

08-1060-CD
John Amick al vs Alvin Gearhart

Appeal Docket Sheet**Docket Number: 1515 WDA 2008****Page 1 of 3****September 16, 2008**

John C. Amick and Judith A. Amick, Appellant

V.

Alvin W. Gearhart

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: September 16, 2008

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType:

Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: September 30, 2008

Next Event Type: Original Record Received

Next Event Due Date: November 14, 2008

Superior Court of Pennsylvania

RECORDED



NOV 12 2008

08-1060-CD

PITTSBURGH OFFICE

[Stamp]

1515 WDA 2008

RECORDED

FILED

m/12:48 PM
SEP 18 2008William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Docket Number: 1515 WDA 2008

Superior Court of Pennsylvania

Page 2 of 3

September 16, 2008



COUNSEL INFORMATION

Appellant Amick, John C
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellant Attorney Information:

Attorney: Belin, Carl A.
 Bar No.: 6804 Law Firm:
 Address: P O Box 1
 Clearfield, PA 16830
 Phone No.: (814)765-8972 Fax No.:
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellant Amick, Judith A.
 Pro Se: Appoint Counsel Status:
 IFP Status:

Appellant Attorney Information:

Attorney: Belin, Carl A.
 Bar No.: 6804 Law Firm:
 Address: P O Box 1
 Clearfield, PA 16830
 Phone No.: (814)765-8972 Fax No.:
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

Appellee Gearhart, Alvin W.
 Pro Se: Appoint Counsel Status:
 IFP Status:

Appellee Attorney Information:

Attorney: Guido, Anthony S.
 Bar No.: 5877 Law Firm: Hanak, Guido & Taladay
 Address: PO Box 487
 DuBois, PA 15801
 Phone No.: (814)371-7768 Fax No.: (814)371-1974
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
9/15/08	Notice of Appeal	60.00	60.00	2008SPRWD000931

Appeal Docket Sheet**Docket Number: 1515 WDA 2008****Page 3 of 3****September 16, 2008****Superior Court of Pennsylvania****TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: August 26, 2008

Judicial District: 46

Date Documents Received: September 16, 2008

Date Notice of Appeal Filed: September 15, 2008

Order Type: Order Dated

OTN:

Judge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: No. 08-1060-CD

ORIGINAL RECORD CONTENTS**Original Record Item****Filed Date****Content/Description****Date of Remand of Record:****BRIEFS****DOCKET ENTRIES****Filed Date****Docket Entry/Document Name****Party Type****Filed By**

September 16, 2008 Notice of Appeal Filed

Appellant

Amick, John C

September 16, 2008 Docketing Statement Exited (Civil)

Per Curiam

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

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

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

08-1060-CD
John C. Amick and Judith A. Amick
Vs.
Alvin W. Gearhart

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

The documents comprising the record have been numbered from **No. 1 to 17**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is November 6, 2008.



William A. Shaw
Prothonotary/Clerk of Courts

(seal)

Date: 11/6/2008

Time: 04:48 PM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2008-01060-CD

Current Judge: Fredric Joseph Ammerman

John C. Amick, et alvs. Alvin W. Gearhart

Civil Other-COUNT

Date		Judge
6/9/2008	New Case Filed.	No Judge
	Filing: Civil Complaint Paid by: Belin, Carl A. Jr. (attorney for Amick, John C.) Receipt number: 1924412 Dated: 6/9/2008 Amount: \$95.00 (Check) 1CC shff and 3CC Atty.	No Judge
6/24/2008	Sheriff Return, Now, this 24th day of June 2008 at 1:30 pm Served the within Complaint on Alvin W. Gearhart by handing to Dolly Gearhart. So Answers, Chester A. Hawkins, Sheriff by s/Mark A. Coudriet, deputy.	No Judge
7/1/2008	Demurrer, filed by s/ Anthony S. Guido, Esquire. no CC	No Judge
7/10/2008	Order, this 11th day of July, 2008, upon consideration of the Defendant's Demurrer, it is Ordered that Oral Argument is scheduled to be held on the 8th day of August, 2008, at 2:30 p.m. in Courtroom 1. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC Atty. Guido	Fredric Joseph Ammerman
7/16/2008	Certificate of Service, copy of the Order of Court dated July 11, 2008, was served upon Carl Belin, Jr., Esquire, by First Class Mail on the 15th day of July, 2008. Filed by s/ Anthony Guido, Esquire. No CC	Fredric Joseph Ammerman
8/14/2008	Order, this 8th day of August, 2008, following argument on the Defendant's Preliminary Objections in the nature of a demurrer, it is Ordered that counsel for Plaintiff have no more than 10 days from this date in which to submit letter brief. Counsel for the Defendant shall have no more than 15 days from this date in which to submit a reply brief, if he should wish to do so. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Belin, Guido	Fredric Joseph Ammerman
8/27/2008	Order, this 26th day of August, 2008, upon consideration of the Demurrer filed on behalf of the Defendant, it is Ordered: the Defendant's Demurrer is granted. The Plaintiffs' Complaint is dismissed with prejudice. by The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Belin, Guidon	Fredric Joseph Ammerman
9/11/2008	Motion to Add Deed to Record, filed by s/ Carl A. Belin, Jr., Esquire. 3CC Atty. Belin	Fredric Joseph Ammerman
	Order, this 11th day of Sept., 2008, the motion is granted and a certified copy of the deed recorded as instrument No. 200307332 is admitted into the record of this case. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Belin	Fredric Joseph Ammerman
9/12/2008	Certificate of Service, filed. Sent a certified copy of Plaintiff's Motion and Order to Add Deed to Record and Order in the above-captioned matter by first class mail on the 12th day of September 2008 to Anthony S. Guido Esq., filed by s/ Carl A. Belin Esq. No CC.	Fredric Joseph Ammerman
9/15/2008	Filing: Appeal to High Court Paid by: Belin, Carl A. Jr. (attorney for Amick, John C.) Receipt number: 1925875 Dated: 9/15/2008 Amount: \$50.00 (Check) For: Amick, John C. (plaintiff) 4CC Atty Belin and 1CC & check to Superior Court.	Fredric Joseph Ammerman
	Proof of Service of Notice of Appeal, copies of th notice of appeal, docket entries, and this proof of service were served upon Honorable Fredric J. Ammerman, Pres. Judge, and Anthony S. Guido, Esquire, by first class mail on sept. 15, 2008. filed by s/ Carl A. Belin, Jr., Esquire. 5CC Atty	Fredric Joseph Ammerman
9/16/2008	Order, this 16th day of Sept., 2008, this Court having been notified of Appea to the Superior Court of PA, it is Orderd that John C. Amick and Judith A. Amick, appellants, file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Belin, Guido	Fredric Joseph Ammerman
9/18/2008	Appeal Docket Sheet, Superior Court Number 1515 WDA 2008, filed.	Fredric Joseph Ammerman

Date: 11/6/2008

Time: 04:48 PM

Page 2 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2008-01060-CD

Current Judge: Fredric Joseph Ammerman

John C. Amick, et alvs. Alvin W. Gearhart

Civil Other-COUNT

Date	Judge
9/29/2008	Sheriff Return, RETURN COSTS So Answers, Chester A. Hawkins, Sheriff Fredric Joseph Ammerman by s/Marilyn Hamm Shff Hawkins costs pd by Belin \$47.61
9/30/2008	Statement of Errors Complained of on Appeal, filed by s/ Carl A. Belin, Jr., Fredric Joseph Ammerman Esquire. 1CC Judge Reilly; 2CC Atty
10/16/2008	Opinion, dated October 15, 2008, filed. (SEE ORIGINAL FOR DETAILS) Th Fredric Joseph Ammerman being the case, Plaintiffs have no claim to any title and have no standing to pursue their first issue. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Belin and Guido and 1CC D. Mikesell and Law Library (without memo)
11/6/2008	November 6, 2008, Appeal Mailed to Superior Court. Fredric Joseph Ammerman November 6, 2008, Letters, Re: Notification of mailing appeal mailed to Carl A. Belin, Jr., Esq. and Anthony S. Guido, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).

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

NOV 06 2008

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

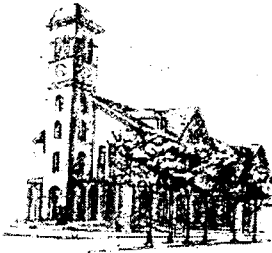
No. 08-1060-CD

John C. Amick and Judith A. Amick

Vs.

Alvin W. Gearhart

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	06/09/08	Civil Complaint	13
02	06/24/08	Sheriff Return	01
03	07/01/08	Demurrer	08
04	07/10/08	Order, Re: Defendant's Demurrer, oral argument is scheduled	01
05	07/16/08	Certificate of Service	02
06	08/14/08	Order, Re: briefs to be submitted	01
07	08/27/08	Order, Re: Defendant's Demurrer is granted; Plaintiffs' Complaint is dismissed with prejudice	01
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09	09/12/08	Certificate of Service	02
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11	09/15/08	Proof of Service	02
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13	09/18/08	Appeal Docket Sheet, Superior Court No. 1515 WDA 2008	03
14	09/29/08	Sheriff Return	01
15	09/30/08	Statement of Errors Complained of on Appeal	05
16	10/16/08	Opinion	04
17	11/06/08	Letters, Re: Notification of mailing appeal mailed to Carl A. Belin, Jr., Esq. and Anthony S. Guido, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	04



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

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

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Carl A. Belin, Jr., Esq.
PO Box 1
15 N. Front Street
Clearfield, PA 16830

Anthony S. Guido, Esq.
PO Box 487
DuBois, PA 15801

John C. Amick and Judith A. Amick
Vs.
Alvin W. Gearhart

Court No. 08-1060-CD; Superior Court No. 1515 WDA 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on November 6, 2008.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED
014:00601
NOV 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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9/18/2008	Appeal Docket Sheet, Superior Court Number 1515 WDA 2008, filed.	Fredric Joseph Ammerman

Date: 11/6/2008

Time: 04:37 PM

Page 2 of 2

Clerkfield County Court of Common Pleas

ROA Report

Case: 2008-01060-CD

Current Judge: Fredric Joseph Ammerman

User: BHUDSON

John C. Amick, et alvs. Alvin W. Gearhart

Civil Other-COUNT

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

NOV 06 2008

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

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

JOHN C. AMICK and JUDITH AMICK,
Plaintiffs

VS.

ALVIN W. GEARHART,
Defendants

NO. 08-1060-CD

^SFILED
018:368V
OCT 16 2008

William A. Shaw
Prothonotary/Clerk of Courts

2 cc Atty's: Belin
Guido
ICC D. Mikosell
Law Library
(without memo)

OPINION

On June 9, 2008 John and Judith Amick (Plaintiffs) filed a Complaint against Alvin Gearhart (Defendant) seeking declaratory relief as to their claim of ownership of coal rights to 398.66 acres located in Sandy Township, Clearfield County. The Defendant filed a preliminary objection in the form of a demurrer to the Complaint. Following oral argument on August 8, 2008 and the Court's receipt of the parties' briefs, the Court granted the demurrer by its Order of August 26, 2008. The Plaintiffs' Complaint was dismissed by the Court, with prejudice. Thereafter Plaintiffs filed a timely appeal to the Superior Court. Plaintiffs' Statement of Errors Complained of on Appeal was filed on September 30, 2008 and this Opinion is written pursuant to the requirements of Rule of Appellate Procedure 1925(a).

This Court notes that in reviewing preliminary objections in the nature of a demurrer, the Court must accept as true all well-pled facts, which are material and relevant, as well as all inferences reasonably deducible there from. Penn Title Insurance Co. v. Deshler, 661 A.2d 481(Pa.Cmwlt.1995.), petition for allowance of appeal denied, 670 A.2d 145 (Pa. 1995). In deciding whether to sustain a demurer, this Court is not required to accept as true legal conclusions, unwarranted factual inferences, allegations that constitute argument, or mere opinion. Id. at 483.

Moreover, a demurrer will not be sustained unless the Court finds that on the face of the complaint the law will not allow recovery; furthermore, any doubts are to be resolved against sustaining the demurrer. Cohen v. City of Philadelphia, 806 A.2d 905 (Pa.Cmwlt. 2002).

The Defendant's position is that it acquired the coal rights in question through a deed from Rochester & Pittsburgh Coal Company (R & P) dated December 13, 2000 and recorded in Clearfield County on May 5, 2003 as Instrument No. 200307332.¹ That quit claim deed sold to the Defendant the coal rights to 921 acres situated in Sandy Township know as the Alfred Bell tract and identified as R & P parcel number 1839. Attached to that deed as Exhibit A is a map which lists two parcels, both being identified with the number 1839 and the words Alfred Bell. The parcels are adjacent to each other, one being 398.66 acres and the other being 522.34 acres. The Plaintiff claims that the only parcel where the coal rights were conveyed through this deed was the 522.34 acres. This position is based upon the fact that the map attached to the deed as Exhibit A has a legend which shows crosshatching as the area to be conveyed and that the 398.66 acres of coal rights were not conveyed because this parcel was not crosshatched. See paragraphs 4, 5 and 6 of the Plaintiffs' Complaint. Plaintiff also claims that prior to the R & P deed to the Defendant that R & P had conveyed the coal rights to the DuBois Land Company through a deed dated September 1, 1922.² Plaintiffs claim to be the successors in title to the DuBois Land Company and therefore own the coal rights to the 398.66 acres. This Court does not agree.

¹ This deed is attached to the Defendant's Demurrer as Exhibit A.

² A copy of that purported deed is attached to the Plaintiffs' Complaint as Exhibit A.

There is a rule for conveyances that provides where a deed refers to a map in the description, the map and deed are to be construed together:

"As a general rule, if maps are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument and are given considerable weight in determining the true description of the land. 11 C.J.S., Boundaries, § 24."

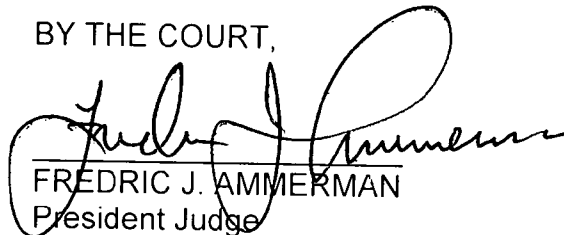
Dallas Borough Annexation Case, 82 A.2d 676, 680 (Pa. 1951). In the case at bar the map attached to the deed was not directly referred to in the typed portion of the deed, except by the identification of the parcel as "R&P parcel No. 1839" appearing at the end of the description.

It is the belief of this Court that the subject deed from R & P to the Defendant unequivocally conveyed all of the right, title and interest in the coal rights owned by the Grantor to 921 acres known as the Alfred Bell tract and identified as R & P parcel number 1839. The granting clause did not reserve any portion of the coal rights in and under the subject 921 acres. The map clearly shows two Alfred Bell parcels, both being identified as number 1839. When one adds the acreage from each parcel, the total of 921 acres is reached. This conforms with the granting clause. In any event, a grant set forth in the deed cannot be diminished or qualified by a recital, In re: Wilson's Estate, 70 A.2d 354 (Pa. 1950), or by a habendum clause. Fleck v. Universal-Cyclops Steel Corporation, 156 A.2d 832 (Pa. 1959). In this case, construing the matter in a light most favorable to the Plaintiffs, there is a conflict between the granting clause and the map attached to the deed. However, the deed does not refer to the map and the map appears to be attached merely to show the extent of the 921 acres. All numbers and acreage totals in the granting clause match

the totals on the map. Notwithstanding any conflict, as a matter of law the granting clause must prevail.

The Plaintiffs' averment that it owns the coal rights pursuant to the unrecorded deed dated September 1, 1922 is clearly meritless. Not only was this never recorded, it also was never signed by the Grantor. A deed that is not signed and/or acknowledged is not effective to convey the property subject to the deed. See Deeds and Mortgages, 21 P.S. § 42. In addition, a deed which is not recorded is deemed to be void as to any subsequent bona fide purchaser. 21 P.S. § 351. Therefore, the 1922 unsigned, unacknowledged and unrecorded deed is meaningless and did not transfer any interest to the DuBois Land Co. This being the case, Plaintiffs have no claim to any title and have no standing to pursue their first issue.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

Date: October 15, 2008

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

JOHN C. AMICK AND JUDITH A. AMICK,	:	
Plaintiffs	:	
	:	NO. 08 - 1060 - CD
vs.	:	
	:	STATEMENT OF ERRORS
ALVIN W. GEARHART,	:	COMPLAINED OF ON THE
Defendant	:	APPEAL

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN, KUBISTA & RYAN LLP
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972 (PHONE)
(814) 765-9893 (FAX)

FILED
02:56 P.M. GK 1cc Judge Reilly
SEP 30 2008 2cc Atty

William A. Shaw
Prothonotary/Clerk of Courts

(610)

#15

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

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
vs. : NO. 08 - 1060 - CD
ALVIN W. GEARHART, :
Defendant : CERTIFICATE OF SERVICE

STATEMENT OF ERRORS COMPLAINED OF ON THE APPEAL

AND NOW come John C. Amick and Judith A. Amick, by and through their attorney, Carl A. Belin, Jr.. of Belin, Kubista & Ryan LLP, and file the following Statement of Errors Complained Of On Appeal of the Order dated September 16, 2008, entered on September 16, 2008, and pursuant to Pa. R.A.P. 1925(b):

The court erred in its Order dated September 16, 2008, entered on September 16, 2008, in refusing to deny the demurrer and in granting the demurrer and dismissing Plaintiffs' Complaint.

That as a result of the Order, the statement of questions involved are as follows:

1. Whether all parts of a quitclaim deed, including a map which was made a part of the deed as recorded, are to be

considered in determining the intention of the parties to the transaction?

Answered by the lower court in the negative.

2. Whether a map, which was made part of a quitclaim deed as recorded and which identified the tract number appearing in the typed description, should be construed with the description to determine what was intended to be conveyed in the transaction?

Answered by the lower court in the negative.

3. Where a map attached to the quitclaim deed limits the tract to be conveyed which appears to be in conflict with the tract described in the deed, does an ambiguity exist which would allow for evidence of the circumstances surrounding the transaction to be admitted, including evidence that the grantor's predecessor had conveyed a part of the tract by an earlier conveyance to appellants predecessor in title that was never recorded?

Answered by the lower court in the negative.

4. Where appellant averred that the grantor to a conveyance had given notice to the grantee that its predecessor in title had conveyed a part of the tract to a predecessor in title of appellants but the transaction was never recorded, is

that evidence admissible to corroborate an intention to limit the conveyance to the tract identified in the map as "the area to be conveyed"?

Answered by the lower court in the negative.

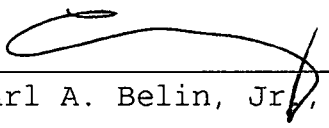
5. May the appellee properly raise issue preclusion in his demurrer or should such issue be raised by an answer and new matter?

Not answered by the lower court.

RESPECTFULLY SUBMITTED,

BELIN, KUBISTA & RYAN LLP

By


Carl A. Belin, Jr., Esquire

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

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
vs. : NO. 08 - 1060 - CD
ALVIN W. GEARHART, :
Defendant :


CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a
certified copy of Plaintiffs' Statement of Errors complained Of
On The Appeal in the above-captioned matter to the following
parties on the 30th day of September, 2008:

HAND DELIVERY:
Honorable Fredric J. Ammerman
President Judge
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

POSTAGE PREPAID UNITED STATES FIRST CLASS MAIL:
Anthony S. Guido, Esquire
Hanak, Guido and Taladay
528 Liberty Boulevard
P.O. Box 487
DuBois, PA 15801

BELIN, KUBISTA & RYAN LLP

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104261
NO: 08-1060-CD
SERVICES 1
COMPLAINT

PLAINTIFF: JOHN C. AMICK and JUDITH A. AMICK
vs.
DEFENDANT: ALVIN W. GEARHART

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	BELIN	25035	10.00
SHERIFF HAWKINS	BELIN	25035	37.61

FILED
013:03/01
SEP 29 2008
William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,



Chester A. Hawkins
Sheriff

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1515 WDA 2008

Page 1 of 3

September 16, 2008



John C. Amick and Judith A. Amick, Appellant

V.

Alvin W. Gearhart

08-1060-CD

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: September 16, 2008

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType:

Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: September 30, 2008

Next Event Type: Original Record Received

Next Event Due Date: November 14, 2008

FILED
m/12:48/21
SEP 18 2008
William A. Shaw
Prothonotary/Clerk of Courts

13

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1515 WDA 2008

Page 2 of 3

September 16, 2008



COUNSEL INFORMATION

Appellant Amick, John C
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:

Attorney: Belin, Carl A.
Bar No.: 6804 **Law Firm:**
Address: P O Box 1
 Clearfield, PA 16830
Phone No.: (814)765-8972 **Fax No.:**
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellant Amick, Judith A.
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Attorney: Belin, Carl A.
Bar No.: 6804 **Law Firm:**
Address: P O Box 1
 Clearfield, PA 16830
Phone No.: (814)765-8972 **Fax No.:**
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellee Gearhart, Alvin W.
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Guido, Anthony S.
Bar No.: 5877 **Law Firm:** Hanak, Guido & Taladay
Address: PO Box 487
 DuBois, PA 15801
Phone No.: (814)371-7768 **Fax No.:** (814)371-1974
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
9/15/08	Notice of Appeal	60.00	60.00	2008SPRWD000931

Appeal Docket Sheet**Superior Court of Pennsylvania****Docket Number: 1515 WDA 2008****Page 3 of 3****September 16, 2008****TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: August 26, 2008

Judicial District: 46

Date Documents Received: September 16, 2008

Date Notice of Appeal Filed: September 15, 2008

Order Type: Order Dated

OTN:

Judge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: No. 08-1060-CD

ORIGINAL RECORD CONTENTS**Original Record Item****Filed Date****Content/Description****Date of Remand of Record:****BRIEFS****DOCKET ENTRIES**

Filed Date	Docket Entry/Document Name	Party Type	Filed By
September 16, 2008	Notice of Appeal Filed		
		Appellant	Amick, John C
September 16, 2008	Docketing Statement Exited (Civil)		
			Per Curiam

117

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

JOHN C. AMICK and JUDITH A. AMICK,
Plaintiffs

vs.

ALVIN W. GEARHART,
Defendant

*
*
*
*
*

NO. 08-1060-CD

ORDER

NOW, this 16th day of September, 2008, 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 **JOHN C. AMICK and JUDITH A. AMICK**, 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
01/4:00
SEP 16 2008

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty's:
Belin
Guido

FILED

SEP 16 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/16/08

☐ You are responsible for serving all appropriate parties.

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

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

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

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

JOHN C. AMICK AND JUDITH A. AMICK,	:	
Plaintiffs	:	
	:	NO. 08 - 1060 - CD
vs.	:	
	:	PROOF OF SERVICE OF
ALVIN W. GEARHART,	:	NOTICE OF APPEAL
Defendant	:	

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN, KUBISTA & RYAN LLP
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 755-8972 (PHONE)
(814) 755-9893 (FAX)

FILED

0 11:09am GK
SEP 15 2008

5 cc Amy

William A. Shaw
Prothonotary/Clerk of Courts

(610)

11/1

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

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
vs. : NO. 08 - 1060 - CD
ALVIN W. GEARHART, :
Defendant :

PROOF OF SERVICE OF NOTICE OF APPEAL

I hereby certify that I am this day serving copies of the foregoing notice of appeal, docket entries, and this proof of service on the following persons in the manner indicated below:

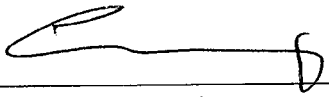
SERVICE BY FIRST CLASS MAIL ADDRESSED AS FOLLOWS:

Honorable Fredric J. Ammerman
President Judge
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Anthony S. Guido, Esquire
Hanak, Guido and Taladay
528 Liberty Boulevard
P.O. Box 487
DuBois, PA 15801

BELIN, KUBISTA & RYAN LLP

Dated: September 15, 2008

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs
Pa. Id. #06805
Belin, Kubista & Ryan LLP
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
814-765-8972

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

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
vs. : NO. 08 - 1060 - CD
ALVIN W. GEARHART, :
Defendant : NOTICE OF APPEAL

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN, KUBISTA & RYAN LLP
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972 (PHONE)
(814) 765-9893 (FAX)

FILED 09/11/08
SEP 15 2008
William A. Shaw
Prothonotary/Clerk of Courts
\$50.00 ATT
1 CC + Check to
Superior Court
4 CC Att'y Belin
\$10

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

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
 : NO. 08 - 1060 - CD
vs. :
 :
ALVIN W. GEARHART, :
Defendant :

NOTICE OF APPEAL

Notice is hereby given that John C. Amick and Judith A. Amick, Plaintiffs above-named, hereby appeal to the Superior Court of Pennsylvania from the Order dated August 26, 2008. This Order has been entered in the docket as evidenced by the attached copy of the docket entry.

Counsel hereby certifies that no hearing was ever held and consequently no transcript will need to be prepared or filed in this case.

BELIN, KUBISTA & RYAN LLP

By 

Carl A. Belin, Jr., Esquire
Attorneys for Plaintiffs
John C. Amick and
Judith A. Amick
Pa. Id. #06805
Belin, Kubista & Ryan LLP
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
814-765-8972

Date: 9/12/2008

Time: 03:35 PM

Page 1 of 1

Clerk of Court

Clerkfield County Court of Common Pleas

ROA Report

User: LMILLER

Case: 2008-01060-CD

Current Judge: Fredric Joseph Ammerman

John C. Amick, et alvs. Alvin W. Gearhart

Civil Other-COUNT

Date		Judge
6/9/2008	New Case Filed.	No Judge
	Filing: Civil Complaint Paid by: Belin, Carl A. Jr. (attorney for Amick, John C.) Receipt number: 1924412 Dated: 6/9/2008 Amount: \$95.00 (Check) 1CC shff and 3CC Atty.	No Judge
6/24/2008	Sheriff Return, Now, this 24th day of June 2008 at 1:30 pm Served the within Complaint on Alvin W. Gearhart by handing to Dolly Gearhart. So Answers, Chester A. Hawkins, Sheriff by s/Mark A. Coudriet, deputy.	No Judge
7/1/2008	Demurrer, filed by s/ Anthony S. Guido, Esquire. no CC	No Judge
7/10/2008	Order, this 11th day of July, 2008, upon consideration of the Defendant's Demurrer, it is Ordered that Oral Argument is scheduled to be held on the 8th day of August, 2008, at 2:30 p.m. in Courtroom 1. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC Atty. Guido	Fredric Joseph Ammerman
7/16/2008	Certificate of Service, copy of the Order of Court dated July 11, 2008, was served upon Carl Belin, Jr., Esquire, by First Class Mail on the 15th day of July, 2008. Filed by s/ Anthony Guido, Esquire. No CC	Fredric Joseph Ammerman
8/14/2008	Order, this 8th day of August, 2008, following argument on the Defendant's Preliminary Objections in the nature of a demurrer, it is Ordered that counsel for Plaintiff have no more than 10 days from this date in which to submit letter brief. Counsel for the Defendant shall have no more than 15 days from this date in which to submit a reply brief, if he should wish to do so. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Belin, Guido	Fredric Joseph Ammerman
8/27/2008	Order, this 26th day of August, 2008, upon consideration of the Demurrer filed on behalf of the Defendant, it is Ordered: the Defendant's Demurrer is granted. The Plaintiffs' Complaint is dismissed with prejudice. by The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Belin, Guidon	Fredric Joseph Ammerman
9/11/2008	Motion to Add Deed to Record, filed by s/ Carl A. Belin, Jr., Esquire. 3CC Atty. Belin	Fredric Joseph Ammerman
	Order, this 11th day of Sept., 2008, the motion is granted and a certified copy of the deed recorded as instrument No. 200307332 is admitted into the record of this case. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Belin	Fredric Joseph Ammerman
9/12/2008	Certificate of Service, filed. Sent a certified copy of Plaintiff's Motion and Order to Add Deed to Record and Order in the above-captioned matter by first class mail on the 12th day of September 2008 to Anthony S. Guido Esq., filed by s/ Carl A. Belin Esq. No CC.	Fredric Joseph Ammerman

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

SEP 15 2008

Attest.


Prothonotary/
Clerk of Courts

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

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
vs. : NO. 08 - 1060 - CD
ALVIN W. GEARHART, :
Defendant : CERTIFICATE OF SERVICE

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN, KUBISTA & RYAN LLP
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972 (PHONE)
(814) 765-9893 (FAX)

FILED NO CC
0/3:35cm
SEP 12 2008 (LM)

William A. Shaw
Prothonotary/Clerk of Courts

(LM)

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

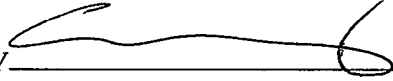
JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
 : NO. 08 - 1060 - CD
vs. :
 :
ALVIN W. GEARHART, :
Defendant :

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a
certified copy of Plaintiffs' Motion And Order To Add Deed To
Record and Order in the above-captioned matter to the following
party by postage prepaid United States first class mail on the
12th day of September, 2008:

Anthony S. Guido, Esquire
Hanak, Guido and Taladay
528 Liberty Boulevard
P.O. Box 487
DuBois, PA 15801

BELIN, KUBISTA & RYAN LLP

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

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

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
vs. : NO. 08 - 1060 - CD
ALVIN W. GEARHART, : MOTION AND ORDER TO
Defendant : ADD DEED TO RECORD

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN, KUBISTA & RYAN LLP
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972 (PHONE)
(814) 765-9893 (FAX)

5 FILED 3cc
014:00/By Amy Belin
SEP 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

(48)

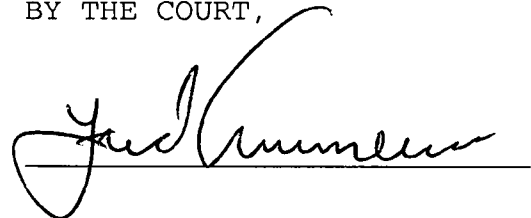
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
vs. : NO. 08 - 1060 - CD
ALVIN W. GEARHART, :
Defendant :

ORDER

AND NOW, this 11 day of September, 2008, upon
consideration of the foregoing motion, the motion is hereby
granted and a certified copy of the deed recorded as Instrument
No. 200307332 is hereby admitted into the record of this case.

BY THE COURT,



FILED 300

SEP 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

610

418

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs : NO. 08 - 1060 - CD
vs. :
ALVIN W. GEARHART, :
Defendant :

MOTION TO ADD DEED TO RECORD

AND NOW come Plaintiffs, John C. Amick and Judith A. Amick, by and through their attorney, Carl A. Belin, Jr., of Belin, Kubista & Ryan LLP, and file the following motion to add deed to record, and in support thereof aver as follows:

1. That this action is for declaratory relief seeking the construction of a deed which has been recorded in Clearfield County as Instrument No. 200307332.
2. That Defendant filed a demurrer in which he attached a portion of the deed to the demurrer.
3. That at argument the court was presented with the deed which included all pages of the instrument that had been recorded.
4. That the Court has entered an Order granting the demurrer, however, the copy of the complete recorded deed is not of record in this action.

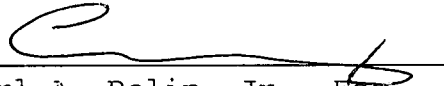
5. That Plaintiffs intend to file an appeal to this order but to complete the record offer a certified copy of the recorded deed to be admitted and made a part of the record, which is attached to this motion.

WHEREFORE, Plaintiffs request Your Honorable Court to grant the motion and admit the certified copy of the recorded deed into the record.

RESPECTFULLY SUBMITTED,

BELIN, KUBISTA & RYAN LLP

By


Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

AFFIDAVIT No. 36454

This Indenture

Made the 13th day of December, 2000, between

ROCHESTER & PITTSBURGH COAL COMPANY, , a Pennsylvania corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business at 1800 Washington Road, Pittsburgh, Pennsylvania, 15241,

Grantor,

A
N
D

ALVIN W. GEARHART, of Box 307 Treasure Lake, DuBois, Clearfield County, Pennsylvania,

Grantee.

WITNESSETH that in consideration of the sum of

----- ONE AND 00/100 DOLLAR (\$1.00) -----

lawful money of the United States of America, unto him well and truly paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the Grantor does hereby remise, release and forever quitclaim unto the said party of the second part, his heirs, successors and assigns all the estate, right, title, interest, claim or demand whatsoever, either in law or in equity, of, in or to ALL THE COAL AND COAL ONLY on, in and/or underneath that certain tract, parcel and/or piece of land more fully described in Clearfield County Deed Book Volume 119, page 484, containing 921.00 acres, more or less, situate in Sandy Township, Clearfield County, Pennsylvania, known as the Alfred Bell Tract and identified as R&P Parcel No. 1839.

TO HAVE AND TO HOLD the same to the said Grantee, his heirs, successors and/or assigns, forever.

NOTICE - THIS DOCUMENT MAY SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P. L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.]

KAREN L. STARK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER

200307332

RECORDED ON

May 05, 2003

2:48:39 PM

Total Pages: 4

RECORDING FEES - \$13.00

RECORDER

COUNTY IMPROVEMENT \$2.00

FUND

REORDER IMPROVEMENT \$3.00

FUND

JCS/ACCESS TO \$10.00

JUSTICE

STATE WRIT TAX \$0.50

TOTAL

\$28.50

CUSTOMER
GEARHART, ALVIN W

IN WITNESS WHEREOF, Rochester & Pittsburgh Coal Company, pursuant to due corporate authority, has caused this Indenture to be signed in its corporate name by its Vice President and it had caused to be affixed hereunto the common and corporate seal of said corporation, attested by its Secretary, the day and year first above written.

ROCHESTER & PITTSBURGH
COAL COMPANY

Attest:

W. L. Jones
Secretary

William D. Stanhagen
Vice President

NOTICE - THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966.

William D. Stanhagen

William D. Stanhagen

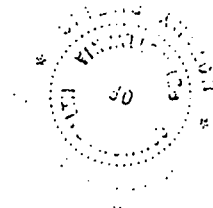
Commonwealth of Pennsylvania :
: ss.
County of Allegheny :

On this, the 4 day of DECEMBER, 2000, before me, a Notary Public, the undersigned officer, personally appeared WILLIAM D. STANHAGEN, who acknowledged himself to be the Vice President of the ROCHESTER & PITTSBURGH COAL COMPANY of Allegheny County, a corporation, and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Vice President.

In witness whereof, I hereunto set my hand and official seal.

Esther E. Smoke
Notary Public


Notarial Seal
Esther E. Smoke, Notary Public
Upper St. Clair Twp., Allegheny County
My Commission Expires Mar. 5, 2004
Member, Pennsylvania Association of Notaries



CERTIFICATE OF RESIDENCE

I, Anthony S. Guido, do hereby certify that the precise residence and complete post office address of the within named Grantee is
307 Treasure Lake, DuBois, PA 15801

Dated: December 13, 2000



Attorney for Grantee

State of Pennsylvania :
:
County of Clearfield :

RECORDED on, this ____ day of _____, A.D. 2000, in the

Recorder's office of said County, in Deed Book Vol. _____, Page _____.

Given under my hand and the seal of the said office, the date above

written.

RECORDER

FILED

SEP 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

Instrument
200307332

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

SEP 10 2008

Attest: *Mamene E. Inlow*

Reg. of Wills Rec. of Deeds & Clk. of Orphans' Court

MY COMMISSION EXPIRES
FIRST MONDAY IN JANUARY 2012

LA

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

JOHN C. AMICK and JUDITH AMICK, * NO. 08-1060-CD
Plaintiffs *
vs. *
ALVIN W. GEARHART, *
Defendant *

ORDER

NOW, this 26th day of August, 2008, upon consideration of the Demurrer filed on behalf of the Defendant this Court finds and ORDERS as follows:

1. The Deed dated December 13, 2000 (Instrument #200307332) from Rochester & Pittsburgh Coal Co. to Alvin W. Gearhart clearly and unambiguously conveyed the coal rights to the entire 921 acre tract. The Plaintiffs' claim that the deed conveyed only 522.34 acres of coal rights is without merit;
2. By law, the unsigned and unrecorded deed dated September 1, 1922 from Rochester & Pittsburgh Coal Co. to the DuBois Land Company is meaningless and void.
3. As such, it is the ORDER of this Court that the Defendant's Demurrer be and is hereby granted. The Plaintiffs' Complaint is dismissed with prejudice.

FILED
AUG 27 2008

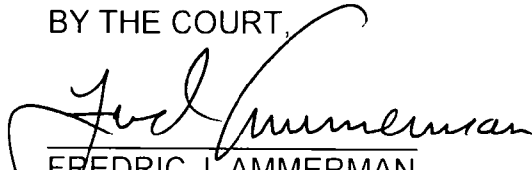
William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty's:

Belin
Guido

610

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

AUG 27 1968

WILLIAM A. SHAW
Prothonotary/Clerk of Courts

DATE: 86768

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

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

JOHN C. AMICK and JUDITH AMICK :

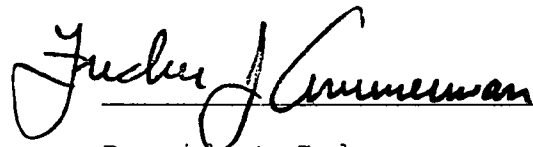
VS. : NO. 08-1060-CD

ALVIN W. GEARHART :

O R D E R

AND NOW, this 8th day of August, 2008, following argument on the Defendant's Preliminary Objection in the nature of a demurrer, it is the ORDER of this Court that counsel for the Plaintiff have no more than ten (10) days from this date in which to submit letter brief. Counsel for the Defendant shall have no more than fifteen (15) days from this date in which to submit a reply brief, if he should wish to do so.

BY THE COURT,


President Judge

FILED
010:5430
AUG 14 2008

William A. Shaw
Prothonotary/Clerk of Courts

2 CC Attys: Belin
Guido

FILED

AUG 14 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/14/08

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

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

JOHN C. AMICK and
JUDITH A. AMICK,
Plaintiffs

vs.

ALVIN W. GEARHART
Defendant

No. 08 -1060-CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on Behalf of:
Defendant

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
528 Liberty Boulevard
P.O. Box 487
DuBois, PA 15801
814-371-7768

Date: 7-15-08

FILED

JUL 16 2008

m/10:15
William A. Shaw

Prothonotary/Clerk of Courts

NO 610

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

JOHN C. AMICK and
JUDITH A. AMICK,
Plaintiffs

vs.

ALVIN W. GEARHART,
Defendant

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No. 08 - 1060 - CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Order of Court dated July 11, 2008, in the above captioned action, was served upon the following by United States First Class Mail, postage prepaid, deposited on the 15th day of July, 2008, in the United States Post Office, DuBois, Pennsylvania, addressed as follows:

CARL BELIN, JR., ESQ.
Belin, Kubista & Ryan LLP
PO Box 1
Clearfield, PA 16830

HANAK, GUIDO & TALADAY

By



Attorney for Defendant

WA

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

JOHN C. AMICK and
JUDITH A. AMICK,
Plaintiffs

vs.

ALVIN W. GEARHART,
Defendant

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: No. 08 - 1060 - CD
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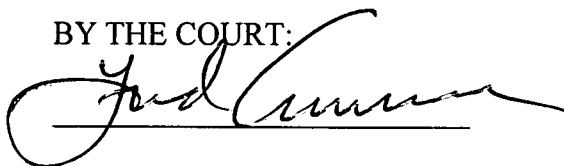
ORDER OF COURT

AND NOW, this 11 day of July, 2008, upon consideration of the within
Defendant's Demurrer,

IT IS HEREBY ORDERED that Defendant shall file a brief on or before the ____
day of _____, 2008. Plaintiffs shall file their brief _____ days thereafter.

IT IS FURTHER ORDERED that Oral Argument is scheduled to be held on the
8th day of August, 2008, at 2:30 o'clock P.M. in Courtroom No.
1 of the Clearfield County Courthouse, 230 E. Market Street, Clearfield,
Pennsylvania.

BY THE COURT:



5 FILED 4CC
013:03/01 Atty Guido
JUL 10 2008

William A. Shaw
Prothonotary/Clerk of Courts

(610)

(14)

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

JOHN C. AMICK and
JUDITH A. AMICK,
Plaintiffs

vs.

ALVIN W. GEARHART
Defendant

No. 08 -1060-CD

Type of Pleading:

DEMURRER

Filed on Behalf of:
Defendant

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
528 Liberty Boulevard
P.O. Box 487
DuBois, PA 15801
814-371-7768

Date: 6-30-08

FILED
m1103381 cc
JUL 01 2008

William A. Shaw
Prothonotary/Clerk of Courts

#3

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

JOHN C. AMICK and
JUDITH A. AMICK,
Plaintiffs

vs.

ALVIN W. GEARHART,
Defendant

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No. 08 - 1060 - CD

DEMURRER

AND NOW, comes the Defendant, Alvin W. Gearhart, and by his attorneys, Hanak, Guido & Taladay, files this Demurrer to the Complaint filed by the Plaintiffs in the above entitled case as follows:

1. In said Complaint, the Plaintiffs allege that the Defendant did not acquire the title to all of the coal owned by the Rochester and Pittsburgh Coal Company by deed dated December 13, 2000, purporting to be all the 921 acres located in Sandy Township, Clearfield County, Pennsylvania, which deed is recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument No. 200307332.
2. The Plaintiffs further allege that the cross-hatched area to be conveyed did not include the property owned by the Amicks set forth in paragraph 3.
3. To the contrary, the subject deed from the Rochester and Pittsburgh Coal Company clearly conveys to Alvin Gearhart, his heirs,

successors and assigns, all the estate, right, title, interest, claim or demand whatsoever, either in law or in equity, of, in or to all the coal and coal only on, in and/or underneath that certain tract, parcel and/or piece of land more fully described in Clearfield County Deed Book Volume 119, page 484, containing 921.00 acres, more or less, situate in Sandy Township, Clearfield County, Pennsylvania, known as the Alfred Bell Tract and identified as R&P Parcel No. 1839.

To have and to hold the same to the Grantee, his heirs, successors and/or assigns, forever.

A copy of said deed is attached hereto and marked Exhibit "A".

4. Consequently, as a result of said deed, Alvin Gearhart obtained all of the right, title and interest of said Rochester & Pittsburgh Coal Company in and to the coal underlying said tract containing 921 acres.

5. In addition thereto, the Plaintiffs allege that the reason for Exhibit "A" being attached as deed was that Gearhart was notified that the Rochester & Pittsburgh Coal Company had already conveyed the coal underneath the Amick's property by virtue of a deed dated September 1, 1922, to the DuBois Land Company, a copy of which is attached to the Plaintiff's Complaint and marked Exhibit "1" but that deed was never recorded.

6. The Plaintiffs failed to state that said deed was only not recorded but was not signed or acknowledged as required. Accordingly, said deed has no legal effect.

7. With regard to said coal interest, the Plaintiffs filed an Action to Quiet Title with regard to said coal interest in the Court of Common Pleas of Clearfield County, Pennsylvania, to No. 06-624-CD. All proceedings filed in said action to No. 06-624-CD is incorporated herein by reference thereto.

8. Pursuant to said action, this Court issued an Order dated May 30, 2006, which provided that title to the claimed premises was found to be vested in the Plaintiffs and that they are allowed to enjoy said property in peace. Said property being described as all the coal and other minerals (except for the coal known as the "Mahoning Vein" which was sold to the Bell, Lewis and Yates Coal Mining Company by lease dated the 17th day of May, A.D. 1866) which underlies the Amick tract.

9. As a result, the Amick's are estopped from claiming the title to the vein of coal known as the "Mahoning Vein" which is otherwise known as Lower Freeport Coal which vein is owned by Alvin Gearhart as a result of said deed from the Rochester and Pittsburgh Coal Company.

10. In this action, the Plaintiffs seek to overturn the Order of Court entered on May 20, 2006 in the previous action which they filed to No. 06-624-CD which is violation of the principle known as the Law of the Case.

WHEREFORE, Defendant, Alvin Gearhart, respectfully requests that this Court sustain Defendant's Preliminary Objection by way of Demurrer and dismiss the Plaintiff's Complaint.

HANAK, GUIDO & TALADAY

By 

AFFIDAVIT No. 36454

This Indenture

Made the 13th day of December, 2000, between

ROCHESTER & PITTSBURGH COAL COMPANY, a Pennsylvania corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business at 1800 Washington Road, Pittsburgh, Pennsylvania, 15241,

Grantor,

A
N
D

ALVIN W. GEARHART, of Box 307 Treasure Lake, DuBois, Clearfield County, Pennsylvania,

Grantee.

WITNESSETH that in consideration of the sum of

ONE AND 00/100 DOLLAR (\$1.00)

lawful money of the United States of America, unto him well and truly paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the Grantor does hereby remise, release and forever quitclaim unto the said party of the second part, his heirs, successors and assigns all the estate, right, title, interest, claim or demand whatsoever, either in law or in equity, of, in or to ALL THE COAL AND COAL ONLY on, in and/or underneath that certain tract, parcel and/or piece of land more fully described in Clearfield County Deed Book Volume 119, page 484, containing 921.00 acres, more or less, situate in Sandy Township, Clearfield County, Pennsylvania, known as the Alfred Bell Tract and identified as R&P Parcel No. 1839.

TO HAVE AND TO HOLD the same to the said Grantee, his heirs, successors and/or assigns, forever.

NOTICE - THIS DOCUMENT MAY SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P. L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.]

KAREN L. STARK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania
INSTRUMENT NUMBER
200307332
RECORDED ON
May 05, 2003
2:48:39 PM
Total Fees: \$
RECORDING FEES - \$13.00
COUNTY IMPROVEMENT \$2.00
FUND
RECORDED IMPROVEMENT \$3.00
JCS/ACCESS TO JUSTICE \$10.00
STATE UNIT TAX \$0.50
TOTAL \$28.50
CUSTOMER
GEARHART, ALVIN W

IN WITNESS WHEREOF, Rochester & Pittsburgh Coal Company, pursuant to due corporate authority, has caused this Indenture to be signed in its corporate name by its Vice President and it had caused to be affixed hereunto the common and corporate seal of said corporation, attested by its Secretary, the day and year first above written.

ROCHESTER & PITTSBURGH
COAL COMPANY

Attest:

W. L. Jones
Secretary

William D. Starnes
Vice President

NOTICE - THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966.

William D. Starnes

William D. Starnes

Commonwealth of Pennsylvania :

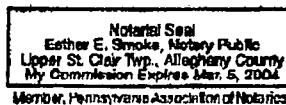
: ss.

County of Allegheny :

On this, the 4 day of December, 2000, before me, a Notary Public, the undersigned officer, personally appeared William D. Starnes, who acknowledged himself to be the Vice President of the ROCHESTER & PITTSBURGH COAL COMPANY of Allegheny County, a corporation, and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Vice President.

In witness whereof, I hereunto set my hand and official seal.

Ester E. Smoke
Notary Public





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

JOHN C. AMICK and
JUDITH A. AMICK,
Plaintiffs

vs.

ALVIN W. GEARHART,
Defendant

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No. 08 - 1060 - CD

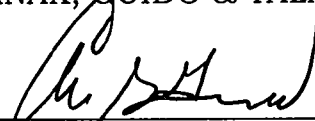
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Demurrer
filed in the above captioned action, were served upon the following by
United States First Class Mail, postage prepaid, deposited on the 30th
day of June, 2008, in the United States Post Office, DuBois,
Pennsylvania, addressed as follows:

CARL BELIN, JR., ESQ.
Belin, Kubista & Ryan LLP
PO Box 1
Clearfield, PA 16830

HANAK, GUIDO & TALADAY

By



Attorney for Defendant

sect 6 Lot 35
371-7489

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-1060-CD

JOHN C. AMICK and JUDITH A. AMICK
vs
ALVIN W. GEARHART

SERVICE # 1 OF 1

COMPLAINT

SERVE BY: 07/09/2008 HEARING: PAGE: 104261

DEFENDANT: ALVIN W. GEARHART
ADDRESS: 307 TREASURE LAKE
DUBOIS, PA 15801
ALTERNATE ADDRESS POSS 911 (16183 TREASURE LAKE ROAD)

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT

ATTEMPTS @ S.S. @ on I.L. RD. 4th on @ after wheat RD.

FILED
0/3:35 am
JUN 24 2008
William A. Shaw
Prothonotary/Clerk of Courts
OCCUPIED

SHERIFF'S RETURN

NOW, THIS 24TH DAY OF JUNE 2008 AT 1:30 AM / PM SERVED THE WITHIN

COMPLAINT ON ALVIN W. GEARHART, DEFENDANT

BY HANDING TO DOLLY GEARHART / DEFENDANTS WIFE

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

ADDRESS SERVED SEC 6 Lot 35 TREASURE LAKE, DUBOIS PA. 15801

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT FOR ALVIN W. GEARHART

AT (ADDRESS) _____

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

I MAKE RETURN OF NOT FOUND AS TO ALVIN W. GEARHART

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

_____ DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF
BY: Mark A. Crozier
Deputy Signature
Mark A. Crozier
Print Deputy Name

2

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

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
vs. : NO. 08 - 1060 - CD
ALVIN W. GEARHART, :
Defendant : COMPLAINT

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN, KUBISTA & RYAN LLP
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972 (PHONE)
(814) 765-9893 (FAX)

' FILED
013:09/01
JUN 09 2008
William A. Shaw
Prothonotary/Clerk of Courts
Att'y pd. \$75.00
ICC Sheriff
3CC Att'y

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

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
 : NO. 08 - - CD
vs. :
 :
ALVIN W. GEARHART, :
Defendant :

NOTICE

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

9YOU 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
1 North Second Street
Clearfield, PA 16830

(814) 765-2641 Ex 5982

JOHN C. AMICK AND JUDITH A. AMICK, :
Plaintiffs :
vs. : NO. 08 - - CD
ALVIN W. GEARHART, :
Defendant :

NOW COMES Plaintiffs, John C. Amick and Judith A. Amick, by and through their attorney, Carl A. Belin, Jr., of Belin, Kubista & Ryan LLP, file the following complaint seeking declaratory relief against Defendant Alvin W. Gearhart, and in support thereof aver as follows:

2. The Defendant is Alvin W. Gearhart, an individual who resides at 307 Treasure Lake, DuBois, Clearfield County, Pennsylvania 15801 ("**Defendant**," "**Gearhart**").

3. The Plaintiffs are the owners of a tract of land which is more fully described as follows:

ALL that certain piece, parcel or tract of land situate in the Township of Sandy, County of Clearfield and Commonwealth of Pennsylvania, more specifically described as follows:

BEGINNING at a stone on the northeast corner of said land near the bridge on the highway crossing Sandy Lick Creek; thence by lands of Hopkins Estate South forty-four (44°) degrees thirty-nine (39') minutes East five thousand and twenty-nine (5,029.00) feet to a post; thence South thirty-nine (39°) degrees West eight hundred eighty-two and five tenths (882.5) feet to a post; thence North forty-nine (49°) degrees three (03') minutes West one hundred thirty-six (136.00) feet to a post; thence South forty-one (41°) degrees fifty-seven (57') minutes West two hundred thirty-seven and eight tenths (237.8) feet to a point on Wise Avenue; thence along and across Wise Avenue South forty-nine (49°) degrees thirty-four (34') minutes East three hundred five and five tenths (305.5) feet to a post; thence along lands of Mrs. Lewis South forty-two (42°) degrees thirty-five (35') minutes West three hundred and fifteen (315.00) feet to a post; thence South eighty-two (82°) degrees seven (07') minutes East three hundred seventeen and two tenths (317.2) feet to a point in center of Long Avenue; thence along Long Avenue North seventy-seven (77°) degrees East three hundred and seventy-eight and eight tenths (378.8) feet to a post; thence continuing along Long Avenue South seventy-seven (77°) degrees fifteen (15') minutes East two hundred and sixty-one and four tenths (261.4) feet to a post; thence South forty-four (44°) degrees West sixteen hundred and forty and thirty-five hundredths (1,640.35) feet to a post; thence North forty-five (45°) degrees thirty (30') minutes West fifteen

and hundred sixty-nine and eight tenths (1,569.8) feet to a stone opposite Fourth Street; thence South forty-three (43°) degrees fifty-two (52') minutes West seven hundred fifty-five and six tenths (755.6) feet to a post; thence West two hundred eighty-one and nine tenths (281.9) feet to a post; thence North forty-four (44°) degrees thirty-nine (39') minutes West eighteen hundred fifty-two and six tenths (1,852.6) feet to a post; thence North forty-three (43°) degrees twenty-one (21') minutes East two hundred (200.00) feet to a post; thence North forty-four (44°) degrees thirty-nine (39') minutes West two thousand one hundred nineteen (2,119.00) feet to a post; thence North forty-four (44°) degrees East three hundred twelve and six tenths (312.6) feet to a post; thence North thirty-eight (38°) degrees thirty-six (36') minutes East twenty-three hundred (2,300.00) feet to a point; thence North sixty-five (65°) degrees nine (09') minutes East five hundred fifty-nine and nine tenths (559.9) feet to a stone, the place of beginning. CONTAINING 398.66 acres more or less.

4. That Defendant acquired all the coal owned by Rochester & Pittsburgh Coal Company described in a tract in a certain deed dated December 13, 2000, purporting to be 921.00 acres in Sandy Township, Clearfield County, Pennsylvania, recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument No. 200307332.

5. That the deed had attached thereto "Exhibit A" setting forth a crosshatched area which designated the "Area to

be conveyed" of 522.34 acres of "Alfred Bell" of the tract referred to in the deed to Gearhart while a tract of 398.66 acres of "Alfred Bell" is the same property set forth in Paragraph 3 was shown on Exhibit "A" ("~~Exhibit~~ "A") as being outside the area being conveyed.

6. That the crosshatched area "to be conveyed" did not include the property owned by the Amicks set forth in Paragraph 3.

7. That the deed from Rochester & Pittsburgh Coal Company was ambiguous in that: (1) Rochester & Pittsburgh Coal Company did not own all the coal under the tract referred to but owned only the coal designated the "Mahoning seam of coal" underlying the tract that was conveyed to Gearhart; and (2) the deed did not intend to convey the entire tract described therein by virtue of the "Exhibit A" attached thereto.

8. That it is believed and averred that the reason for Exhibit "A" being attached to the deed is that Gearhart was notified that Rochester & Pittsburgh Coal Company had already conveyed the coal underlying the Amicks' property by virtue of a deed dated September 1, 1922, to DuBois Land Company, a copy of which is attached hereto and marked Exhibit "1" but that deed was never recorded.

9. That the Amicks are the successors in title to DuBois Land Company by virtue of a quiet title filed in the Clearfield County Court of Common Pleas at No. 96-937-CD and by virtue of a deed from John R. Amilkavich and Gertrude J. Amilkavich to John C. Amick, Trustee, dated May 26, 1999, and recorded in the Office of the Recorder of Deeds of Clearfield County in Instrument No. 199908785, and by deed from John C. Amick, Trustee, to John C. Amick and Judith A. Amick, dated February 19, 2003, and recorded in the Office of the Recorder of Deeds of Clearfield County in Instrument No. 200302417.

10. That the purpose of this action is to seek a construction of the Gearhart deed that the actual area intended to be conveyed by Rochester & Pittsburgh Coal Company to Gearhart was the area described in Exhibit "A" to the deed which does not include the Amick property.

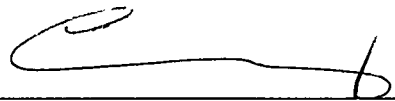
WHEREFORE, Amicks request Your Honorable Court to enter the following declaratory judgment:

(1) that the Rochester & Pittsburgh Coal Company conveyed to Gearhart the Mahoning seam of coal underlying the tract that was "crosshatched" of 522.34 acres of Alfred Bell in Exhibit "A" to said deed;

(2) that the tract conveyed by Rochester & Pittsburgh Coal Company did not include the Amick tract; and

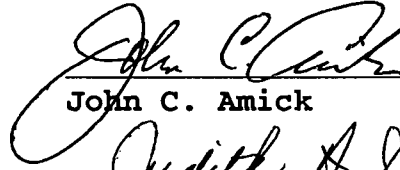
(3) such other relief as the Court deems appropriate.

BELIN, KUBISTA & RYAN LLP

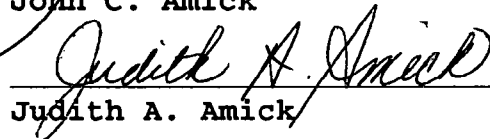
By 
Carl A. Belin, Jr., Esq.

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

Before me the undersigned officer, personally appeared
JOHN C. AMICK and JUDITH A. AMICK, who being duly sworn
according to law, depose and say that the facts set forth in
the foregoing Complaint are true and correct to the best of
their knowledge, information and belief.



John C. Amick



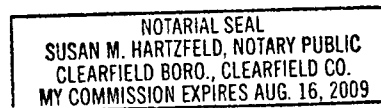
Judith A. Amick

Sworn and subscribed before me this 9th day of

June, 2008.



Notary Public



THIS DEED, made the fourth day of February in the year of our Lord, one thousand nine hundred and twenty two, between the JEFFERSON AND CLEARFIELD COAL AND IRON COMPANY, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, party of the first part (hereinafter called the Grantor); and THE EUROPE LAND COMPANY, a like corporation, party of the second part (hereinafter called the Grantee).

WITNESSETH, that in consideration of the sum of One thousand Dollars (\$1,000.00), in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantee, its successors and assigns, all the coal of what is known as the "MAMONIE TRIP" (being that same vein or seam of coal heretofore mined by Grantor under the terms of a certain mining lease dated May 17, 1904, between Alfred Bull, of the first part, and the Bull Lumber and Lumber Coal Mining Company, of the second part, which lease was duly assigned to said Grantor, lying in, upon and under that certain tract of land situate in the Township of Sandy, County of Clearfield and State of Pennsylvania, bounded and described as follows, to-wit:

1834
(over)

BEGINNING at a stone on the northeast corner of said land near the bridge on the highway crossing Sandy Creek; thence by lands of Hopkins Estate South 44 degrees 30 minutes East-fifty thousand and twenty nine (50,259) feet to a post; thence South 84 degrees West eight hundred eighty two and five tenth (882.5) feet to a post; thence North 42 degrees 3 minutes West one hundred and thirty six (136) feet to a post; thence South 42 degrees 57 minutes West two hundred thirty seven and eight tenth (237.8) feet to a point on Wice Avenue; thence along and across Wice Avenue South 45 degrees 34 minutes East three hundred five and five tenth (305.5) feet to a post; thence along lands of Mrs.

South 45 degrees 30 minutes West three hundred and fifteen
 (215) feet to a post; thence South 82 degrees 7 minutes West three
 hundred and seventeen and two tenths (317.2) feet to a point in
 center of Long Avenue; thence along Long Avenue North 77 degrees
 West three hundred and seventy eight and eight tenths (378.8) feet
 to a post; thence continuing along Long Avenue South 77 degrees 10
 minutes East two hundred and sixty one and four tenths (261.4) feet
 to a post; thence South 66 degrees West sixteen hundred and forty
 and thirty five hundredths (1640.35) feet to a post; thence North 45
 degrees 30 minutes West fifteen hundred and sixty nine and eight
 tenths (1569.8) feet to a stone opposite Fourth Street; thence South
 45 degrees 30 minutes West seven hundred fifty five and six tenths
 (755.6) feet to a post; thence West two hundred eighty one and nine
 tenths (281.9) feet to a post; thence North 44 degrees 39 minutes
 West eighteen hundred fifty two and six tenths (1852.6) feet to a
 post; thence North 45 degrees 31 minutes East two hundred (200)
 feet to a post; thence North 44 degrees 39 minutes East two
 thousand one hundred and eighteen (2118) feet to a post; thence
 North 44 minutes East three hundred twelve and six tenths (312.6)
 feet to a post; thence North 35 degrees 36 minutes East twenty
 three hundred (2300) feet to a point; thence North 45 degrees 9
 minutes East five hundred fifty nine and nine tenths (559.9) feet
 to a stone, the place of beginning. *Containing 898.66 Acres ±*

Being the unnamed portion of the coal conveyed to said
 Grantor by deed of Katharine B. Lewis, surviving Executrix of the
 Will of Alfred Bell, deceased, by deed dated October 21, 1901, and
 recorded in the Recorder's Office of Clearfield County in Book
 Book Vol. 119, page 404.

It is distinctly understood and agreed for the considera-
 tion aforesaid, that the coal hereby granted and conveyed, shall
 not at any time in the future be mined and removed by the Grantee,
 its successors or assigns, but shall be left for the support of the

overlying land, and this deed is accepted by the Grantee with the
 covenant above stated and this agreement shall be construed as a
 covenant running with the land heretofore granted and conveyed.

And the said Jefferson and Olmfield Coal and Iron
 Company, Grantor, hereby authorizes and empowers E. M. Clark as its
 attorney to acknowledge this indenture for it, and in its name and
 stead.

IN WITNESS WHEREOF, the said Jefferson and Olmfield
 Coal and Iron Company has caused this deed to be signed by its
 President and attested by its Secretary and the corporate seal to
 be hereunto affixed, the day and year first above written.

JEFFERSON AND OLMFIELD
 COAL AND IRON COMPANY,

By _____
 President.

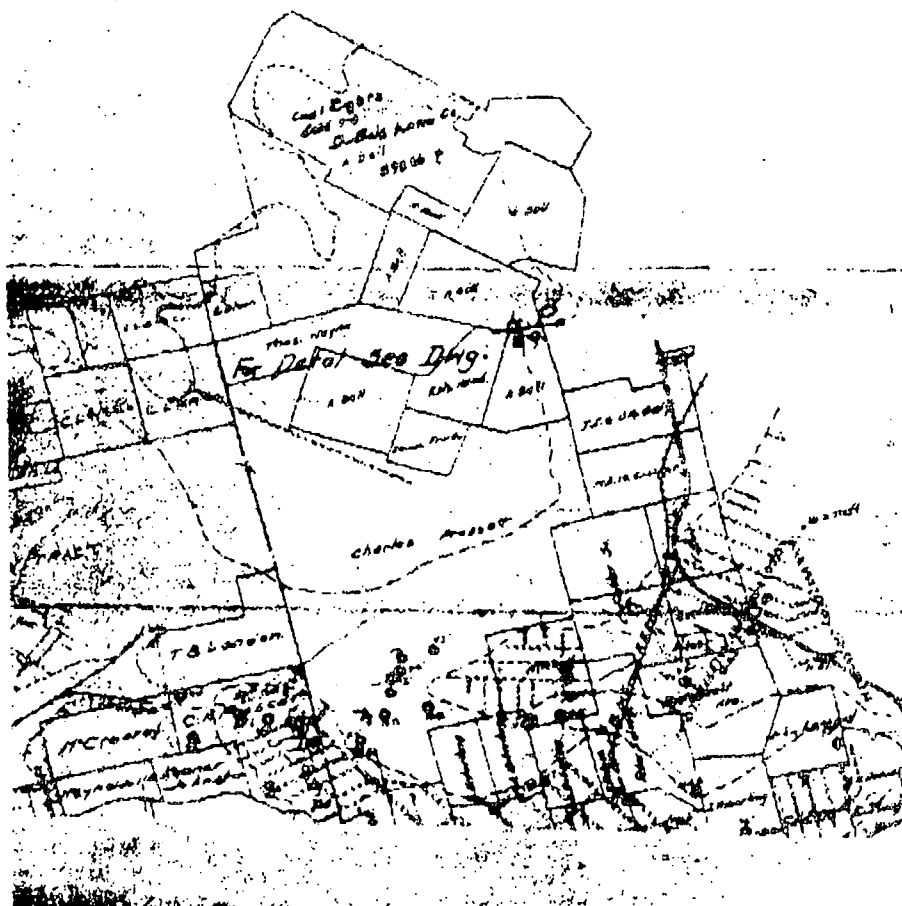
Attest:-- _____
 Secretary.

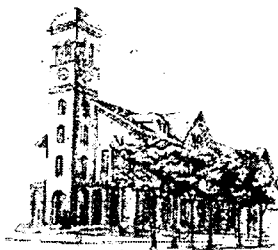
STATE OF PENNSYLVANIA ss.
 COUNTY OF INDIANA.

On this 2nd day of Sept. A.D. 1906,
 before me, the undersigned, a Notary Public in and for said County
 and State, personally appeared E. M. Clark, the attorney hereinbe-
 fore named, who in due form of law acknowledged the foregoing
 Indenture to be the act and deed of the Jefferson and Olmfield
 Coal and Iron Company, and desired the same to be recorded as such.
 WITNES my hand and Notarial seal the day and year
 aforesaid.

 Notary Public.

My commission expires _____





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

November 6, 2008

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

RE: John C. Amick and Judith A. Amick
vs
Alvin W. Gearhart
No. 08-1060-CD
Superior Court No. 1515 WDA 2008

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office.

Sincerely,

William A. Shaw
Prothonotary

Recd
FILED
014:00:01
NOV 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

John C. Amick and Judith A. Amick

Vs.

Case No. 2008-01060-CD

Alvin W. Gearhart

FILED

NOV 14 2008

William A. Shaw

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF CONTENTS

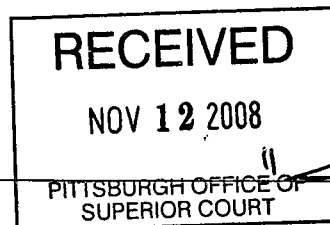
NOW, this 16th day of November, 2008, the undersigned, Prothonotary or Deputy Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court of record, does hereby certify that attached is the original record of the case currently on Appeal.

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

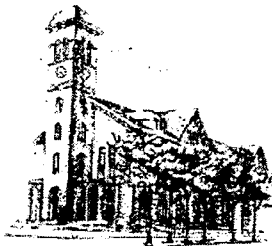
By: *William A. Shaw*
William A. Shaw, Prothonotary

Record, Etc. Received:

Date: 11/12/08



(Signature & Title)



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

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Carl A. Belin, Jr., Esq.
PO Box 1
15 N. Front Street
Clearfield, PA 16830

Anthony S. Guido, Esq.
PO Box 487
DuBois, PA 15801

John C. Amick and Judith A. Amick
Vs.
Alvin W. Gearhart

Court No. 08-1060-CD; Superior Court No. 1515 WDA 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on November 6, 2008.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 08-1060-CD

John C. Amick and Judith A. Amick

Vs.

Alvin W. Gearhart

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	06/09/08	Civil Complaint	13
02	06/24/08	Sheriff Return	01
03	07/01/08	Demurrer	08
04	07/10/08	Order, Re: Defendant's Demurrer, oral argument is scheduled	01
05	07/16/08	Certificate of Service	02
06	08/14/08	Order, Re: briefs to be submitted	01
07	08/27/08	Order, Re: Defendant's Demurrer is granted; Plaintiffs' Complaint is dismissed with prejudice	01
08	09/11/08	Motion to Add Deed to Record with Order admitting deed into the record of this case	08
09	09/12/08	Certificate of Service	02
10	09/15/08	Appeal to Superior Court	03
11	09/15/08	Proof of Service	02
12	09/16/08	Order, Re: concise statement to be filed	01
13	09/18/08	Appeal Docket Sheet, Superior Court No. 1515 WDA 2008	03
14	09/29/08	Sheriff Return	01
15	09/30/08	Statement of Errors Complained of on Appeal	05
16	10/16/08	Opinion	04

Civil Other-COUNT

Date		Judge
6/9/2008	New Case Filed.	No Judge
	Filing: Civil Complaint Paid by: Belin, Carl A. Jr. (attorney for Amick, John C.) Receipt number: 1924412 Dated: 6/9/2008 Amount: \$95.00 (Check) 1CC shff and 3CC Atty.	No Judge
6/24/2008	Sheriff Return, Now, this 24th day of June 2008 at 1:30 pm Served the within Complaint on Alvin W. Gearhart by handing to Dolly Gearhart. So Answers, Chester A. Hawkins, Sheriff by s/Mark A. Coudriet, deputy.	No Judge
7/1/2008	Demurrer, filed by s/ Anthony S. Guido, Esquire. no CC	No Judge
7/10/2008	Order, this 11th day of July, 2008, upon consideration of the Defendant's Demurrer, it is Ordered that Oral Argument is scheduled to be held on the 8th day of August, 2008, at 2:30 p.m. in Courtroom 1. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC Atty. Guido	Fredric Joseph Ammerman
7/16/2008	Certificate of Service, copy of the Order of Court dated July 11, 2008, was served upon Carl Belin, Jr., Esquire, by First Class Mail on the 15th day of July, 2008. Filed by s/ Anthony Guido, Esquire. No CC	Fredric Joseph Ammerman
8/14/2008	Order, this 8th day of August, 2008, following argument on the Defendant's Preliminary Objections in the nature of a demurrer, it is Ordered that counsel for Plaintiff have no more than 10 days from this date in which to submit letter brief. Counsel for the Defendant shall have no more than 15 days from this date in which to submit a reply brief, if he should wish to do so. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Belin, Guido	Fredric Joseph Ammerman
8/27/2008	Order, this 26th day of August, 2008, upon consideration of the Demurrer filed on behalf of the Defendant, it is Ordered: the Defendant's Demurrer is granted. The Plaintiffs' Complaint is dismissed with prejudice. by The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Belin, Guidon	Fredric Joseph Ammerman
9/11/2008	Motion to Add Deed to Record, filed by s/ Carl A. Belin, Jr., Esquire. 3CC Atty. Belin	Fredric Joseph Ammerman
	Order, this 11th day of Sept., 2008, the motion is granted and a certified copy of the deed recorded as instrument No. 200307332 is admitted into the record of this case. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Belin	Fredric Joseph Ammerman
9/12/2008	Certificate of Service, filed. Sent a certified copy of Plaintiff's Motion and Order to Add Deed to Record and Order in the above-captioned matter by first class mail on the 12th day of September 2008 to Anthony S. Guido Esq., filed by s/ Carl A. Belin Esq. No CC.	Fredric Joseph Ammerman
9/15/2008	Filing: Appeal to High Court Paid by: Belin, Carl A. Jr. (attorney for Amick, John C.) Receipt number: 1925875 Dated: 9/15/2008 Amount: \$50.00 (Check) For: Amick, John C. (plaintiff) 4CC Atty Belin and 1CC & check to Superior Court.	Fredric Joseph Ammerman
	Proof of Service of Notice of Appeal, copies of th notice of appeal, docket entries, and this proof of service were served upon Honorable Fredric J. Ammerman, Pres. Judge, and Anthony S. Guido, Esquire, by first class mail on sept. 15, 2008. filed by s/ Carl A. Belin, Jr., Esquire. 5CC Atty	Fredric Joseph Ammerman
9/16/2008	Order, this 16th day of Sept., 2008, this Court having been notified of Appea to the Superior Court of PA, it is Orderd that John C. Amick and Judith A. Amick, appellants, file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Belin, Guido	Fredric Joseph Ammerman
9/18/2008	Appeal Docket Sheet, Superior Court Number 1515 WDA 2008, filed.	Fredric Joseph Ammerman

Date: 11/6/2008

Time: 04:37 PM

Page 2 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2008-01060-CD

Current Judge: Fredric Joseph Ammerman

John C. Amick, et alvs.Alvin W. Gearhart

Civil Other-COUNT

Date	Judge
9/29/2008	Sheriff Return, RETURN COSTS So Answers, Chester A. Hawkins, Sherifi Fredric Joseph Ammerman by s/Marilyn Hamm Shff Hawkins costs pd by Belin \$47.61
9/30/2008	Statement of Errors Complained of on Appeal, filed by s/ Carl A. Belin, Jr., Fredric Joseph Ammerman Esquire. 1CC Judge Reilly; 2CC Atty
10/16/2008	Opinion, dated October 15, 2008, filed. (SEE ORIGINAL FOR DETAILS) Th Fredric Joseph Ammerman being the case, Plaintiffs have no claim to any title and have no standing to pursue their first issue. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Belin and Guido and 1CC D. Mikesell and Law Library (without memo)

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

NOV 06 2008

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

Date: 11/6/2008

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 04:34 PM

ROA Report

Page 1 of 1

Case: 2008-01060-CD

Current Judge: Fredric Joseph Ammerman

John C. Amick, et alvs. Alvin W. Gearhart

Civil Other-COUNT

Date	Selected Items	Judge
9/18/2008	13 Appeal Docket Sheet, Superior Court Number 1515 WDA 2008, filed.	Fredric Joseph Ammerman
9/29/2008	14 Sheriff Return, RETURN COSTS So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Belin \$47.61	Fredric Joseph Ammerman 1
9/30/2008	15 Statement of Errors Complained of on Appeal, filed by s/ Carl A. Belin, Jr. Esquire. 1CC Judge Reilly; 2CC Atty	Fredric Joseph Ammerman 5
10/16/2008	16 Opinion, dated October 15, 2008, filed. (SEE ORIGINAL FOR DETAILS) Th being the case, Plaintiffs have no claim to any title and have no standing to pursue their first issue. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Belin and Guido and 1CC D. Mikesell and Law Library (without memo)	Fredric Joseph Ammerman 24

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7/1/2008	③ Demurrer, filed by s/ Anthony S. Guido, Esquire. no CC 8	No Judge
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7/16/2008	⑤ Certificate of Service, copy of the Order of Court dated July 11, 2008, was served upon Carl Belin, Jr., Esquire, by First Class Mail on the 15th day of July, 2008. Filed by s/ Anthony Guido, Esquire. No CC	Fredric Joseph Ammerman 2
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8/27/2008	Order, this 26th day of August, 2008, upon consideration of the Demurrer ⑦ filed on behalf of the Defendant, it is Ordered: the Defendant's Demurrer is granted. The Plaintiffs' Complaint is dismissed with prejudice. by The Cour /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Belin, Guidon	Fredric Joseph Ammerman 1
9/11/2008	⑧ Motion to Add Deed to Record, filed by s/ Carl A. Belin, Jr., Esquire. 3CC Atty. Belin	Fredric Joseph Ammerman 8
	Order, this 11th day of Sept., 2008, the motion is granted and a certified copy of the deed recorded as instrument No. 200307332 is admitted into the record of this case. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Belin	Fredric Joseph Ammerman
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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JOHN C. AMICK AND JUDITH A. AMICK, : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

Appellants

v.

ALVIN W. GEARHART,

Appellee

No. 1515 WDA 2008

08-1060-CD

Appeal from the Order entered on August 26, 2008
in the Court of Common Pleas of Clearfield County,
Civil Division, No. 08-1060-CD

BEFORE: MUSMANNO, DONOHUE and SHOGAN, JJ.

MEMORANDUM:

FILED: September 8, 2009

John C. and Judith A. Amick ("the Amicks") appeal from the Order dismissing their Complaint and granting the Preliminary Objection in the nature of a Demurrer filed by Alvin W. Gearhart ("Gearhart") in this real property case. We affirm.

This appeal arises out of a dispute regarding title to a vein of coal in and under a 398.66-acre parcel of land in Clearfield County, Pennsylvania.¹ In 2000, the Rochester and Pittsburgh Coal Company ("R&P") conveyed to Gearhart, by a recorded quitclaim deed (hereinafter "2000 deed"),² all of the coal (and coal only) underlying a 921-acre tract in Clearfield County, "known

¹ We note that the parties do not dispute that the Amicks own the surface rights to the 398.66-acre parcel; rather, this case concerns which party holds title to *only the coal* underlying this particular parcel. **See** Brief for Appellee at 2; Complaint, 6/9/08, at 1 ¶ 3.

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William A. Shaw
Prothonotary/Clerk of Courts

as the Alfred Bell Tract and identified as R&P Parcel No. 1839." Attached to the 2000 deed as an exhibit was a map (hereinafter "the map"), which lists two adjoining parcels, one totaling 522.34 acres and the other 398.66 acres (the latter being the parcel owned by the Amicks), **both** parcels bearing the number "1839" and the words "ALFRED BELL[.]"³ A legend on the map shows crosshatching designating one of the adjoining parcels (more specifically, the underlying coal) as the "*Area to be Conveyed[.]*" Of significance to this case, the 522.34-acre parcel is designated with crosshatching on the map, whereas the 398.66-acre parcel bears no crosshatching.

In their Complaint, the Amicks sought declaratory relief as to their claim of ownership of the coal rights underlying the 398.66-acre parcel. The Amicks claimed that R&P intended to convey to Gearhart, in the 2000 deed, title to *only* the coal underlying the 522.34-acre parcel, as this was the only parcel designated with crosshatching on the map attached to that deed. The Amicks asserted that R&P intentionally did not mark the 398.66-acre parcel with crosshatching on the map, thus not designating it as an "*Area to be Conveyed*" via the 2000 deed. According to the Amicks, the 398.66-acre parcel bore no crosshatching because R&P allegedly previously had conveyed

² A copy of the 2000 deed is attached to Gearhart's Demurrer as Exhibit A. **See** Demurrer, 7/1/08, Exhibit A.

³ We note that when one adds the acreage from the adjoining parcels (*i.e.*, 522.34 plus 398.66 acres), a total of 921 acres is reached.

the coal rights underlying that parcel to the DuBois Land Company ("DuBois") in a deed⁴ dated 1922 (hereinafter "1922 deed").⁵ The Amicks' Complaint alleged that they are the successors in title to DuBois, and thus hold exclusive title to the coal underlying the 398.66-acre parcel. Significantly, however, the 1922 deed (of which the Amicks obtained a copy from R&P) ***was not recorded, acknowledged, or signed***, and neither party can locate the original. The Amicks also asserted in their Complaint that R&P provided Gearhart with advance notice that it lacked ownership of the coal rights underlying the 398.66-acre parcel by virtue of the 1922 deed.

Gearhart responded to the Amicks' Complaint by filing a Preliminary Objection in the form of a Demurrer. Gearhart contended in his Demurrer that the 2000 deed unambiguously conveyed to him coal rights underlying the entire 921-acre "ALFRED BELL" tract owned by R&P, including the coal underlying the Amicks' 398.66-acre parcel. Gearhart also maintained that

⁴ A copy of this purported deed, which is almost completely indecipherable, is attached to the Amicks' Complaint as Exhibit A. **See** Complaint, 6/9/08, Exhibit A.

⁵ Although the Amicks asserted in their Complaint that R&P allegedly previously had conveyed title to the coal underlying the 398.66-acre parcel to DuBois, in their appellate brief, the Amicks maintain that the grantor in this purported transaction was not R&P, but its predecessor in title, Jefferson and Clearfield Coal and Iron Company. Complaint, 6/9/08, at 4 ¶ 8; Brief for Appellant at 5.

the unrecorded and unsigned 1922 deed had no legal effect.

The trial court later heard oral argument on Gearhart's Demurrer. Subsequently, upon consideration of the oral argument and the parties' respective briefs, the trial court granted Gearhart's Demurrer and dismissed the Amicks' Complaint with prejudice by an Order dated August 26, 2008. The trial court concluded that the 2000 deed clearly and unambiguously conveyed to Gearhart R&P's coal rights to the entire 921-acre tract (including the 398.66-acre parcel), and that the unrecorded 1922 deed was meaningless and void. The Amicks then instituted the instant timely appeal from the August 26, 2008 Order.

On appeal, the Amicks raise the following claims for our review:

1. Whether all parts of a quitclaim deed, including a map which was made a part of the deed as recorded, are to be considered in determining the intention of the parties to the transaction?
2. Whether [the] map, which was made part of [the 2000] deed as recorded and which identified the tract number appearing in the typed description, should be construed with the description to determine what was intended to be conveyed in the transaction?
3. Where [the] map attached to the [2000] deed limits the tract to be conveyed[,], which appears to be in conflict with the tract described in the [2000] deed, does an ambiguity exist which would allow for evidence of the circumstances surrounding the transaction to be admitted, including evidence that [R&P's] predecessor had conveyed a part of the tract by an earlier conveyance to [the Amicks'] predecessor in title that was never recorded?
4. Where [the Amicks] averred that [R&P] had given notice to [Gearhart] that its predecessor in title had conveyed a part

of the [921-acre] tract to a predecessor in title of [the Amicks] but the transaction was never recorded, is that evidence admissible to corroborate an intention to limit the conveyance to the tract identified in the map as “the [A]rea to be [C]onveyed”?

5. May [Gearhart] properly raise [the defense of] issue preclusion in his [D]emurrer or should such issue be raised by an answer and new matter?

Brief for Appellant at 4.

The Amicks challenge the trial court’s Order granting of Gearhart’s Demurrer. Our standard of review is as follows:

Preliminary objections in the nature of demurrer test the legal sufficiency of the plaintiff’s complaint. Accordingly, to dispose of a demurrer, the court must examine the complaint to determine whether it sets forth a cause of action that, if proven, would vest the plaintiff with a right to relief. Accordingly,

when reviewing the dismissal of a complaint based upon . . . a demurrer, we treat as true all well-pleaded material, factual averments and all inferences fairly deducible therefrom. Where the demurrer will result in the dismissal of the action, it may be sustained only in cases that are clear and free from doubt. To be clear and free from doubt that dismissal is appropriate, it must appear with certainty that the law would not permit recovery by the plaintiff upon the facts averred. Any doubt should be resolved by a refusal to sustain the objections.

As a demurrer challenges the complaint’s legal sufficiency, our scope of review is plenary and our standard of review is *de novo*.

State Farm Mut. Auto. Ins. Co. v. Ware’s Van Storage, 953 A.2d 568, 571 (Pa. Super. 2008) (citations, brackets, and quotation marks omitted).

The Amicks contend on appeal that in light of the above-mentioned conflict between the 2000 deed and the map, an ambiguity exists, which

must be resolved at a trial by allowing admission of parol evidence regarding the intention of the grantor, R&P. **See** Brief for Appellant at 12, 14-15, 18. The Amicks also assert that since R&P had physically attached the map to the 2000 deed, this reveals R&P's intention that the map be construed as part of the deed. **Id.** at 12, 14. According to the Amicks, the trial court erred in ignoring the fact that only the 522.34-acre parcel was designated with crosshatching on the map, allegedly indicating this parcel alone as the "*Area to be Conveyed*" via the 2000 deed. **Id.** at 13. The Amicks also contend that the trial court improperly ignored their allegations that (1) R&P had marked only the 522.34-acre parcel with crosshatching since R&P's predecessor had previously conveyed title to the coal underlying the 398.66-acre parcel to DuBois, (2) R&P had informed Gearhart about the significance of the map and the crosshatching, and (3) Gearhart thus knew that R&P intended to convey to him rights to *only* the coal underlying the 522.34-acre parcel. **Id.**

The Amicks further argue that the trial court misinterpreted the significance of the 1922 deed and the purpose for which they presented a copy of this deed to the trial court, in that the court merely found that this deed failed to meet the requirements of establishing a conveyance. **See id.** at 20-22. Specifically, the Amicks assert that they

recognize[] that the [1922] deed, by itself, does not establish the underlying conveyance[, *i.e.*, the alleged 1922 conveyance of title to the coal underlying the 398.66-acre parcel from R&P's predecessor to the Amicks' predecessor, DuBois]. However, [the

1922 deed] is relevant to establish the intent of R&P in marking up the map so as to exclude the [398.66-acre] tract from the [2000] deed.

Id. at 20. According to the Amicks, had the trial court not dismissed their cause of action, "upon discovery, the records of R&P may have additional documents that could establish[] . . . the conveyance of title to the [coal underlying the 398.66-acre parcel to] DuBois []." **Id.** at 21.

Pursuant to Pennsylvania's recording statute, 21 P.S. § 351,⁶ any deed or other interest in land which is not recorded is deemed to be void as to any subsequent *bona fide* purchaser. **Id.** "The recording statute was intended to protect *bona fide* purchasers who give value for land. In order to qualify as a *bona fide* purchaser, the subsequent buyer must be without notice of a prior equitable interest." **Roberts v. Estate of Pursley**, 718 A.2d 837, 841 (Pa. Super. 1998) (citations omitted). "Either actual or constructive notice is sufficient to prevent [a] subsequent purchaser from acquiring the status of a

⁶ Section 351 states, in pertinent part, as follows:

Every [] deed, conveyance, contract, or other instrument of writing which [is] not [] acknowledged or proved and recorded . . . shall be adjudged fraudulent and void as to any subsequent *bona fide* purchaser or mortgagee or holder of any judgment, duly entered in the prothonotary's office of the county in which the lands, tenements, or hereditaments are situate, without actual or constructive notice unless such deed, conveyance, contract, or instrument of writing shall be recorded . . . before the recording of the deed or conveyance or the entry of the judgment under which such subsequent purchaser, mortgagee, or judgment creditor shall claim.

21 P.S. § 351.

bona fide purchaser." **Long John Silver's, Inc. v. Fiore**, 386 A.2d 569, 573 (Pa. Super. 1978) (citation omitted).

In **Roberts**, the appellees' predecessors in title had purchased two parcels of real property for value and properly recorded their deed, without notice of the appellants' predecessors' adverse interest in the subject parcels (as the latter had not recorded their deed to the property at that time). **Roberts**, 718 A.2d at 840. The appellees' predecessors subsequently devised the subject parcels to the appellees, and the appellees properly recorded their deed. **Id.** The appellants in **Roberts** claimed that they owned the subject parcels since their predecessors in title had previously acquired title to the property. **Id.** Although the appellants' predecessors had failed to record their interest in the subject parcels for nearly 113 years, they eventually did record their deed (*after* the appellees' predecessors had recorded their deed) in the Prothonotary's "Book of Treasurer's Acknowledgments of Unseated Lands" ("Prothonotary's Book"). **Id.** at 840, 843. The parties agreed, however, that the office of the Recorder of Deeds did not contain any record of an interest adverse to that of the appellees at the time of their recordation of their deed. **Id.** at 843.

On appeal, the **Roberts** Court rejected the appellants' contention that they were in compliance with the recording statute since record of their predecessors' title to the subject parcels was recorded in the Prothonotary's Book, thereby giving the appellees constructive notice of the appellants'

predecessors' adverse interest. **Id.** (stating that the "[a]ppellees had no reason to know of the record contained in the Prothonotary's Book . . . , and it is not likely that inquiry would have led to such knowledge."). The Court further stated that "[t]he fact that Appellants' predecessors [had] failed to record their deed for more than a century, when [21 P.S. § 444] requires recording within 90 days,^[7] is clearly enough evidence for the trial court to have determined that Appellees failed to have notice of Appellants' adverse interests." **Id.** at 844 (footnote added). Based on the foregoing, the Court concluded that since the appellees' predecessors were *bona fide* purchasers and acquired title superior to that of the appellants' predecessors, the appellees thus held superior title to that of the appellants under the

⁷ **See** 21 P.S. § 444 (providing, *inter alia*, that "[a]ll deeds made in the state [shall] be acknowledged and recorded within ninety days[.]").

recording statute.⁸ *Id.* at 842.

Here, the only allegation advanced by the Amicks in support of their apparent claim of title to the vein of coal underlying the 398.66-acre parcel is that R&P purportedly had conveyed its coal rights to that parcel in the 1922 deed to DuBois, the Amicks' predecessor. *See* Complaint, 6/9/08, at 4-5 ¶¶ 8-9. However, the Amicks concede in their brief that the unsigned and unrecorded 1922 deed, by itself, does not establish the conveyance of title to this vein of coal to DuBois. Brief for Appellant at 20. Rather, the Amicks maintain that their "primary purpose in [proffering] the copy of the [1922] deed is to corroborate, with other related evidence, that the intent of R&P [in the 2000 conveyance to Gearhart] was to convey only what [R&P]

⁸ We note that regarding application of the recording statute, the *Roberts* Court observed that "retroactive application of section 351 is not permitted." *Roberts*, 718 A.2d at 841 (citing *Farmers Nat'l Bank & Trust Co. of Reading*, 5 A.2d 94, 95 (Pa. 1939) (holding that section 351, enacted in 1925, and as amended in 1931, did not retroactively apply to deeds executed prior to 1931)). However, even though section 351 may not be applied to deeds executed prior to 1931, the recording statute nonetheless applies in the instant case to the 1922 deed pursuant to section 444, Pennsylvania's original recording statute (enacted in 1775 and amended in 1893). *See Roberts*, 718 A.2d at 841; *see also United States v. Purcell*, 798 F. Supp. 1102, 1115 (E.D. Pa. 1991) (discussing the application of section 444 as opposed to section 351 and collecting pertinent Pennsylvania case law). Under section 444, deeds which are not acknowledged and recorded within ninety days "shall be adjudged fraudulent and void against any subsequent purchaser . . . for a valid consideration[.]" 21 P.S. § 444. According to the *Roberts* Court, "[a]s evidenced by its language and its similarities to section 351, section 444 was also enacted to protect *bona fide* purchasers"; therefore, "sections 351 and 444 of Title 21 must be read together." *Roberts*, 718 A.2d at 841.

thought it owned[,], which did not include [title to the coal underlying the 398.66-acre] parcel.” ***Id.***

It is undisputed that the purported 1922 deed, which has remained unrecorded for over eighty-five years, is void, and a review of the record reveals that the Amicks have failed to establish that they (or DuBois) ever acquired title to the coal underlying the 398.66-acre parcel. Therefore, the Amicks, unlike the appellants in ***Roberts***, have not shown that they have an interest in this particular vein of coal adverse to that held by R&P and conveyed to Gearhart under the 2000 deed. It is also undisputed that Gearhart tendered valid consideration for R&P’s interest in the coal rights underlying the 921-acre parcel. Based on the foregoing, the Amicks lack standing to bring the instant action challenging the 2000 conveyance from R&P to Gearhart, as they have failed to proffer any credible evidence establishing that they hold title to the coal underlying the 398.66-acre parcel.

Moreover, the Amicks asserted in their Complaint that “it is **believed and averred** that the reason for [the map] being attached to the [2000] deed is that Gearhart was notified that [R&P] had already conveyed the coal underlying the [398.66-acre parcel] by virtue of [the 1922] deed . . . to DuBois. . . .” Complaint, 6/9/08, at 4 ¶ 8 (emphasis added). In light of this unsupported and speculative allegation and the fact that the 1922 deed is a legal nullity, the Amicks have simply not pleaded facts sufficient to support

their claim that Gearhart had notice of their purported adverse interest and is thus not a *bona fide* purchaser. **See** Brief for Appellant at 21-22. Our review of the record discloses no evidence that Gearhart had actual or constructive notice at the time of the execution and/or recordation of the 2000 deed that the Amicks or any other party had an interest adverse to R&P's in the coal rights conveyed to him under the deed. Gearhart had no reason to know of the unrecorded 1922 deed. **See Roberts**, 718 A.2d at 843. We therefore conclude that the Amicks' contention that Gearhart is not a *bona fide* purchaser protected by the recording statute lacks merit.

Based on the foregoing, viewing all well-pleaded facts and reasonable inferences in the Amicks' Complaint as true, we conclude that the trial court properly dismissed the Amicks' cause of action since they cannot recover on their claim as a matter of law. In light of this conclusion, R&P's intent as to the coal rights conveyed to Gearhart under the 2000 deed (and whether this deed is ambiguous due to the conflict between it and the map) is irrelevant.

The Amicks also point out that the 2000 deed was a quitclaim deed, and not a warranty deed. Brief for Appellant at 17. According to the Amicks, this deed contained no covenants, and the trial court thus improperly cited in its Opinion the rule that a grant set forth in a deed cannot be diminished or qualified by any other part of the deed. **Id.** at 18. The Amicks assert that the map would be admissible at a trial to explain the conflict between the 2000 deed and the map. **Id.**

However, in light of our determination that the Amicks have not alleged sufficient facts in their Complaint to sustain their cause of action, the fact that the 2000 deed was a quitclaim deed is immaterial and of no avail.

Similarly, we do not reach the Amicks' final contention on appeal that Gearhart improperly raised the defense of issue preclusion in his Preliminary Objections. ***See id.*** at 23-24.

Order affirmed.

Judgment Entered:

Eleanor K. Valecko
Deputy Prothonotary

DATE: September 8, 2009