

08-1973-CD

John Keith vs Shelly Miles

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

EQUITY DIVISION

JOHN KEITH,

Plaintiff

vs.

SHELLY MILES,

Defendant

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No. 08-

COMPLAINT

1. Plaintiff, JOHN KEITH, an individual, resides at 299 Old 30 Road, Jacksonville, North Carolina, 28540.

2. Defendant, SHELLY MILES, an individual, resides at 585 Crossroads Boulevard, Coalport, Pennsylvania, 16627.

3. On or about November 19, 2007 John Keith entered into a valid agreement for the sale of land with Harvey Dean Troxell and Sue Ann Troxell.

4. On November 19, 2007 a valid deed between the Plaintiff and Harvey Dean Troxell, et ux, was recorded in Clearfield County Instrument Number 200719070.

5. Plaintiff's property is a rectangular piece with a small strip approximately thirty-three feet (33') in width and five hundred and sixteen feet (516') in length, running from the main rectangular piece to State Highway Route #17033 (Crossroads Boulevard).

6. This small strip of land lies to the East of the Defendant's property between Defendant's property and the property of Eric Miles. By way of further pleading there is a great deal of confusion on this issue relating to an improper description in the Awards of Real Estate described below from the Estate of Ethel Mae Troxell.

7. Defendant is believed to be the owner of a garage which encroaches on this small strip between fifteen and sixty-six hundredths feet (15.66') and eighteen and fifty-nine hundredths feet (18.59') at its width and thirty four and twenty-seven hundredths feet (34.27') in length.

8. Plaintiff acquired his property from Harvey Dean Troxell et ux. by deed dated November 19, 2007 and recorded as Clearfield County Instrument Number 200719070.

9. Harvey Dean Troxell et ux. conveyed to Harvey Dean Troxell et ux. by deed dated December 4, 1992 and recorded in Clearfield County Deed Book 1504 at Page 371.

10. Harvey Dean Troxell acquired his property from Ethel Mae Troxell by Award of Real Estate recorded January 19, 1993 in Clearfield County Deed Book Volume 1510 at Page 95.

11. Defendant acquired her property through Richard Chapaloney, in his capacity as administrator of the Estate of his wife Carol A. Chapaloney as recorded by Indenture dated March 10, 2006.

12. Richard Chapaloney acquired administratorship as a result of an estate, duly probated on February 22, 2006 and recorded in the Office of the Register of Wills of Clearfield County in File # 99-689.

13. Carol A. Chapaloney acquired Defendant's property by an Award of Real Estate filed in the Orphan's Court Division for the Estate of Ethel Mae Troxell dated January 4, 1993 and recorded on January 19, 1993 in Clearfield County Deed Book Volume 1510 at Page 95.

14. Both Plaintiff and Defendant's property were originally owned by Ethel Mae Troxell and comprised the same tract of land.

COUNT I

EQUITY - EASEMENT BY NECESSITY

Paragraphs 1 - 14 are hereby incorporated by reference as though the same were set forth at length herein.

15. Unity of title for Plaintiff and Defendant's property was severed by the Award of Real Estate of January 4, 1993.

16. An easement is necessary in order for Plaintiff to use his land.

17. At the time of severance an easement was necessary for access to Plaintiff's property.

WHEREFORE, Plaintiff demands that judgement be entered in his favor and against Defendant, by declaration of the existence of an Easement by Necessity.

COUNT II

EQUITY - EASEMENT BY IMPLICATION

Paragraphs 1 - 17 are hereby incorporated by reference as though the same were set forth at length herein.

18. "An easement by implication can be found to exist where the intent of the parties is demonstrated by the terms of the grant, the property's surroundings and any other res gestae of the transaction." *Sentz v. Crabbs*, A.2d 894, 895-896 (Pa.Super. 1993).

19. By the layout of the parcels the grantor's intent is clear: that the small strip of property would be the means by which Plaintiff's property accessed the road.

20. Because of the location of Defendant's garage, an easement for Plaintiff is necessary.

WHEREFORE, Plaintiff demands that judgement be entered in his favor and against Defendant, by declaration of the existence of an Easement by Implication.

COUNT III

EQUITY - EJECTMENT

Paragraphs 1 - 20 are hereby incorporated by reference as though the same were set forth at length herein.

21. Plaintiff is the rightful legal owner of the small strip of land upon which Defendant's garage sits.

22. Defendant does not have Plaintiff's permission for the location of the garage.

23. Plaintiff comes to the Court of Equity with clean hands.

WHEREFORE, Plaintiff demands that judgement be entered in his favor and against Defendant, declaring the small strip of land to be Plaintiff's, that Defendant is a trespasser, and that a writ of Ejectment be issued against Defendant.

COUNT IV

FEES AND COSTS

Paragraphs 1 - 23 are hereby incorporated by reference as though the same were set forth at length herein.

24. Plaintiff has had to hire counsel at a rate of \$125 per hour to assist with the prosecution of this action.

25. Plaintiff has incurred costs of survey and title search in the prosecution of this action.

WHEREFORE, Plaintiff demands that judgement be entered in his favor and against Defendant, for reasonable costs and attorney fees.

Respectfully submitted,

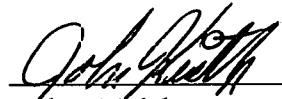
A handwritten signature in black ink, appearing to read 'D. R. Thompson', with a long, sweeping horizontal stroke extending to the right.

David R. Thompson, Esquire

VERIFICATION

I certify that the facts set forth in the foregoing **COMPLAINT** are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities.

Dated: 10/6/08



John Keith

CIVIL DIVISION - LAW

DEFENDANT

[illegible]

**COUNSEL OF RECORD FOR
THIS PARTY:**
David R. Thompson, Esq.
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED 3ce
01/14/09 Atty Thompson
APR 17 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOHN KEITH,

Plaintiff

vs.

SHELLY MILES,

Defendant

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No. 08-1973-CD

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PRAECIPE TO APPEND NOTICE TO DEFEND
TO COMPLAINT

TO THE PROTHONOTARY:

Kindly append the attached Notice to Defend to the Complaint, in the above-captioned matter.

DATE:



David R. Thompson, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOHN KEITH,

Plaintiff

vs.

SHELLY MILES,

Defendant

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No. 08 -1973-CD

NOTICE TO DEFEND

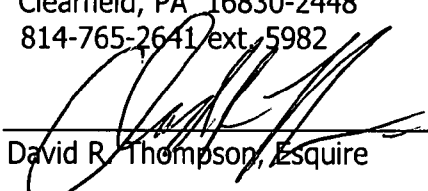
TO: SHELLY MILES:

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

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

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

Office of Court Administrator
Clearfield County Courthouse
230 E. Market Street, Suite 228
Clearfield, PA 16830-2448
814-765-2641 ext. 5982


David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOHN KEITH,

Plaintiff

VS

SHELLY MILES,

Defendant

No. 08-1973-CD

TYPE OF CASE
Civil Case

TYPE OF PLEADING:
Important Notice

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:

David R. Thompson, Esq.
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED
MAY 12 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOHN KEITH,

Plaintiff

vs.

SHELLY MILES,

Defendant

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No. 08-1973-CD

TO: Shelly Miles
585 Crossroads Boulevard
Coalport, PA 16627


DATE OF NOTICE: May 11, 2009

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

DATED: May 11, 2009



David R. Thompson, Esquire
P.O. Box 587
Philipsburg PA 16866
(814) 342-4100
I.D. No. 73053

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

JOHN KEITH,

Plaintiff

vs.

SHELLEY (SHELLY) MILES,

Defendant

NO. 08-1973-CD

FILED No CC.
m/11:43 am
MAY 13 2008 GR

William A. Shaw
Prothonotary/Clerk of Courts

ANSWER TO PLAINTIFF'S COMPLAINT

WILLIAM J. HABERSTROH, ESQUIRE
Counsel for Defendant
3615 Burgoon Road
Altoona, PA 16602
(814) 944-9486
PA I.D. #10364

DAVID R. THOMPSON, ESQUIRE
Counsel for Plaintiff
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg, PA 16866
(814) 342-4100
PA I.D. 73053

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

JOHN KEITH,

Plaintiff

vs.

NO. 08-1973-CD

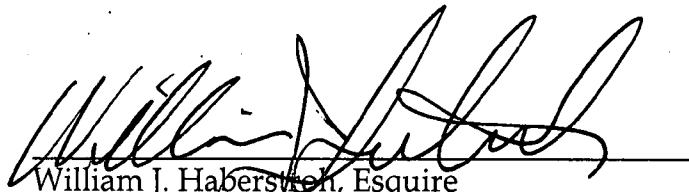
SHELLEY (SHELLY) MILES,

Defendant

NOTICE TO PLEAD

TO: JOHN KEITH

In accordance with Rules 1026 and 1361 of the Pennsylvania Rules of Civil Procedure, you are hereby notified to file a written response to the enclosed Answer and New Matter within twenty (20) days from service hereof or a judgment may be entered against you.


William J. Habershon, Esquire
Attorney for Defendant
PA ID# 10364

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

JOHN KEITH,

Plaintiff

vs.

SHELLEY (SHELLY) MILES,

Defendant

NO. 08-1973-CD

ANSWER TO PLAINTIFF'S COMPLAINT

1. Admitted for purposes of this litigation.
2. It is admitted that the Defendant named is Shelly Miles, however, it is denied that the spelling is correct in that Shelly is spelled Shelley and resides at 464 Crossroads Boulevard, Coalport, Clearfield County, Pennsylvania 16627.
3. The allegation contained in paragraph 3 of Plaintiff's Complaint is information solely within the knowledge of the Plaintiff, and the Defendant is unable to ascertain the truth and veracity of the allegation set forth therein, and therefore denies the same and demands strict proof of the allegation at the time of the trial.
4. It is admitted that a deed dated November 19, 2007, appears of record in Clearfield County Instrument No. 200719070. The validity of said deed is a conclusion of law to which no answer is required.
5. The allegations contained in paragraph 5 of Plaintiff's Complaint are denied. The property claimed by the Plaintiff is limited to the extent of the description set forth within the deed of conveyance hereinbefore referred to.

6. The location of the land of the Plaintiff is as set forth in the deed of conveyance. It is denied that any confusion exists as to the description of the property, and it is alleged that the description of Defendant's property has been consistent since 1922.

7. It is admitted that the Defendant is owner of a garage located upon property of the Defendant. It is denied, however, that the same encroaches as is referred to in Plaintiff's Complaint in that, after reasonable investigation, your answering Defendant is without sufficient information to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 7 of Plaintiff's Complaint, and therefore denies the same and demands strict proof at the trial of the cause.

8. It is admitted that a deed of conveyance appears of record as is reflected in Plaintiff's Complaint. The written deed of conveyance speaks for itself as to the content thereof.

9. It is admitted that a deed of conveyance appears of record as is reflected in Plaintiff's Complaint. The written deed of conveyance speaks for itself as to the content thereof.

10. It is admitted that a deed of conveyance appears of record as is reflected in Plaintiff's Complaint. The written deed of conveyance speaks for itself as to the content thereof.

11. It is admitted that a deed of conveyance appears of record as is reflected in Plaintiff's Complaint. The written deed of conveyance speaks for itself as to the content thereof.

12. Admitted.

13. It is admitted that a deed of conveyance appears of record as is reflected in Plaintiff's Complaint. The written deed of conveyance speaks for itself as to the content thereof.

14. It is admitted through the chain of title that Ethel Mae Troxell became the owner of the parcels of ground now purportedly owned by the Plaintiff and the Defendant. It is denied, however, that the said Ethel Mae Troxell owned the premises comprised of the same or single tract of land. Plaintiff's parcel of ground has been severed by deed of Frank Fry to H. B. Troxell dated April 24, 1922, and recorded in Clearfield County Deed Book Volume 256, at Page 160, consisting of a parcel of ground 87 feet by 56 feet, fronting upon a state highway, and the description has remained the same from that time to the present.

COUNT I

EQUITY - EASEMENT BY NECESSITY

14a. Paragraphs 1 through 14 of this Answer are incorporated herein by reference thereto as though being fully set forth herein.

15. The allegations contained in paragraph 15 of Plaintiff's Complaint are denied. In the alternative, it is alleged that the severance of the properties occurred on or about April 24, 1922.

16. The allegations contained in paragraph 16 of Plaintiff's Complaint are denied. In the alternative, it is alleged that Plaintiff's Complaint is purportedly described as fronting upon a public roadway, and, therefore, no easement would be necessary.

17. The allegations contained in paragraph 17 of Plaintiff's Complaint are denied for the reasons set forth in paragraph 16.

WHEREFORE, your Defendant demands that Plaintiff's Complaint be dismissed.

COUNT II

EQUITY - EASEMENT BY IMPLICATION

17a. Paragraphs 1 through 17 are hereby incorporated herein by reference thereto as though being fully set forth herein.

18. The allegations contained in paragraph 18 of Plaintiff's Complaint are a conclusion of law to which no response is required. To the extent that a response is required, the same is denied in that the property of the Plaintiff purports to front on a public roadway, thereby denying the existence of any easement implied or otherwise.

19. After reasonable investigation, your answering Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations set forth in paragraph 19 of Plaintiff's Complaint, and therefore denies the same and demands strict proof at the time of the trial of the cause.

20. After reasonable investigation, your answering Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations set forth in paragraph 20 of Plaintiff's Complaint, and therefore denies the same and demands strict proof at the time of the trial of the cause.

WHEREFORE, your answering Defendant demands that Plaintiff's Complaint be denied and dismissed.

COUNT III

EQUITY - EJECTMENT

20a. Paragraphs 1 through 20 of Defendant's Answer are hereby incorporated herein by reference thereto as though being fully set forth herein.

21. The allegations contained in paragraph 21 of Plaintiff's Complaint are denied. Defendant's garage, as it is presently located, has been situate in the same location since 1964, and any claim of the Plaintiff as to the ownership of the underlying land is denied.

22. The allegations contained in paragraph 22 of Defendant's Complaint are denied. In the alternative, it is alleged that at the time of the purchase of the Plaintiff's property, the garage was situated in the exact location and had been so situate since 1964, and the Plaintiff therefore knew, or should have known, as to the location of the garage and the purchase of the premises implied permission as to its location.

23. The allegations contained in paragraph 23 of Plaintiff's Complaint are denied. The garage of the Defendant, if situated upon lands of the Plaintiff, has been so situate since 1964, and the Plaintiff purchased the same knowing, or having reason to know, the location of the said garage and purchased the property with said knowledge. To now claim that he had no knowledge, denies the equitable claim that the Plaintiff comes before this Court with clean hands.

WHEREFORE, your answering Defendant demands dismissal of Plaintiff's Complaint and denial of the claims set forth therein.

COUNT IV

FEES AND COSTS

23a. Paragraphs 1 through 23 of Defendant's Answer are hereby incorporated herein by reference thereto as though being fully set forth herein.

24. Defendant is unable to ascertain the truth and veracity of the allegations as contained in paragraph 24 of Plaintiff's Complaint, as said averments are apparently

within the sole knowledge of the Plaintiff. Therefore, the same are denied, and strict proof is demanded at the trial of the cause. The allegation is further denied on the basis that the claim is not a lawful or legal claim in such matters.

25. Defendant is unable to ascertain the truth and veracity of the allegations as contained in paragraph 25 of Plaintiff's Complaint, as said averments are apparently within the sole knowledge of the Plaintiff. Therefore, the same are denied, and strict proof is demanded at the trial of the cause. The allegation is further denied on the basis that the claim is not a lawful or legal claim in such matters.

WHEREFORE, your answering Defendant demands that Plaintiff's Complaint be denied and dismissed.

NEW MATTER

26. NOW COMES the Defendant, SHELLEY MILES, and by way of further Answer, alleges the following New Matter.

27. The predecessor in title of the Defendant's land was Frank Fry, he having acquired the title to a 20-acre parcel of ground by deed dated May 29, 1907, and recorded in Clearfield County Deed Book Volume 186, at Page 212.

28. That the said Frank Fry conveyed the premises of the Defendant, being a parcel 87 feet fronting along a highway and extending back in equal width a distance of 516 feet, was conveyed by the said Frank Fry to H. B. Troxell, by deed dated April 24, 1922, and recorded in Clearfield County Deed Book Volume 256, at Page 160.

29. That the premises of the Plaintiff vested in Ethel Troxell by deed of Frank Fry dated August 20, 1952, and recorded in Clearfield County Deed Book Volume 423, at Page 540, which description, therein contained, specifically excepts and reserves out of the

said conveyance the premises of the Defendant. Further description of the property in that deed fronts upon a state highway thereby negating any requirement of an easement either by implication or necessity.

30. From April 24, 1922, your answering Defendant's parcel of property has been consistently described as therein set forth and was never merged with, or incorporated in, the parcel of ground now claimed by the Plaintiff.

31. At no time did the Plaintiff or the Plaintiff's predecessors in title maintain, claim or utilize any easement or access crossing or encumbering the property of the Defendant.

32. That the garage referred to in Plaintiff's Complaint, if indeed situate on property claimed by the Plaintiff, has been so situate and existing since 1964 and has been apparent upon the ground and observation since that time.

33. That the garage is an integral part and appurtenant to the dwelling house of the Defendant.

34. That if indeed the Defendant's garage does encroach upon the property of the Plaintiff, then indeed the Defendant has acquired, through the passage of time, a prescriptive easement to the premises so encumbered by the location of the garage.

35. That the garage existed and was fully visible upon observation as to its existence in the present location, at the time that the Plaintiff purchased the property as alleged in Plaintiff's Complaint.

36. That based upon notice of the recording of the deeds appertaining in this matter, and upon visual observation of the subject premises, the Plaintiff knew, or should

have known, as to the existence of the garage at the time of the purchase of the subject premises.

37. That the Plaintiff, notwithstanding the knowledge or imputed knowledge as to the location of the garage, purchased the same, and thereby inferredly accepted the location of the said garage.

38. That the Plaintiff, pursuant to the doctrine of equitable estoppel, and is now estopped from making a claim, as is set forth in his Complaint.

WHEREFORE, your Defendant respectfully requests Your Honorable Court to deny and dismiss the Complaint of the Plaintiff.

COUNTERCLAIM

By way of further answer, your Defendant alleges the following Counterclaim:

39. Paragraphs 26 through 38 of the Plaintiff's Answer and New Matter are incorporated herein by reference thereto as if the same had been set forth herein.

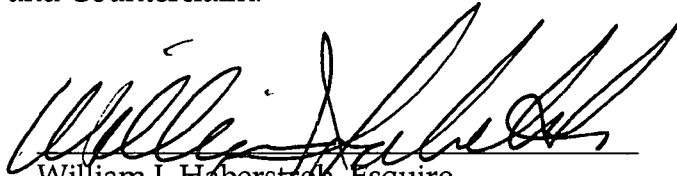
40. That your Defendant, and Defendant's predecessors in title, have occupied the premises claimed by the Plaintiff since 1964, a period in excess of 21 years.

41. That the possession has been open, adverse, hostile and notorious for a period in excess of 21 years.

42. That your Defendant has acquired a prescriptive easement over and upon the land alleged to be claimed by the Plaintiff, and is entitled to quiet enjoyment thereof.

43. That the Plaintiff is estopped from raising a claim of right, title or interest in and to the said premises, the same having existed at the time of the Plaintiff's purchase of the subject property, and the Plaintiff having full knowledge as to the location of the said garage.

WHEREFORE, your Defendant respectfully requests that Your Honorable Court enter an Order barring the Plaintiff and the Plaintiff's successors in title from asserting any right, title, claim or interest in and to the subject property upon which the garage is situate, and as such as may be inconsistent with the interest and claim of the Defendant as is set forth in this Answer, New Matter and Counterclaim.

A handwritten signature in black ink, appearing to read 'William J. Haberstroff', written over a horizontal line.

William J. Haberstroff, Esquire
Attorney for Defendant
PA I.D. #10364

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

JOHN KEITH,

Plaintiff

vs.

SHELLEY (SHELLY) MILES,

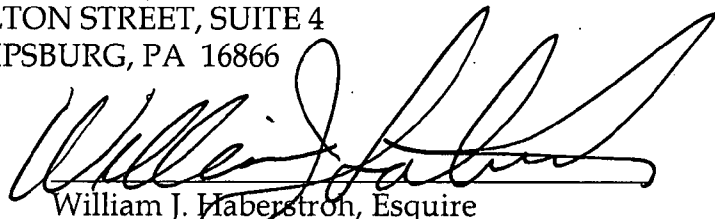
Defendant

NO. 08-1973-CD

CERTIFICATE OF SERVICE

I, WILLIAM J. HABERSTROH, ESQUIRE, 3615 Burgoon Road, Altoona, Pennsylvania 16602, hereby certify that a true and correct copy of the Answer to New Matter has been served on the following counsel by First Class United States Mail, Postage prepaid, on the 12 day of ~~April~~^{May}, 2009:

DAVID R. THOMPSON, ESQUIRE
P.O. BOX 587
308 WALTON STREET, SUITE 4
PHILIPSBURG, PA 16866


William J. Haberstroh, Esquire
Attorney for Defendant
PA I.D. #10364

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF BLAIR :

I verify that the statements made in the foregoing Answer, New Matter and Counterclaim are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 PA. C.S. Section 4904, relating to unsworn falsification to authorities.

5/11/09
Date

Shelley Miles
Shelley Miles

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

JOHN KEITH,

Plaintiff

vs.

SHELLEY (SHELLY) MILES,

Defendant

No. 08-1973-CD

TYPE OF PLEADING:
Certificate of Service

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esq.
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

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FILED 2cc
JUN 02 2009
Atty Thompson
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

JOHN KEITH,

Plaintiff

vs.

SHELLEY (SHELLY) MILES,

Defendant

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No. 08-1973-CD

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the **REPLY TO NEW MATTER AND COUNTERCLAIM** in the above captioned matter by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

William J. Haberstroh, Esquire
3615 Burgoon Road
Altoona, PA 16602

DATE: 6-1-09

BY:



David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOHN KEITH,

Plaintiff

vs.

SHELLEY (SHELLY) MILES,

Defendant

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No. 08-1973

REPLY TO NEW MATTER AND COUNTERCLAIM

AND NOW, comes the Plaintiff, John Keith, by and through his attorney, David R. Thompson, Esquire, and files the following Reply to New Matter and Counterclaim:

26. No response necessary.
27. Admitted.
28. Admitted.
29. Admitted.
30. Admitted in part, conclusion of law in part. It is admitted that said description specifically excepts and reserves out of the conveyance the premises that are now in the ownership of Defendant. It is also admitted that said description of the property in that deed fronts upon a state highway. It is a conclusion of law to which no response is necessary that said description negates any requirement of an easement either by implication or necessity. To the extent a response is required the same is denied and strict proof is demanded at the time of trial.

31. Admitted in part, denied in part, without sufficient information in part. It is admitted that Plaintiff did not utilize any easement or access, crossing or encumbering, the property of Defendant. By way of further pleading, such non-access is the subject of the immediate action. It is denied that Plaintiff does not claim such easement or access, for the reasons stated above. After reasonable investigation, the Plaintiff is without sufficient information at this time as to whether his predecessors in title utilized or claimed such easement or access, to formulate a response as to the truth or falsity of this accusation. By way of further pleading, Plaintiff merely avers that such a claim exists and may be exercised by Plaintiff.

32. Denied in part, without sufficient information in part. After reasonable investigation, the Plaintiff is without sufficient information at this time to comment on the truth or falsity of the allegation that said garage has existed on said property since 1964. It is denied that such garage is apparent in its encroachment, said encroachment being only discovered in a survey done by Plaintiff, strict proof is demanded at the time of trial.

33. After reasonable investigation the Plaintiff is without sufficient information to comment on the truth or falsity of the allegation. To the extent that a response is required the same is denied and strict proof is demanded at the time of trial.

34. Defendant's paragraph 34 represents a conclusion of law to which no response is necessary. To the extent that a response is deemed necessary the same is denied. By way of further pleading, the averments contained in Defendant's paragraph 34 are answered more fully in the following paragraph 41 of this Answer.

35. Denied. The averments contained in Defendant's paragraph 35 are strictly denied, and strict proof is demanded at the time of trial. By way of further pleading,

Plaintiff has more fully answered this charge in paragraph 32 of this Answer.

36. Conclusion of law. The averments contained in Defendant's paragraph 36 represent a conclusion of law to which no response is necessary. To the extent that a response is deemed necessary, the same is denied and strict proof is demanded at the time of trial. By way of further pleading, the averments contained in Defendant's paragraph 36 are answered more fully in paragraph 32 of this Answer.

37. Conclusion of law. The averments contained in Defendant's paragraph 37 represent a conclusion of law to which no response is necessary. To the extent that a response is deemed necessary, the same is denied and strict proof is demanded at the time of trial.

38. Conclusion of law. The averments contained in Defendant's paragraph 38 represent a conclusion of law to which no response is necessary. To the extent that a response is deemed necessary, the same is denied and strict proof is demanded at the time of trial.

39. No response necessary.

40. Admitted in part, without sufficient information in part. It is admitted that the Defendant is currently occupying said premises. After reasonable investigation the Plaintiff is without sufficient information to comment on the truth or falsity of the allegations that Defendant or Defendant's predecessors in title have occupied said premises for a period in excess of 21 years, or that Defendant's predecessors in title have ever occupied said premises. To the extent that a response is deemed necessary, the same is denied and strict proof is demanded at the time of trial.

41. Denied. By way of further pleading, Defendant's predecessor in title Ethel Mae


Troxell was the owner of both Plaintiff's and Defendant's real property until an award of real estate dated January 19, 1993 and recorded in the Clearfield County Recorder's Office to Volume 1510 page 94. As the owner of both parcels, Ethel Mae Troxell's possession could not be hostile against herself. The appropriate time to begin calculation of a prescriptive easement is from January 19, 1993 which is less than 21 years from the commencement of this action.

42. Conclusion of law. The averments contained in Defendant's paragraph 38 represent a conclusion of law to which no response is necessary. To the extent that a response is deemed necessary, the same is denied and strict proof is demanded at the time of trial.

43. Conclusion of law in part, Denied in part. It is denied that at the time of purchase Plaintiff had full knowledge as to the location of said garage. The remained of Defendant's paragraph 43 represents a conclusion of law to which no response is necessary. To the extent that a response is deemed necessary, the same is denied and strict proof is demanded at the time of trial.

WHEREFORE, Plaintiff respectfully requests that Defendant's Counterclaim be denied and dismissed with prejudice.

Respectfully Submitted,



David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOHN KEITH,

Plaintiff

vs.

SHELLEY (SHELLY) MILES,

Defendant

No. 08-1973-CD

TYPE OF CASE:
Civil Action - Law

TYPE OF PLEADING:
Praecipe to Append Verification to
Reply to New Matter and
Counterclaim

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esq.
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

⚡ **FILED** 2cc
016:52.611
JUN 11 2009
William A. Shaw
Prothonotary/Clerk of Courts
Att. Thompson

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOHN KEITH,

Plaintiff

vs.

SHELLEY (SHELLY) MILES,

Defendant

*

*

No. 08-1973-CD

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**PRAECIPE TO APPEND VERIFICATION TO REPLY TO NEW MATTER AND
COUNTERCLAIM**

TO THE PROTHONOTARY:

Kindly append the attached Verification to Plaintiff's Reply to New Matter and Counterclaim in the above-captioned matter.

DATE: 6-8-09



David R. Thompson, Esquire
Attorney for Plaintiff

VERIFICATION

Plaintiff hereby verifies that the statements made in this **Reply To New Matter And Counterclaim** are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

DATE: 6-3-09



John Keith

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOHN KEITH,

PLAINTIFF

VS.

SHELLEY (SHELLY) MILES,

DEFENDANT

No. 08-1973

TYPE OF CASE:
Civil Action - Law

TYPE OF PLEADING:
Motion for Summary Judgment

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esq.
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED 4CC

SEP 10 2009

William A. Shaw
Prothonotary/Clerk of Courts

60

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOHN KEITH,

Plaintiff

vs.

SHELLEY (SHELLY) MILES,

Defendant

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No. 08-1973

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the Plaintiff, John Keith, by and through his attorney, David R. Thompson, Esquire, and files the following Motion for Summary Judgment on Count III of Plaintiff's Complaint - Ejectment:

1. The Plaintiff commenced this matter by Complaint filed in the Clearfield County Courthouse on October 15, 2008.

2. Thereafter the Defendant filed an Answer to Plaintiff's Complaint on or about May 12, 2009.

3. Plaintiff filed a Reply to New Matter and Counterclaim on June 2, 2009.

4. The relevant pleadings have been closed in this matter.

5. There is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report.

6. Plaintiff is the rightful owner of such property as described in Clearfield County Instrument Number 200719070.

7. The existence of such record is admitted in Defendant's Answer paragraph 4.

8. Defendant is encroaching upon Plaintiff's property by virtue of a garage.

9. Defendant in her Answer, paragraph 7, asserts that "It is admitted that the Defendant is owner of a garage located upon property of the Defendant. It is denied, however, that the same encroaches as is referred to in Plaintiff's Complaint in that, after reasonable investigation, you answering Defendant is without sufficient information to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 7 of Plaintiff's Complaint, and therefore denies the same and demands strict proof at the trial of the cause."

10. Attached hereto is a true and correct copy of a survey report and map showing clearly the extent of Defendant's encroachment.

WHEREFORE, Plaintiff respectfully requests this honorable Court to grant Summary Judgment on Court III of Plaintiff's Complaint and against Defendant and further Order Defendant to remove her garage from the Plaintiff's property.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David R. Thompson", written in a cursive style.

David R. Thompson, Esquire

0 100'



LINE	BEARING	HORIZ DIST
L1	N3°30'00"E	30.520'
L2	N86°10'59"E	87.000'
L3	N88°09'00"E	32.150'

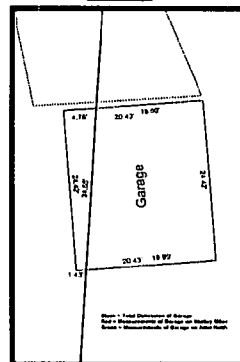
S.R. 2002 (a.k.a. Cross Roads Blvd.)

To Smoke Run →

To Utahville

See Insert

Insert



n/f Sinclair
Tax Parcel 101 - J17 - 53
Deed Instrument # 199901543

n/f Miles
Tax Parcel 101 - J17 - 90
Deed Instrument # 200606540

n/f Miles
Tax Parcel 101 - J17 - 54
Deed Instrument # 200500907

n/f Sinclair
Tax Parcel 101 - J17 - 163
Deed Instrument # 200503447

n/f Ryan
Tax Parcel 101 - J17 - 76
Deed Instrument # 199919259

John Keith
Tax Parcel 101 - J17 - 52
Deed Instrument # 200719070
4.756 Acres

Plat of Survey
for
John Keith

Situated in: Beccaria Township
Clearfield County, Pennsylvania

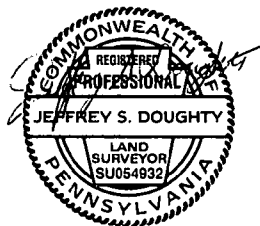
Scale: One Inch = One Hundred Feet

Surveyed by:
Environmental Land Surveying
1805 Philadelphia Street
Indiana, PA 15701
(724) 463-7303

Environmental
Land Surveying
& Solutions

Drawing #: 08-72

April 22, 2008



SURVEYOR'S REPORT

Jeffrey S. Doughty
Professional Land Surveyor
Environmental Land Surveying & Solutions, Inc.
Indiana, PA

For: John Keith
Subject Parcel: Clearfield County Tax Parcel 101-J17-52

With this report I bring several of my findings to your attention. This firm completed a field survey of the subject parcel on April 22, 2008 and the survey map is delivered with this report. The map shows the parcel's location along with surrounding physical objects and measurements.

Issues in Locating the Written Deed: The current deed description of the subject parcel of land can be broken down into two parts; (1) along the parent tract of land and (2) through the parent tract of land.

The first three courses and distances match exactly those courses and distances in the parent tract deed as described in Deed Book 186 Page 212. The fourth course matches exactly the course mentioned in the parent tract, but the distance is measured in feet (not perches) and was calculated to be 411.3 feet shorter than the distance in the parent tract description. The end of the fourth course and distance in the current deed description, therefore, is the point at which the current parcel starts through the parent tract.

The fifth course calls a general "northerly" direction along the line of Grantors. The fifth distance matches exactly the distance mentioned in the parent tract (perches). The sixth and final course of the current deed description matches exactly the northern course of the parent tract. The sixth and final distance was calculated to be 411.3 shorter than the northern distance of the parent tract.

The two above mentioned aspects were the starting point of my evaluation. No original monuments were physically found on either the parent tract or the current parcel. There were, however, subsequent monuments found which appear the related to a survey performed for the area. A portion of said survey was found in the current deed for tax parcel 101-J17-53.

There are two exceptions out of the subject property. The first listed exception is currently identified as tax parcel 101-J17-90. It is located in the northwest corner of the subject property deed description with its northern line running along the northern line of the subject property northern line, and its western line running along the western line of the subject property. This fact was determined by the calls in the deed description of tax parcel 101-J17-90; (1) course and distance number one is along the public road as mentioned in the subject property deed (2) course and distance number four is called as being along Joseph Wild, one of the priors to tax parcel 101-J17-53.

The second exception's northern line is located along the second course and distance of the subject property and its western line is located partially along the third course and distance of the subject property.

Issues of Ownership and Title:

There is a possession encroachment by way of a garage being used by the owner of tax parcel 101-J17-90 located in majority on the subject property's strip of residual land. Please see an attorney to pursue legal advice on this situation.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOHN KEITH,

Plaintiff

VS.

SHELLEY (SHELLY) MILES,

Defendant

No. 08-1973

FILED

SEP 11 2009

8/9:30/16 (GID)

William A. Shaw
Prothonotary/Clerk of Courts

4 cent to Ann

ORDER

AND NOW this 10th day of September, 2009 upon consideration of the attached MOTION FOR SUMMARY JUDGMENT, It is ORDERED AND DECREED that a hearing be scheduled for Defendant to show cause why said Petition should not be granted.

A hearing thereon shall be on the 6th day of October, 2009, at 9:00 (a.m.) p.m. at the Clearfield County Courthouse, Courtroom No. 1.

BY THE COURT:

Date: _____

Frederick J. Zimmerman
J.

FILED
SEP 11 2009
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6-11-09
for serving all appropriate parties.
☒ You are responsible for providing service to the following parties:
____ The Prothonotary's office has provided service to the following parties:
____ Plaintiff(s) _____ Defendant(s) Attorney
____ Plaintiff(s) _____ Defendant(s) Attorney
____ Defendant(s) _____
____ Special instructions:

JP

FILED 2009
01/11/57 am SCipione
OCT 05 2009 Copy to CIA
William A. Shaw
Honorary/Clerk of Courts
CW

No. 08-1973

William A. Shaw
Prothonotary/Clerk of Courts

CU

Civil Action - Law

TYPE OF PLEADING:

Praeceptum of Entry of Appearance

FILED ON BEHALF OF:

Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:

David R. Thompson, Esquire
Supreme Court I.D. No. 73053
Attorney at Law
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOHN KEITH,

Plaintiff

VS.

SHELLEY (SHELLY) MILES,

Defendant

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No. 08-1973

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance in the above-captioned matter on behalf of the Plaintiff,
John Keith.

Respectfully submitted,



Joseph M. Scipione, Esquire

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

JOHN KEITH

VS.

SHELLEY (SHELLY) MILES

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NO. 08-1973-CD

ORDER

NOW this 6th day of October, 2009, following argument on Plaintiff's Motion for Summary Judgment, it is the ORDER of this Court that counsel provide the Court with letter briefs within fifteen (15) days from date hereof.

BY THE COURT,



President Judge

4 **FILED** 10.08.2009
OCT 08 2009
William A. Shaw
Prothonotary/Clerk of Courts
Thompson/Scipion
Haberstroh
(60)

FILED

OCT 08 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/8/09

☐ You are responsible for serving all appropriate parties.

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

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

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

1A

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

JOHN KEITH,
Plaintiff

vs.


NO. 08-1973-CD

SHELLEY (SHELLY) MILES,
Defendant

ORDER

AND NOW, this 9 day of November 2009, upon consideration of the Parties' oral arguments and briefs, it is the ORDER of this Court that Plaintiff's Motion for Summary Judgment on Count III of Plaintiff's Complaint be and is hereby DENIED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

011-45/61 Thompson
NOV 10 2009

William A. Shaw
Prothonotary/Clerk of Courts

(611)

FILED

NOV 10 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/10/09

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Institutions:

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

JOHN KEITH

Plaintiff

vs.

SHELLEY (SHELLY) MILES

Defendant

FILED²

NOV 16 2009

W/12:05h
William A. Shaw
Prothonotary/Clerk of Courts
License to Atty

NO. 08-1973-CD

PRAECIPE FOR WITHDRAWAL
AND ENTRY OF APPEARANCE

Filed on Behalf of:
Shelley (Shelly) Miles, Defendant

Counsel of Record for this Party:
William J. Haberstroh, Esquire
PA ID #10364

LAW OFFICES OF WILLIAM J. HABERSTROH
3615 Burgoon Road
Altoona, Pennsylvania 16602
(814) 944-9486

Shelley A Miles
Shelley (Shelly) Miles, Pro Se

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOHN KEITH,

Plaintiff

VS.

SHELLEY (SHELLY) MILES,

Defendant

No. 08-1973-CD

TYPE OF CASE:
Civil Action - Law

TYPE OF PLEADING:
Certificate of Readiness

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:
Joseph M. Scipione
Attorney at Law
Supreme Court I.D. 210163
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

5
FILED
DEC 15 2009
William A. Shaw
Prothonotary/Clerk of Courts
9/3/3930 Atty Scipione

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOHN KEITH,

Plaintiff

vs.

SHELLEY (SHELLY) MILES,

Defendant

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No. 08-1973-CD

To the Prothonotary:

Please place the above-captioned case on the trial list. I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

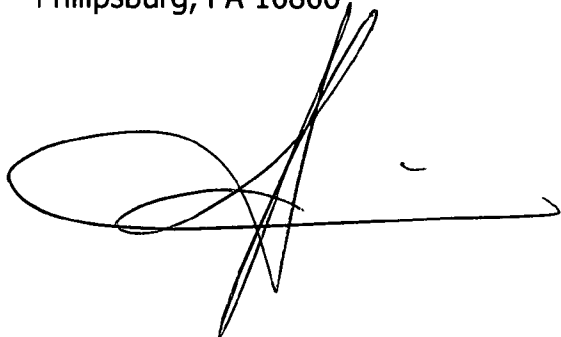
Trial Type Requested: Non - Jury
Estimated Trial Time: One-half Day

For the Plaintiff: Joseph M. Scipione, Esq.
For the Defendant: *Pro se*

Certification of Current Address for all parties or counsel of record:

For the Plaintiff:
Joseph M. Scipione, Esq.
THOMPSON LAW OFFICE
308 Walton Street
Philipsburg, PA 16866

For the Defendant: *Pro se*
Shelley Miles
585 Crossroads Boulevard
Coalport, PA 16827

A handwritten signature in black ink, appearing to be "J. Scipione", with a large, stylized loop at the end.

1A

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

JOHN KEITH

vs.

SHELLEY (SHELLY) MILES

:
:
: No. 08-1973-CD
:
:

ORDER

AND NOW, this 23rd day of December, 2009, it is the Order of
the Court that a pre-trial conference in the above-captioned matter shall be and is
hereby scheduled for **Thursday, February 11, 2010 at 9:00 A.M.** in Judges
Chambers, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

01/4:00/01
DEC 23 2009

William A. Shaw
Prothonotary/Clerk of Courts

2CC Atty's

Thompson/Scipione

100 Def. - 585 Crossroads

Blvd.
Coalport, PA 16827

FILED

DEC 23 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/23/09

___ You are responsible for serving all appropriate parties.
X The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) X Plaintiff(s) Attorney ___ Other

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

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

JOHN KEITH,
Plaintiff

vs.

SHELLEY (SHELLY) MILES
Defendant

NO. 08-1973-CD

FILED

FEB 11 2010


§ 0/3:15/W
William A. Shaw
Prothonotary/Clerk of Courts
COUN TO ATTY.
THOMPSON
DEAN

ORDER

NOW, this 11th day of February, 2010, following pre-trial conference with counsel for the Plaintiff and the pro se Defendant as set forth above, it is the ORDER of this Court that a Non-Jury Trial be and is hereby scheduled for May 21, 2010 commencing at 9:00 a.m. at the Clearfield County Courthouse, Clearfield, Pennsylvania.

One-half day has been reserved for this proceeding.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
FEB 11 2010
Prothonotary/Clerk of Courts
William A. Shaw

DATE: 2-11-16

☐ 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:

464 CROSSROAD BLVD.
COAR POOR PA,

16622

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

JOHN KEITH

VS.

SHELLEY (SHELLY) MILES

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NO. 08-1973-CD

O R D E R

NOW this 21st day of May, 2010, following the taking of testimony on behalf of the Plaintiff, and with the Court noting that the Defendant has failed to appear, it is the ORDER of this Court that the Defendant's counterclaim be and is hereby dismissed.

BY THE COURT,



President Judge

FILED

0124381
MAY 24 2010

William A. Shaw
Prothonotary/Clerk of Courts

2cc Atty's Thompson/Scipione

2cc Def.

464 Cross Roads Blvd.
Coalport, PA 16827

FILED

MAY 24 2010

William A. Shaw
Probationary/Clerk of Courts

DATE: 5/24/10

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

X Defendant(s) Defendant(s) Attorney

 Special Instructions:

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

JOHN KEITH

VS.

SHELLEY (SHELLY) MILES

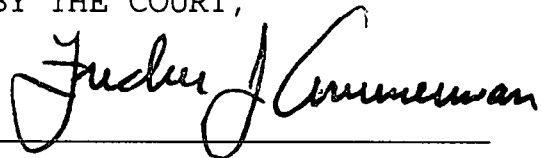
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NO. 08-1973-CD

O R D E R

NOW this 21st day of May, 2010, following completion of nonjury trial, with the Court noting that the Defendant has failed to appear, it is the ORDER of this Court that counsel for the Plaintiff have no more than fifteen (15) days from this date to supply the Court with a proposed final Order and a letter brief containing any authority relative the Plaintiff's request that the Defendant be ordered, at her expense, to remove any structures located on the Plaintiff's property.

BY THE COURT,



President Judge

4
FILED acc Atty's
12:41 PM
MAY 24 2010 Thompson/Seipora
103
acc Def.
William A. Shaw 464 Cross Roads Blvd
Prothonotary/Clerk of Courts Coalport, PA 16827

FILED

MAY 24 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/24/10

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 X Defendant(s) Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOHN KEITH,

Plaintiff

VS.

SHELLEY (SHELLY) MILES,

Defendant

No. 08-1973-CD

FILED

4cc
013:54/60 Amy
JUN 15 2010 Thompson
William A. Shaw
Prothonotary/Clerk of Courts (60)

COURT ORDER

AND NOW, this 11 day of June 2010, following a non-jury trial on May 21, 2010 in the above captioned matter, this Court having carefully considered the evidence presented makes the following findings of fact:

1. The Plaintiff John Keith is the rightful, legal owner of the premises described in Clearfield County Instrument Number 200719070.
2. The Defendant Shelly Miles is the rightful, legal owner of the premises described in Clearfield County Instrument Number 200606540.
3. That a certain garage, currently utilized by Defendant encroaches upon the rightful premises of Plaintiff.

FILED

JUN 15 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/15/10

☒ 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:

FILE COPY

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

JOHN KEITH

VS.

SHELLEY (SHELLY) MILES

)
)
)
) NO. 08-1973-CD
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)

O R D E R

NOW this 6th day of October, 2009, following argument on Plaintiff's Motion for Summary Judgment, it is the ORDER of this Court that counsel provide the Court with letter briefs within fifteen (15) days from date hereof.

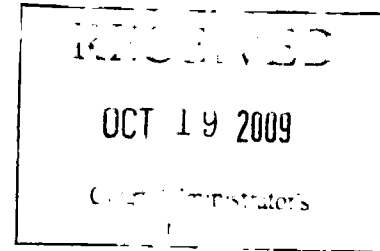
BY THE COURT,

President Judge

THOMPSON LAW OFFICE
David R. Thompson, Esquire
Joseph M. Scipione, Esquire
P.O. Box 587
Philipsburg, PA 16866
(814) 342-4100 - Phone
(814) 342-7081 - Fax
drthompsonaal@comcast.net

The Honorable Fredric J. Ammerman
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

RE: John Keith vs. Shelley (Shelly) Miles
No. 08-1973-CD



Your Honor,

Please accept this letter brief on behalf of Plaintiff John Keith in the above referenced matter. Essentially, it is the position of the Plaintiff that Summary Judgment is the appropriate method for resolving this action. As outlined below the Plaintiff's survey is not in dispute and those legal defenses which Defendant has raised in this case are moot as a matter of law. Finally, Defendant has asked this Court to exercise its equitable powers to deprive Plaintiff of his rightfully and legally held property which we argue would be improper and manifestly unfair in these circumstances.

Summary judgment is properly granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. *Solcar Equipment Leasing Corp. v. Pa. Manufacturers Assn. Insurance Co.*, 606 A.2d 522 (Pa. Super. 1992); Pa. R.C.P. 1035.1, et. seq. (2007). In the immediate case, Plaintiff has not only met all of the elements that are requisite for an Action in Ejectment but also rebutted as a matter of law the Defense of Adverse Possession which Defendant has raised.

"Ejectment is a possessory action only, and can succeed only if the plaintiff is out of possession, and he has a present right to immediate possession." *Brennan v. Shore Brothers, Inc.*, 110 A.2d 401, 402 (Pa. 1955). In the immediate case, movant Plaintiff attached a signed surveyors report to the motion for summary judgment. Said expert report, in compliance with rule Rule 4003.5(a)(1), has not been rebutted by respondent Defendant in any way. Defendant did not challenge the validity of said report at oral argument nor has the validity of said survey been challenged in any pleading. Defendant has not offered any evidence of any other survey nor intent to contract for a survey. As such Plaintiff believes that the conclusions of their surveyor should be adopted by this Court for purposes of deciding this motion.

Pursuant to said survey, it is clear that the Plaintiff in this case is out of possession of his rightful property. Defendant's garage encroaches upon the property

of the Plaintiff between fifteen and sixty-six hundredths feet (15.66') and eighteen and fifty-nine hundredths feet (18.59') at its width and thirty four and twenty-seven hundredths feet (34.27') in length. Finally, Plaintiff is entitled to immediate possession by virtue of a valid recorded deed as pled in Plaintiff's Complaint and the existence of which was affirmed in Defendant's Answer.

Defendant has specifically pled Adverse possession as a defense to Plaintiff's Action in Ejectment. In reviewing a claim for Adverse Possession, "It is a serious matter indeed to take away another's property. That is why the law imposes such strict requirements of proof on one who claims title by adverse possession." *Stevenson v. Stein*, 412 Pa. 478, 195 A.2d 268, 270 (Pa. 1963). Essentially, the burden to show an Adverse Possession rightfully rests upon the party claiming it, and it is not the Plaintiff's burden in this case to disprove all possible defenses.

As outlined in Plaintiff's Answer to Defendant's New Matter and Counterclaim paragraph 41, the parcels of property owned by Plaintiff and Defendant were both owned by Ethel Mae Troxell from the years 1952 until 1993. It would be impossible for Ms. Troxell's possession of the property to be hostile against herself and thus the 21 year count necessary for adverse possession cannot have begun until 1993, which is less than 21 years from the date of filing.

During oral argument, counsel for the Defense raised the issue that the age of the encroaching garage is not known. However, Plaintiff avers that this is not a material fact within the meaning of Summary Judgment, because the existence or non-existence of such a fact would not provide any legal defense to Defendant. By operation of law it is impossible that any adverse possession before the joint ownership of Ms. Troxell has been transferred to the Defendant in this case. "[O]ne who claims title by adverse possession must prove that he had actual and continuous, exclusive, visible, notorious, distinct, and hostile possession of the land for twenty-one (21) years. . . . Each of these elements must exist, otherwise, the possession will not confer title." *Castronuovo v. Sordoni*, 357 Pa. Super. 187, 192, 515 A.2d 927 (1986). Since Defendant is the one claiming Adverse Possession she must have a continuous possession tack with a previous Adverse Possessor. As Ms. Troxell's joint ownership was less than 21 years ago, such continuous possession would be destroyed if it had begun before Ms. Troxell's tenure, thus making Defendant's assertions moot as a matter of law.

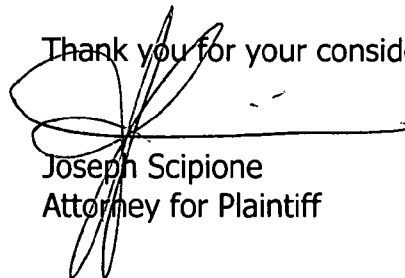
Finally, Defendant asserted during oral argument that it would be manifestly unfair to require Defendant to remove said encroaching garage. In response the Plaintiff contends that he comes to the Court with clean hands, as an innocent party. As is clear from the deed descriptions, survey map, and assessment map, all of which would have been available to Ms. Miles at the time of her purchase in 2006, it is the obvious intent of the original grantors that Mr. Keith's parcel be accessed across that

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narrow strip of land upon which Defendant's garage sits. It will be noted from the County Assessment records that Mr. Keith has still not improved his land and will be barred from doing so into perpetuity by Defendant's encroachment if that garage is allowed to stand.

Therefore, for the reasons stated above, the Plaintiff avers that he is entitled to Summary Judgment as a matter of law and that the Court should refrain from exercising the extraordinary remedy of granting equitable relief to Defendant as against a clear legal title and counterbalanced equitable detriment on the side of Plaintiff.

Thank you for your consideration,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

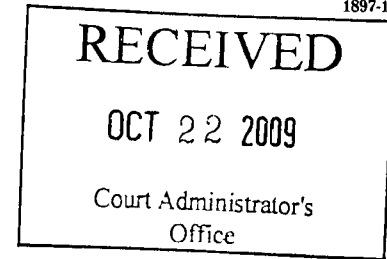
Joseph Scipione
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WILLIAM J. HABERSTROH
TERRESSA E GEORGE

MITCHELL MACCARTNEY
1897-1989

October 20, 2009



THE HONORABLE FREDRIC J. AMMERMAN
CLEARFIELD COUNTY COURTHOUSE
230 E MARKET STREET
CLEARFIELD PA 16830

In Re: John Keith v. Shelley Miles
No. 08-1973-CD

Dear Judge Ammerman:

This action comes before the Court to determine the boundary between Plaintiff's and Defendant's property. Plaintiff contends that the boundary line is established, by a survey of the property line, by deed description, which shows that Defendant's garage encroaches upon the Plaintiff's property. Further, Plaintiff is seeking an easement over Defendant's property to access his property.

Defendant contends that, if indeed her garage encroaches upon Plaintiff's property, she has acquired a prescriptive easement to the ground upon which her garage sits, which has been in that location since the 1960s. Further, Defendant believes that the Plaintiff is estopped from claiming said property, as he took no steps to determine the boundary line, since the date of his purchase (approximately 2 years) and was aware of the location of the garage at the time of purchase.

Plaintiff has filed a Motion for Summary Judgment. This letter brief is in opposition to said Motion.

Pennsylvania law provides that summary judgment may be granted **only** in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. The moving party has the burden of proving that no genuine issues of material fact exist. In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to

the existence of a genuine issue of material fact against the moving party. Thus, summary judgment is proper only when the uncontroversial allegations in the pleadings, depositions, answers to interrogatories, admissions of record and submitted affidavits demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. In sum, only when the facts are so clear that reasonable minds cannot differ, may a trial court properly enter summary judgment. LaSalle Bank v. Lykens, 8 Pa. D&C 5th 399; Barnish v. KWI Building Company, 916 A.2d 642.

Further, equitable estoppel arises when one by his acts, representations, of admissions or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. Zivari v. Willis, 611 A.2d 293, 295 (Pa.Super. 1992). In this situation, the person inducing the belief in the existence of a certain state of facts is estopped to deny that the state of facts does in truth exist, aver a different or contrary state of facts as existing at the same time, or deny or repudiate his acts, conduct or statements. Young v. Cerone, 487 A.2d 965, 967 (Pa.Super. 1985).

In the instant case, Plaintiff purchased his property in 2007. Defendant's garage was built in the 1960s by the common owner of the properties and has remained in that location since that time. At the time of the construction, a mistake was made as to the location of the boundary lines between the two parcels owned by Ethel Troxel. The fact that the garage crosses the boundary lines is evident that a mistake was made.

At the time of his purchase, Plaintiff was aware of the location of the garage. Plaintiff took no action against Defendant during that time. Further, Plaintiff could have obtained a survey at the time of the purchase of his property. However, he waited to do so. Therefore, he is now estopped to deny that Defendant has obtained a prescriptive easement over the ground on which the garage now sits.

In an action for ejectment, the court is required to apply equitable principles in resolving the dispute. Karda v. Morris, 368 A.2d 657; Keesler v. Pustay, 29 Pa. D & C 3d 223. Even in a legal action of ejectment, where one party has entered unlawfully upon the property of another, with the knowledge of that other, and has expended large sums of money, the dispute must be settled in accordance with equitable principles. Wingert v. TW Phillips Gas & Oil Company, 157 A.2d 92.

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Further, it would not be equitable to make Defendant now remove the garage. The garage is an integral part of the house. Further, the garage was built in the 1960s, by the common owner of both parcels of ground. It is clear from the survey that Plaintiff has an access to his property, from the road. The allegations in the Complaint state that the garage encroaches upon Plaintiff's property 15.66 feet in the front and 18.59 feet in the back. The Plaintiff's property is 33 feet wide at this point, leading the road. Therefore, Plaintiff has 17.34 feet of clearance in the front and 14.41 feet of clearance in the back of the garage. This amount allows for Plaintiff to have access to his property, without the requirement of Defendant having to move her garage.

Based upon the foregoing, Plaintiff has failed to establish that there are no issues of material fact. The trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Defendant alleges that she has acquired a prescriptive easement over the property, upon which her garage sits. The garage has remained in that location since the 1960s. The mere fact that a survey shows that garage encroaches upon Plaintiff's property does not entitle him to summary judgment. The Court must determine whether or not Defendant has acquired a prescriptive easement, which is a genuine issue of material fact.

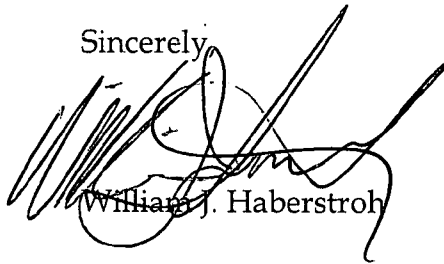
Further, the Court must determine whether or not the location of the Defendant's garage inhibits or restricts Plaintiff's access to his property. His property is approximately 33 feet wide in the area where the alleged encroachment appears. According to the survey, there is ample space between the alleged garage encroachment and the property line for Plaintiff to access his property. Thus, this factor is a genuine issue of material fact to be determined by the Court.

Further, there is a genuine issue of material fact as to whether or not Plaintiff's failure to act promptly upon the purchase of his property to determine the location of property lines and the garage acts as equitable estoppel. The actual location of the garage was clearly known to him. Is his failure to obtain a survey prior to or shortly after his purchase constitute equitable estoppel? Again, this is an issue of material fact for the Court to determine.

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Based upon the foregoing, taking the facts of the case in the light most favorable to the Defendant, the non-moving party, and resolving all doubts as to the existence of a genuine issue of material fact against the Plaintiff, the moving party, it is clear that Plaintiff is not entitled to Summary Judgment. Therefore, Defendant respectfully requests this Honorable Court to deny and dismiss Plaintiff's Motion for Summary Judgment and grant equitable relief to Defendant allowing her to maintain the garage, in its' present location.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Haberstroh", written over the printed name. The signature is stylized with loops and a long horizontal stroke.

Cc: Joseph Scipione Esquire
Cc: Ms. Shelley Miles

DRAFT

1 10/6/09 KEITH V. MILES

2 Argument on Motion for Summary Judgment

3

4 We have Joseph Scipione. I reviewed the file this morning. The
5 thing that I find to be most helpful is the map attached to the
6 motion for summary judgment. Mr. Scipione, what do you want to
7 tell me here?

8 It would appear that what we have, this long skinny
9 piece of Mr. Keith's property abutts the property of Shelly
10 Miles, and at some point, I think it's claimed since 1964, that
11 this garage has been in place and a pretty good portion of it is,
12 according to this survey by Environmental Land Surveying of
13 April 22nd, 2008, it appears that the line share of this garage
14 is actually located on Mr. Keith's property.

15 ATTORNEY SCIPIONI: That's correct, Your Honor.
16 Although I'm not aware of the date the garage was built. But
17 that sounds approximately correct.

18 THE COURT: So what do you want to tell me?

19 ATTORNEY SCIPIONI: Well, Your Honor, I think it's
20 pretty clear that the garage is over the line here. Mr. Keith is
21 having trouble accessing the bulk of his property. I think it
22 looks from the way it's set up that this is intended as his
23 access.

24 Regardless, the only defense that I really anticipate
25 here is one of adverse possession as far as the garage goes, in

7-11-90
brief was filed May 7, 2009. (Rec. Doc. No. 36). No reply brief has been filed.

The matters are ripe for disposition.

Now, for the following reasons, we will dismiss counts VI, VII, and VIII, the Civil Rights claims, and we will decline to exercise supplemental jurisdiction over the state law claims. We will dismiss the complaint as to counts VI-VIII. Counts I-V will be remanded to the Court of Common Pleas of Centre County. Plaintiff's motion to exclude an affidavit relating to the state law issues is denied as moot.

DISCUSSION:

I. Motion to Dismiss Standard

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court must view all allegations stated in the complaint as true and construe all inferences in the light most favorable to plaintiff. Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984); Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). "The tenet that a court must accept as true all of the [factual] allegations contained in the complaint is inapplicable to legal conclusions." Ashcroft v. Iqbal, ___ U.S. ___, 2009 U.S. Lexis 3472, *29 (internal citations omitted). In ruling on such a motion, the court primarily considers the allegations of the pleading, but is not required to consider legal conclusions alleged in the

1 1952 Ethel May Troxell was the owner of both Mr. Keith's parcel
2 and Mr. Miles' parcel.

3 She ceased being the owner of both parcels in 1992,
4 so it's our position that such ownership could not have been
5 hostile against herself in the two parcels, even though they were
6 separate in the record and, thus, no adverse possession could
7 have occurred.

8 THE COURT: So you're telling me that the Miles'
9 property had belonged to Mr. Keith's mother?

10 ATTORNEY SCIPIONI: I don't believe she was related
11 to Mr. Keith. Her name was Ethel May Troxell.

12 THE COURT: Ethel Troxell.

13 ATTORNEY SCIPIONI: Yes, Your Honor.

14 THE COURT: And you're saying she owned both
15 properties?

16 ATTORNEY SCIPIONI: Yes, Your Honor.

17 THE COURT: And that split when?

18 ATTORNEY SCIPIONI: 1992.

19 THE COURT: 1992, okay. Looking at this survey, one
20 of the things it does not tell me is where the garage is. How
21 wide is that thing?

22 ATTORNEY SCIPIONI: I may have a clearer copy for
23 you, Your Honor.

24 THE COURT: Maybe it does tell me. 32 feet, .15.
25 32.15 feet.

complaint. Kost, 1 F.3d at 183. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, ___ U.S. at *29. At the motion to dismiss stage, the court considers whether plaintiff is entitled to offer evidence to support the allegations in the complaint. Maio v. Aetna, Inc., 221 F.3d 472, 482 (3d Cir. 2000).

A complaint should only be dismissed if, accepting as true all of the allegations in the complaint, plaintiff has not pled enough facts to state a claim to relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1960 (2007). "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, ___ U.S. at *30. In considering a Rule 12(b)(6) motion, we must be mindful that federal courts require notice pleading, as opposed to the heightened standard of fact pleading. Hellmann v. Kercher, 2008 U.S. Dist. LEXIS 54882, 4 (W.D. Pa. 2008). Federal Rule of Civil Procedure 8 "'requires only a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the...claim is and the grounds on which it rests,'" Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1964, (2007) (citing Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, (1957)). However, even under this lower notice pleading standard, a plaintiff

1 ATTORNEY SCIPIONI: 32.15 feet should be the length
2 of Mr. Keith's very small piece there. I have a clearer copy.
3 May I approach, Your Honor?

4 THE COURT: I don't know, this is pretty clear. I
5 think I just didn't notice that L3 there reference to that legend
6 up in the left corner.

7 ATTORNEY SCIPIONI: Yes. In the insert there, it
8 actually has the dimensions of the garage listed. They're very
9 small, but I believe the garage goes over 18.5 feet.

10 THE COURT: With the status of my eyes at age 53, I'm
11 afraid I can't read that insert. So, in essence, you're saying
12 since the same person owned the property until 1992 there can't
13 be adverse possession.

14 ATTORNEY SCIPIONI: That's correct, Your Honor.

15 THE COURT: If I boil it down that's where you're
16 coming from?

17 ATTORNEY SCIPIONI: Yes, Your Honor.

18 THE COURT: Anything else you want to tell me?

19 ATTORNEY SCIPIONI: No, Your Honor.

20 THE COURT: Mr. Haberstroh.

21 ATTORNEY HABERSTROH: If the Court, please, as the
22 Court is well aware, summary judgment is only appropriate where
23 indeed there is absolutely no issue of fact in controversy.

24 If the issue is that the garage sits where it does
25 and, as Mr. Scipioni indicated, he said, well, I don't know when

must do more than recite the elements of a cause of action, and then make a blanket assertion of an entitlement to relief under it. Hellmann, 2008 U.S. Dist. LEXIS at 4-5. Instead, a plaintiff must make a factual showing of his entitlement to relief by alleging sufficient facts that, when taken as true, suggest the required elements of a particular legal theory. Twombly, 127 S.Ct. at 1965. “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - - but it has not “shown” - - “that the pleader is entitled to relief.” Iqbal, __ U.S. at *29, citing Fed. R. Civ. P. 8(a). The failure-to-state-a-claim standard of Rule 12(b)(6) “streamlines litigation by dispensing with needless discovery and factfinding.” Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). A court may dismiss a claim under Rule 12(b)(6) where there is a “dispositive issue of law.” Id. at 326. If it is beyond a doubt that the non-moving party can prove no set of facts in support of its allegations, then a claim must be dismissed “without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one.” Id. at 327

II. Allegations in the Complaint

Taking as true all of the allegations in the complaint, the facts are as follows. At the time of the allegations in the complaint, Lance Marshall was an Assistant District Attorney (“ADA”) with the Centre County District Attorney’s Office.

1 the garage was built, that's obviously an issue for testimony and
2 for fact.

3 We have, in the responsive pleadings to this matter,
4 raised an issue of equitable estoppel. And, of course, there
5 being no court of equity, that defense, or response, is an
6 equitable response.

7 So assuming that -- I mean, there's an easement by
8 implication raised in the complaint, I think there's an easement
9 by necessity raised in the complaint, all of which are not
10 applicable or relevant at all in this proceeding because
11 Mr. Keith owns the property fronting upon the roadway.

12 Our position is is that we believe the basis of the
13 defendant's position is that there is testimony necessary, there
14 are facts needed to be developed, as to the construction of the
15 garage, the ability of Mr. Keith to use that as an accessway
16 based upon a PennDOT highway occupancy permit, or the lack
17 thereof; that he has, according to our calculations, 17 feet in
18 the front and 14.14 feet in the back where he can transgress his
19 access to his property, and both of which are perfectly wide
20 enough for vehicular traffic; and that the garage being there for
21 64 years, which we would establish through testimony, the fact
22 that Mr. Keith purchased the property in 2007, that Ms. Miles
23 already owned her property at that point in time; that the garage
24 was there, that he had a duty to inspect or investigate prior to
25 purchasing the property.

Michael Madeira is the District Attorney ("DA") of Centre County. Centre County is a county in Pennsylvania. E.B. was the victim of a domestic abuse case. On September 10, 2008, her boyfriend, the father of her child, Harley Anderson ("Anderson"), was arrested and incarcerated on charges of aggravated assault, false imprisonment, and simple assault.

E.B. first met Marshall on September 17, 2008, at Anderson's preliminary hearing. On December 4, 2008, E.B. sought a modification of a Protection from Abuse ("PFA") Order. E.B. met with Marshall at the DA's office and she told him she wanted to have contact with Anderson, and wanted a plea agreement to be reached so that the case would not go to trial. Marshall told E.B. the Commonwealth had not decided whether to pursue a plea agreement or a trial.

The following day, E.B. received a telephone call from Marshall. Marshall told her that he was at Garfield's restaurant with his secretary. He asked E.B. to meet him there so that she could sign a medical release form. When E.B. arrived at the restaurant, she found that Marshall's secretary was not present and he did not have any forms for her to sign. Again, E.B. explained to Marshall that she did not want to go to trial, and wanted Anderson to get a plea bargain for time served. "Marshall indicated to E.B. that he thinks about sex more often than most people, and that he thinks of penises and vaginas like apples and oranges." He went on to

1 All of these facts need to be developed in the trial
2 of cause, Your Honor, as we see the matter and, therefore, based
3 upon those facts I don't believe summary judgment is appropriate.

4 If, indeed, ejectment, as Mr. Scipioni has pleaded it
5 and argued it, as I understand it, is, well, the garage sits and,
6 so therefore we're right and there's nothing else needs to be
7 done.

8 Well, what about our position of an equitable
9 estoppel? I think there's an argument to be made as to
10 prescriptive right by Ms. Miles and that the issue of adverse
11 possession may well be Mr. Scipioni is correct in saying that,
12 well, because the title at one point was owned by the same person
13 and broken up in connection with distribution of an estate, I
14 think that's an issue for argument after the facts are developed
15 in the case.

16 So basically our position is that it is not a
17 situation that is free from the necessity of testimony; that it
18 is not clearly a question of law; and that summary judgment
19 doesn't apply, Your Honor.

20 THE COURT: Do I understand that the plaintiff and
21 defendant know, are they related to each other?

22 ATTORNEY HABERSTROH: I don't believe, Your Honor. I
23 don't think Mr. Keith or Ms. Miles are related to Ethel Troxell.

24 THE COURT: I only said that because you mentioned
25 something about the property being broken up through an estate.

tell E.B. about extramarital affairs he had had in 2004 and 2005. Marshall also reviewed trial testimony with E.B., which E.B. informed Marshall was incorrect and that she would not lie.

That weekend, E.B. began to receive text messages from Marshall. E.B. again told Marshall that she wanted a plea bargain, and that she wanted Anderson out of jail because they had a daughter at home. Marshall told E.B. via telephone conversation that he could not approve a plea bargain. That Monday a jury was selected in Anderson's criminal case, to be prosecuted by Marshall.

Between December 5, 2008 and December 28, 2008, Marshall sent more than 250 text messages to E.B. Some of those text messages were sexually explicit. In addition, Marshall made multiple sexually explicit voice messages and telephone calls to E.B. A sampling of the text messages follows.

my phone is always in my pocket now and every free moment I want to sneak a text to you. . . my phone is always on vibr8, it's like a little vibration in my pocket. . . we actually have not had sex yet, what am I missing. . . u lying in bed paints a very nice pic and now I want 2 talk 2 u again. . . I bet if I sent u a naked pic of myself, that would surprise u. . . I am watching Catie Morgan's sex tips and learning why dudedes [sic] have morning [wood]. As for being a pussy, what can I say, I am what I eat. . . something about the bladder being full and it pinches blood flow off. It also part of the normal sleep cycle. Dudes get a number of woodies during the night. . . well it makes me hot for u. . . she would be fucking her mom's boss' husband, and I think that would be a little weird. . .

1 ATTORNEY HABERSTROH: The Ethel Troxell estate --
2 Ethel Troxell died, and the parcel in the front which Ms. Miles
3 owns and the parcel of Mr. Keith were basically divided at that
4 point among two separate parties. Correct me, Joe, if I'm wrong.

5 ATTORNEY SCIPIONI: I believe that's correct.

6 ATTORNEY HABERSTROH: Through a decree of
7 distribution, they went to two separate parties. One,
8 Mr. Keith's title, went to H. Dean Troxell; and our title went
9 through a Mrs., I believe, Shaboney, is how you say the name, I'm
10 not sure.

11 Mrs. Shaboney then conveys to Ms. Miles; and then
12 in 2007 Mr. Troxell, H. Dean Troxell, conveys to Mr. Keith.

13 THE COURT: So looking at this survey map, do I
14 understand that Shelley Miles actually owns the property on both
15 sides of this long skinny piece?

16 ATTORNEY HABERSTROH: No, Your Honor. The piece --
17 she owns the parcel on the survey --

18 THE COURT: That's the one that has the house on it.

19 ATTORNEY SCIPIONI: Your Honor, Ms. Miles owns
20 the the piece. Ms. Miles' brother --

21 ATTORNEY HABERSTROH: She owns -- if you're looking
22 at it, she owns the property to the west of this parcel, and her
23 brother owns the parcel to the east of this, the accessway. I
24 mean, this is not an easement or a right-of-way. This is an
25 actual grant to Mr. Keith that extends to the roadway.

Marshall had also attempted to get E.B. to come to his home for a sexual encounter. Marshall told E.B. if she “did this one thing for him” that Anderson would be released from prison. E.B. refused Marshall’s advances.

To pursue E.B. sexually, Marshall requested the Centre County prison send to him all tapes of recorded conversations between E.B. and Anderson. Marshall phoned E.B. and told her that he was disturbed that he heard on the tape that she was considering getting back together with Anderson. The next day, Marshall spoke with E.B. again about the intercepted phone calls. E.B. could hear the tapes of her telephone conversation with Anderson being played in the background. Marshall told E.B. that the more he listened to the tapes the more he got disgusted, he told her she had no reason to get back together with Anderson, and that he would take her in a heartbeat and his wife would never have to know. E.B. responded that she had two young children and had no interest in a relationship.

Anderson’s sentencing was set for December 19, 2008. Marshall made attempts to have E.B. engage in a sexual relationship with him prior to the sentencing. Marshall left voice messages for E.B. telling her that he had condoms and wanted to “fuck her brains out.” E.B. spoke with Marshall and told him she had no interest in a relationship. Marshall told E.B. if she came over to his house, that he would have Anderson released from prison. He told E.B. that he and she

1 THE COURT: Well, I'm assuming that was done to get
2 his property to the roadway. At least, that's my guess.

3 ATTORNEY HABERSTROH: I presume so.

4 THE COURT: Otherwise, why have that long skinny
5 piece that's 32 feet long, or wide, I should say.

6 ATTORNEY HABERSTROH: I think that's correct. I
7 think the biggest issue that we would raise, Your Honor, is the
8 equitable estoppel issue. It's been there. It's been there since
9 '64. Our calculation is there's 17.some feet in the front and
10 14.some feet in the back to go around the garage. So
11 fundamentally it is --

12 THE COURT: How can you have equitable estoppel
13 against yourself?

14 ATTORNEY HABERSTROH: I don't think you have
15 equitable estoppel against yourself. I think you have equitable
16 estoppel on the basis of Mr. Keith attempting to exert his claim
17 that the garage should be removed.

18 I think he's equitably estopped, one, because he had
19 a duty to investigate; two, it was there whenever he bought the
20 property; three, it has been there since 1964; and equitable
21 estoppel is the basis of basically fundamental fairness.

22 Is it fair to force Ms. Miles to tear down the garage
23 that's been there all that time when Mr. Keith can get around the
24 garage using his ground anyway. Now, if it's destroyed or
25 something, she can't rebuild it.

had two things in common: the criminal case and that they both wanted to be with someone they should not be with.

On December 16, 2008, Marshall called E.B. and asked her to meet him at his home on his lunch break, and if she did, he would get Anderson out at the sentencing. E.B. said no. Marshall left E.B. a voice message stating he would “take her clothes off with his teeth, starting with her shirt, moving to her pants, bra and kissing her all over the body until he made it to her vagina and then he would turn her around and put it in from behind.” E.B. asked Marshall to stop texting and calling her.

The day of Anderson’s sentencing, Marshall, via text message, attempted to dissuade E.B. from coming to the sentencing because of the weather. She called Marshall to tell him she was coming and that she was running late. Marshall told the Judge that E.B. was not attending sentencing so they should proceed. When E.B. arrived, Marshall spoke with her privately outside of the courtroom. Marshall told her if she did not tell the judge she wanted a no contact provision, the judge would not accept the plea bargain. E.B. refused to tell the judge that she wanted no contact. Anderson was sentenced to credit for time served and was ordered to have no contact with E.B.

The Probation and Parole department told E.B. that Marshall had told them

1 THE COURT: What if the garage extended over so he
2 only had hypothetically eight feet of clearance? What then?

3 ATTORNEY HABERSTROH: My point of equitable estoppel,
4 I think under the fundamental fairness doctrine, is the same. My
5 argument is the Court should grant fundamental fairness and say
6 I'm not going to tear down a garage that's been there since 1964,
7 was was built by the people that owned the property and then
8 turned around and sold to it Mr. Keith without him making
9 investigation and he has no access.

10 It's no different than if I buy by a piece of
11 property from you and there's an issue with access.

12 THE COURT: Well, I'm not so sure about that. I
13 would be interested to see some case law on that type of issue.

14 ATTORNEY HABERSTROH: The question remains, Judge,
15 for today's purposes, it's is this case that can be decided
16 without any further factual discovery. And our position is
17 simply is it is not.

18 THE COURT: I understand your position. Do you want
19 to respond to that?

20 ATTORNEY SCIPIONI: Yes, Your Honor, just briefly.
21 I'm unsure of which additional facts would really be necessary to
22 adjudge any of these issues. There's no other survey that's pled
23 in any of the responsive pleadings. We've attached the survey
24 today which I think makes it very clear of the location of the
25 garage.

that Anderson was going to live with “hippies” and that she was not allowed contact with him. Defense counsel, prior to sentencing, advised Marshall that E.B. wanted Anderson to be released and wanted contact with Anderson. Marshall advised defense counsel that E.B. did not want contact with Anderson and did not want a sentence of time served.

On December 22, 2008, E.B. advised Marshall that if he continued to text her, she would go to CDT¹ with his text messages. The following day, E.B. received a photo text message from Marshall, purportedly of Marshall with his pants pulled down and pubic hairs visible. The text message said “Hello CDT.” On the 24th of December, Marshall texted E.B. that he had pictures of her from her place of employment, her driver’s license photo, and that he “sneaked onto her MySpace from time to time.” E.B. had to cancel her phone number to stop the messages from Marshall.

E.B.’s complaint alleges that in addition to the harassment she experienced by Marshall, he harassed other females in the Centre County Courthouse. The Centre County Human Resources department has received complaints by women of inappropriate conduct by Marshall. Women in the Centre County Probation and Parole department have experienced Marshall’s inappropriate conduct. One

¹Plaintiff does not explain what “CDT” stands for.

1 Even if I were to stipulate today as to the age of
2 the garage, which I'm not sure is really an issue in this case,
3 adverse possession would still be out of the question, even if we
4 go with Mr. Haberstroh's number for the age of the garage.

5 With that said then, there's sort of this confusion
6 as to whether or not Mr. Keith needs to use this as an access.
7 And that may or may not be true. But the fact still remains this
8 is Mr. Keith's property, and the garage is over his property.

9 So even if the Court finds that -- I believe there's
10 12 feet approximately left between the very edge of this
11 property. I know there's some trees and things there, as well,
12 and this garage. But even so, this garage is on Mr. Keith's
13 property, and it's clearly an encroachment.

14 And for those reasons I think that the Court is
15 perfectly capable of deciding this issue on the law.

16 THE COURT: I said 1964 about the garage. I think
17 what I really was looking at was paragraph 40 of the counterclaim
18 where it says the Defendant and Defendant's predecessors are
19 entitled to occupy the premises claimed by the Defendant since
20 1964. That says the premises; it doesn't say anything about the
21 garage. Okay.

22 Interesting issues involving real estate, I guess.
23 Do you want to -- Cathy, do an order, give them 15 days to submit
24 a letter brief to the Court. All right. Thank you, counsel.

25

probation officer, Chrissie Prisk advised the Centre County Human Resource Director, who advised Centre County and its DA's office, in 2006 that Marshall had been engaging in unwanted sexually charged comments and behavior since 2002. Prisk was advised that Marshall had been spoken to and it would not happen again. She experienced additional unwanted conduct, until shortly thereafter, she was promoted and her contact with Marshall was limited.

Contrary to policy, Marshall would often interview female victims without a police officer or victim witness advocate present. The State College Police Department advised the DA's office that Marshall's conduct was questionable. When Madeira took office as DA, he was advised by a Centre County Commissioner that Marshall needed to be terminated. The DA's office took no action. E.B. alleges that Centre County and its DA's office were on notice of Marshall's conduct, and failed to take action to remedy it.

In a case where the defendant was accused of driving under the influence and injuring her two young children, Marshall would comment to the children's father, the defendant's husband, that the defendant was very attractive. Defendant's husband complained to the DA's office about Marshall's inappropriate comments. Neither the DA's office or the County took any action on these complaints.