super. Ct. 1998). This can be demonstrated by actions or possession which is inconsistent with the "possession or right of possession of another." Hutchison v. Little Four Oil & Gas Co., 275 Pa. 380, 387-88, 119 A. 534, 536 (1923). Here, Plaintiffs assert that they originally cleared some briars out of the alley with a scythe and a lawnmower; they thereafter maintained the alley by planting and mowing grass and maintaining the alley as an extension of their yard. Deposition of Gerald M. Dufour,

11/07/2008 ("Deposition 1") at 23-24; Deposition of Madeline S. Dufour, 11/07/2008 ("Deposition 2") at 13. Plaintiffs planted a tree, which was mowed down at an apparently early stage in its development by one of Plaintiffs' sons, Deposition 1 at 25, and had for some time a dog pen which may have been partly on the alley, Deposition 1 at 24. Plaintiffs did not post any "No Trespassing" signs or tell any neighbors (including the Defendants) to stay off of the alley, nor did they install any fence or other obstruction to segregate the area of the alley they were treating as an extension of their yard. Deposition 1 at 25. Plaintiffs admit that Defendants would walk upon and use the alley, and that the Defendants also helped to maintain the alley. Deposition 1 at 42; Deposition 2 at 13-14. As the Defendants were not excluded by the Plaintiffs, the possession of the alley by the Plaintiffs cannot be hostile or exclusive. The adverse possession claim must fail.

This is not to say that the Plaintiffs have acquired no title to any additional land. The alley in question has not been opened for over twenty-one (21) years since originally planned. As the public has not accepted the alley, the two abutting landowners take title to the mid-point of the alley. 36 Pa. Cons. Stat. § 1961; Rahn v. Hess, 378 Pa. 264, 270, 106 A.2d 461, 464 (1954). Therefore, both Plaintiffs and Defendants (the Martins) have acquired title to one half of the width of the alley for the length of their properties.

The title to land is not the only right of access to land, however. Despite a municipality's failure to open a street originally on a plan after twenty-one (21) years giving title to the abutting landowners, all property owners in the community retain private rights of easement for ingress and egress over the unopened streets. Estojak v. Mazsa, 522 Pa. 353, 359, 562 A.2d 271, 274 (1989). Such an easement may be extinguished by adverse possession, with the definition as set out in Conneaut Lake Park, *supra*, but with a use of the

land inconsistent with the use and rights of the easement holder. Estojak, 522 Pa. at 360, 562 A.2d at 275. A complete lack of use or the passage of time is not sufficient to extinguish this private easement over the alley. Riek v. Binnie, 352 Pa. Super. 246, 249, 507 A.2d 865, 867 (1986). The Plaintiffs have adduced no evidence, in their depositions or otherwise, showing that their use of the alley was adverse to the purpose of the Defendant's private easement over the same, namely, providing for ingress and egress. The fact that the Defendants may not have used the alley for such purposes ever, or until recently, is of no importance; Defendants' easement cannot be extinguished by mere non-use. Id.


Viewing all of the evidence presented by the Plaintiffs (as the non-moving party) as true, and taking all valid inferences in favor of the Plaintiffs, Pa. State. Univ., supra, this Court sees no dispute as to any material fact that would prevent judgment being granted to the Defendants as a matter of law. No rational fact finder could find that the Plaintiffs had acquired title to the entire width of the alley nor extinguished the Defendant Martins' private right of easement over the same.

ORDER

AND NOW, this 16th day of July, 2009, it is the Order of this Court that the Defendants' Motion for Summary Judgment be and hereby is GRANTED. Plaintiffs and Defendant Martins each take title to one-half of the width of the alley which abuts their respective properties, said alley being that alley immediately north of Dorthea Street, Houtzdale, Clearfield County, Pennsylvania, and running west from Good Street, running for the length of both parties' properties, namely, 100.00 feet.

FURTHERMORE it is the Order of this Court that both Plaintiffs and Defendants shall continue to enjoy private easement rights over the full width of said alley for ingress and egress.

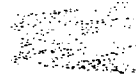
BY THE COURT,

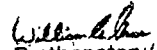

FREDRIC J. AMMERMAN
President Judge

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

JUL 17 2009

Attest.




Prothonotary/
Clerk of Courts

Civil Other-COUNT

Date		Judge
5/27/2008	New Case Filed.	No Judge
	Filing: Quiet Title Action (Property located in Woodward Twp.) Paid by: Dufour, Gerald M. (plaintiff) Receipt number: 1924215 Dated: 5/27/2008 Amount: \$105.00 (Cash) 7 Cert. to Plaintiff.	No Judge
6/2/2008	Sheriff Return, Now, 6/2/08 at 1:43 pm Served the within Complaint Action to Quiet Title on Charles R. Henry by handing to Charles R. Henry. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
	Sheriff Return, Now, 6/2/08 at 2:15 pm Served the within Complaint Action to Quiet Title on Leonard Thompson and Janice Thompson by handing to Leni Thompson. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
	Sheriff Return, Now, June 2, 2008 at 2:02 pm Served the within Complaint Action to Quiet Title on Norman R. and Florance Martin by handing to Florance Martin. So Answers, Chester A. Hawkins, Sheriff by s/Dominic Morgillo, deputy.	No Judge
6/5/2008	Sheriff Return, Now, 6-4-08 at 5:40 pm Served the within Complaint Action to Quiet Title on Charles W. and Anna Henry by handing to Alex Henry. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
	Sheriff Return, Now, 6-4-08 at 5:45 pm Served the within Complaint Action to Quiet Title on Lisa A. McKee nka Lisa A. Noel and Jeffrey A. Noel by handing to Lisa A. Noel. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
6/16/2008	Response, filed by s/ Florence Martin, Defendant. no cc	No Judge
6/24/2008	Praeipe for Entry of Appearance, filed. Kindly enter my appearance on behalf of all of the above named defendants in the above-captioned matter, filed by s/ James A. Naddeo Esq. 1CC Atty Naddeo.	No Judge
6/25/2008	First Amended Praeipe For Entry of Appearance, on behalf of Norman R. Martin and Florance Martin, Charles R. Henry, charles William Henry, Lisa A. McKee n/k/a Lisa A. Noel and Jeffrey A. Noel, enter appearance of Jame A. Naddeo, Esquire. Please accept this as a revision of my previosly filed entry of appearance which included the named Defendants, Leonard Thompson and Janice Thompson. Filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
	Answer and New Matter, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
7/25/2008	Plaintiff's Answer to New Matter, filed by s/ R. Bruce Manchester, Esquire. No CC	No Judge
9/25/2008	Sheriff Return, RETURN COSTS So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by G. DuFour \$134.54	No Judge
	Certificate of Service, a copy of Notice of Taking Deposition was served on the 25th day of Sept., 2008, upon R. Bruce Manchester, Esquire, and Maryann Cornelius, Court Reporter, by First-Class Mail. filed by s/ James A Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
9/29/2008	Certificate of Service, a copy of Notice of Taking Deposition was served on the 25th day of Sept., 2008, upon R. Bruce Manchester, Esquire, and Maryann Cornelius, Court Reporter, by First-Class Mail. filed by s/ James A Naddeo, Esquire. 2CC Atty. Naddeo	No Judge

Civil Other-COUNT

Date	Judge
5/1/2009	Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. 2CC No Judge Atty. Naddeo
5/5/2009	Order AND NOW, this 5th day of May 2009, upon consideration of Defendants' Motion for Partial Summary Judgment filed by James A. Naddeo Esq. it is the Order of this Court that this case will be heard before the Court on the 10th day of June 2009 at 9:00 a.m. in courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman. P. Judge. 2CC Atty Naddeo. Fredric Joseph Ammerman
5/6/2009	Certificate of Service, filed. That a certified copy of Order dated May 5, 2009 was served on the 6th day of May 2009 by first class mail to R. Bruce Manchester Esq., filed by s/ James A. Naddeo Esq. NO CC. Fredric Joseph Ammerman
6/10/2009	Order, this 10th day of June, 2009, following argument on the Motion for Partial Summary Judgment, it is Ordered that counsel for both parties have no more than 20 days from this date in which to submit letter brief to the Court. Counsel shall, upon receipt of the same, have no more than 5 days to submit a reply, if desired. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Fredric Joseph Ammerman Manchester, Naddeo; 1CC Leonard Thompson, Janice Thompson - 70 North Good St., Houtzdale PA 16651
7/17/2009	Opinion and Order, AND NOW, this 16th day of July, 2009, Order that Defendants' Motion for Summary Judgment is Granted. BY THE COURT: /s/ Fredric J. Ammerman, P.J. Two CC Attorneys Manchester and Naddeo One CC Leonard and Janice Thompson One CC D. Mikesell and Law Librarian Fredric Joseph Ammerman

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

AUG 12 2009

Attest.

William L. Ben
Prothonotary/
Clerk of Courts

CERTIFICATION OF SERVICE

It is hereby certified that on this date, August 14, 2009, copies of the foregoing Notice of Appeal were served on the following individuals and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

SERVICE BY FIRST CLASS MAIL:

James A. Naddeo, Esq.
207 E. Martket St.
P. O. Box 522
Clearfield, Pa 16830

SERVICE IN PERSON:

Honorable Frederic J. Ammerman
Court of Common Pleas of Clearfield County
Clearfield County Courthouse
230 E. Market St.
Clearfield, Pa 16830

Court Reporter's Office
Court of Common Pleas of Centre County
Clearfield County Courthouse
230 E. Market St.
Clearfield, Pa 16830

Respectfully Submitted,



Catherine Manchester
Legal Assistant
124 W. Bishop St.
Bellefonte, Pa 16823

RECEIVED
AUG 17 2009
PITTSBURGH OFFICE OF
SUPERIOR COURT