

Adams County Legal Journal


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JILLIAN CHARLES V. CONNIE ASPER



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NOTICE

NOTICE IS HEREBY GIVEN that DANIEL S. TOPPER, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 21st day of April, 2017 at 8:15 a.m., Courtroom Number 1, and that he intends to practice law as Assistant District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111 Baltimore Street, Room #6, Gettysburg, Pennsylvania.

3/3, 3/10, 3/17

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County-Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, March 24, 2017 at 8:30 a.m.

RISER — Orphans' Court Action Number OC-0-2017. The First and Final Account of Mary C. Small, Executrix of the Estate of Brian Francis Riser, Deceased, late of McSherrystown Borough, Adams County, Pennsylvania.

HORICK — Orphans' Court Action Number OC-19-2017. The First and Final Account of David J. Horick and Douglas C. Horick, Co-Executors of the Estate of Jean M. Horick, Deceased, late of Franklin Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

3/10, 3/17

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW NO. 16-SU-1137

NOTICE OF ACTION IN MORTGAGE FORECLOSURE

Bank of America, N.A., Plaintiff vs.

The Unknown Heirs of Paula A. Shull, Deceased, Mortgage and Real Owner, Defendant(s)

To: The Unknown Heirs of Paula A. Shull, Deceased, Mortgage and Real Owner, Defendant(s), whose last known address is 149 Little Avenue, New Oxford, PA 17350.

This firm is a debt collector, and we are attempting to collect a debt owed to our client. Any information obtained from you will be used for the purpose of collecting the debt. You are hereby notified that Plaintiff, Bank of America, N.A., has filed a Mortgage Foreclosure Complaint endorsed with a notice to defend against you in the Court of Common Pleas of Adams County, Pennsylvania, docketed to No. 16-SU-1137, wherein Plaintiff seeks to foreclose on the mortgage secured on your property located, 149 Little Avenue New Oxford, PA 17350, whereupon your property will be sold by the Sheriff of Adams County. Notice: You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below. This office can provide you with information about

hiring a lawyer. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

Court Admin.
Adams County Courthouse
111-117 Baltimore St.
Gettysburg, PA 17325
717-337-9846

Michael T. McKeever, Esq.
Attorney for Plaintiff
KML Law Group, P.C.
Suite 5000
Mellon Independence Center
701 Market Street
Philadelphia, PA 19106-1532
215-627-1322

3/17

JILLIAN CHARLES V. CONNIE ASPER

1. Where the burden of proof rests with the non-moving party, the non-moving party may suffer judgment as a matter of law for failure to advance sufficient evidence on an issue essential to the cause of action.

2. In order to succeed on the negligence action brought by plaintiff, plaintiff must demonstrate: (1) the defendant owed a duty to plaintiff; (2) the defendant breached that duty; (3) a causal relationship between the breach and the resulting injury suffered by the plaintiff; and (4) actual loss suffered by the plaintiff.

3. More specifically, in the context of the duty which a possessor of land owes to a licensee, the possessor of the land's liability for physical harm caused to licensee by a condition of the land exists only if:

- (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect they will not discover or realize the danger.
- (b) the licensee fails to establish reasonable care to make the condition safe, or to warn the licensee of the condition and the risk involved; and
- (c) the licensee does not know or have reason to know of the condition and the risk involved.

4. Pennsylvania law does not require a possessor of land to guarantee to a licensee the complete absence of defects on the property which may cause injury. Rather, a land possessor only becomes responsible for a licensee's injuries when the danger is known or should reasonably be known to exist.

5. To place on every possessor of open land the requirement that they insure against transitory conditions to their property caused by nature, including animals, is an unrealistic standard and one unsupported by the law.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CIVIL 15-S-1364, JILLIAN CHARLES V.
CONNIE ASPER.

Gregory P. DiPippo, Esq., Attorney for Plaintiff

John N. Keller, Esq., Attorney for Defendant

George, J., February 28, 2017

OPINION

Connie Asper (“Defendant”) owns the property located at 239 Carlisle Road, Biglerville, Pennsylvania. The property, referred to by the parties as “the farm property,” is essentially rural. It is developed with a residence in which Defendant resides. The property also has a lake including a dock. On Memorial Day of each year, Defendant takes advantage of the country setting and hosts a fish-fry party. On May 25, 2013, among the invited guests to the annual affair was Jillian Charles (“Plaintiff”). Plaintiff attended the party with her currently estranged husband and two children, Elise and Christian.¹ Since Plaintiff and her family had spent the prior night at another property owned by Defendant, they were among the first guests to arrive at the party. After taking some items into the house, Plaintiff and Elise walked down to the dock to take pictures. At the time, Plaintiff was wearing what she described as “slip-on” clogs with approximately a one-inch heel. While taking photographs, Plaintiff had a brief conversation with other guests standing near the lake. While she was doing so, Elise left the area and began walking back to the house. Plaintiff followed while keeping her eyes on the young child; however, she stepped into a hole and fell down. She claims not to have seen the hole and stepped into it with her right foot causing her to fall toward her right. During the course of her fall, she somehow injured her left foot but was unable to describe the specifics of how the injury occurred. After regaining her footing, she noticed the hole which she described to be the size of a softball approximately four to five inches deep. She further observed there was no grass growing in or over the hole. After returning to the residence, Plaintiff ultimately received medical care for broken bones on her left foot. There is no evidence that Defendant was aware of the existence of the hole or how long the hole existed. The record also indicates that Defendant historically filled holes near the dock area of which she was aware. Apparently, muskrats living near the lake occasionally dig holes. Defendant currently seeks summary judgment on Plaintiff’s negligence action arguing Plaintiff is unable

¹ At the time of Plaintiff’s deposition on May 4, 2016, Elise was seven years old and Christian was four years old. Elise was four years old at the time of the accident.

to establish a duty on the part of Defendant.²

In evaluating Defendant's argument, I am mindful that summary judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law. Pa. R.C.P. 1035.2. Nevertheless, where the non-moving party bears the burden of proof on an issue, mere reliance on the pleadings is insufficient to avoid summary judgment. Where the burden of proof rests with the non-moving party, the non-moving party may suffer judgment as a matter of law for failure to advance sufficient evidence on an issue essential to the cause of action. *Krauss*, 104 A.3d at 563.

In order to succeed on the negligence action brought by plaintiff, plaintiff must demonstrate: (1) the defendant owed a duty to plaintiff; (2) the defendant breached that duty; (3) a causal relationship between the breach and the resulting injury suffered by the plaintiff; and (4) actual loss suffered by the plaintiff. *Reeves v. Middletown Athletic Ass'n.*, 866 A.2d 1115, 1126 (Pa. Super. 2004). More specifically, in the context of the duty which a possessor of land owes to a licensee³, the possessor of the land's liability for physical harm caused to licensee by a condition of the land exists only if:

- (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect they will not discover or realize the danger;
- (b) [the licensee] fails to establish reasonable care to make the condition safe, or to warn the licensee of the condition and the risk involved; and
- (c) the licensee do[es] not know or have reason to know of the condition and the risk involved.

² The factual background is derived from the allegations in Plaintiff's Complaint and Plaintiff's deposition. No other depositions have been presented to the Court in consideration of the Motion for Summary Judgment. In considering the motion, the record will be reviewed in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact will be resolved against the moving party. *Krauss v. Trane U.S., Inc.*, 104 A.3d 556, 563 (Pa. Super. 2014).

³ A licensee is "a person who is privileged to enter or remain on land only by virtue of the possessor's consent." *Rossino v. Kovacs*, 718 A.2d 755, 757 (Pa. 1998), citing Restatement (Second) of Torts, § 330 (1965). There is no dispute between the parties that Plaintiff was a licensee on the date of the accident.

Rossino v. Kovacs, 718 A.2d 755, 757 (Pa. 1998), citing Restatement (Second) of Torts, § 342.

Applying this guidance, it is clear that Defendant did not know nor had reason to know of the existence of the hole in which Plaintiff tripped. Indeed, there is a complete paucity of evidence as to when the hole first existed. Circumstantially, the absence of vegetation growth in the hole speaks to its relatively recent existence however does not permit quantification as to whether it developed days, hours, or even minutes before the accident. Absent some indication as to the lifespan of the hole, it is impossible to impute knowledge of its existence to Defendant. This lack of knowledge is critical as Pennsylvania law does not require a possessor of land to guarantee to a licensee the complete absence of defects on the property which may cause injury. Rather, a land possessor only becomes responsible for a licensee's injuries when the danger is known or should reasonably be known to exist. *Moultrely v. Great A & P Tea Co.*, 422 A.2d 593 (Pa. Super. 1980) ("a land owner is not an insurer; he is liable only for the defects that he has actual or constructive notice of; i.e., which could have been discovered by a reasonable inspection").⁴ Plaintiff argues that the Defendant should have realized the possibility of holes existing near the lake as she was aware that muskrats had dug holes in the area on other prior occasions and therefore had a duty to actively inspect the area. I find this argument unpersuasive. The muskrat holes are transitory defects in the landscape rather than a durable or more permanent defect such as an uneven grade on the floor. Although Plaintiff claims Defendant acknowledged that muskrats making holes on the property are a problem, there is nothing to suggest that holes constantly existed. Rather, Defendant's acknowledgment that muskrat holes are a problem is only an acknowledgment of common sense: wild animals live in open lands, particularly near water sources, and many species of wild animals are fond of digging or burrowing holes. One need not have a degree in wildlife management to appreciate that animals commonly establish residence and/or search for nutrition sources within minutes at

⁴ Although the *Moultrely* Court expressed its opinion in the context of considering the duty of possessor of property owes to a business "invitee" rather than "licensee," the Court's discussion related to an element which is common to establishing a land possessor's liability to either a "invitee" or a "licensee." Accordingly, I find it persuasive currently.

unanticipated random intervals and locations. Indeed, any rural resident can affirm that muskrat holes, rabbit holes, groundhog holes, snake holes, and a variety of other holes are not an infrequent problem on any rural property. The natural appearance of open wild land, with its inherent benefits and risks, is what makes the land attractive. Indeed, it is precisely this allure which causes many to frequently travel from the city to enjoy the pleasures of the country. It is also this reality which, through the exercise of common sense, should cause one such as Plaintiff to expect and be vigilant to the presence of holes and other temporary tripping hazards present near lakes and wooded areas. Aware that living in the country comes with certain issues, Defendant promptly filled holes around the property when she became aware of their existence. The law requires no more. To place on every possessor of open land the requirement that they insure against transitory conditions to their property caused by nature, including animals, is an unrealistic standard and one unsupported by the law. Instantly, the Defendant did not know nor had reason to know of the existence of the random hole at issue. As such, there is no evidence of a duty breached by Defendant and summary judgment is appropriate.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 28th day of February, 2017, Defendant's Motion for Summary Judgment is granted. The Adams County Prothonotary's Office is directed to enter judgment in favor of the Defendant and against the Plaintiff on the sole count in Plaintiff's Complaint.

REQUEST FOR SEALED BIDS FOR
SALE OF REAL PROPERTY

Littlestown Area School District

The Littlestown Area School District (the "District") is accepting sealed bids in the form attached hereto for the purchase of the following real property (the "Property") as described in this Request for Sealed Bids for Sale of Real Property. The Property consists of approximately .228 acres of land, as more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein. The sale of the Property shall be awarded, at the discretion of the Board of School Directors, to the bidder submitting the highest qualifying bid in accordance with the terms outlined below. The Board of School Directors reserves the right to reject any and all bids. A cashier's check, certified check or money order payable to the Littlestown Area School District in an amount equal to 10% of its bid shall be attached to the bid as bid security. Terms and conditions for the sale of the Property shall include:

1. Purchase of the real property in "as is" condition;
2. Conveyance of the Property by special warranty deed;
3. Purchaser to pay all fees, commissions and costs associated with closing the sale of the Property;
4. Purchaser to close the sale within 60 days, after Board of School Directors acceptance of the bid; subject to title defects if any;
5. Execution of Agreement of Sale, for the Property to be sold "as is" with no warranties or representations as to suitability for any particular use other than restricted by zoning.
6. It is the responsibility of the Purchaser to obtain and pay for any title examination and/or survey. Seller offers no guarantee in regard to the quality or condition of the title. Any defect revealed through the Purchaser's research which makes the title unmarketable must be submitted to the Seller in writing within 20 days from the date of the award notice.

By submitting a bid, each bidder agrees to waive and does hereby waive any claim the bidder has or may have against the District, and the District's respective employees and representatives for the awarding of damages or attorney fees, arising out of or in connection with the administration, evaluation, or recommendation of any bid, waiver, deletion or amendment of any requirements under this Request for Sealed Bids for Sale of Real Property,

acceptance or rejection of any bids, and award of the bid.

By execution and submission of this bid, the bidder hereby represents and warrants to the District that the Bidder has read and understands that Request for Sealed Bids for Sale of Real Property and that the bid is made in accordance with the terms stated herein. Bidder acknowledges that it understands all terms herein, which include the waiver provisions, and that it had the right to consult with counsel regarding all applicable documents.

The District reserves the right to waive, delete or amend any of the requirements connected with this bid. Bids shall be delivered in writing on the attached Bid Form, signed by the bidder or an authorized representative, and enclosed in a sealed envelope to the District, marked

"SEALED BID TO PURCHASE REAL PROPERTY."

Bids must be received before 4:00 p.m. on March 30th, 2017, and any bid received after that time will not be considered.

District staff will publicly open, read and tabulate the bids at the District Office of Littlestown Area School District, 162 Newark Street, Littlestown, PA 17340.

Bidders may contact Michael Statler, Business Manager at 717-359-4146 for clarifications and questions.

PROPERTY INFORMATION: EXHIBIT A

ALL THAT CERTAIN tract of land situated in the Borough of Littlestown, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an existing street pin set in the concrete walk on the West side of School Drive, at its intersection with the North side of a 12 foot wide alley, said alley running from the East side of Park Avenue to the West side of School Drive, having on its North side land now or formerly of Bret M. Motter and Littlestown High School, and on its South side land now or formerly of Willodean Higgs and Linda L. Riley; thence along the North side of said alley, South 67 degrees 25 minutes 49 seconds West, 102.30 feet to an existing steel pin; thence along the East side of another 12 foot wide alley, North 22 degrees 34 minutes 11 seconds West, 125.40 feet to an existing steel pin set in the concrete walk on the East side of said alley, at its intersection with the South side of School Drive; thence along said School Drive by a curve to the right having a radius of 100.68 feet for an arc distance of 131.49 feet, the long chord of which is South 71 degrees 50 minutes

58 seconds East, 122.34 feet to an existing steel pin; thence along same, South 34 degrees 25 minutes 55 seconds East, 46.58 feet to an existing steel pin set in the concrete walk on the West side of School Drive, at its intersection with the North side of a 12 foot wide alley, the place of BEGINNING. CONTAINING .228 Acre.

BEING Tract No. 2 in Deed by Littlestown Joint School Authority dated December 20, 1990 and recorded December 21, 1990 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Deed Book 576, Page 286, granted and conveyed unto Littlestown Area School District.

Mr. Christopher Bigger,
Superintendent Of Schools;
Mr. Michael Statler
Business Manager
162 Newark Street,
Littlestown, PA 17340
(717) 359-4146
FAX: (717) 359-9617
www.lasd.k12.pa.us

3/10, 3/17, 3/24

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF MARTHA L. ADAMS, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Juanita Mackley, 190 Darlene Street, York, PA 17402

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF JOANNA B. KENNEDY, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Benjamin Kennedy, 402 Hanover St., Gettysburg, PA 17325

ESTATE OF DIANE M. KIERNIESKY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

David M. Kierniesky and Stephen N. Kierniesky, c/o Vance E. Antonacci, Esq., McNees Wallace & Nurick LLC, 570 Lausch Lane, Suite 200, Lancaster, PA 17601

Attorney: Vance E. Antonacci, Esq., McNees Wallace & Nurick LLC, 570 Lausch Lane, Suite 200, Lancaster, PA 17601

ESTATE OF NAOMI THERESA MART, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Louis A. Mart, 3 Glendale Street, Hanover, PA 17331

Attorney: Scott J. Strausbaugh, Esq., Becker & Strausbaugh, P.C., 544 Carlisle Street, Hanover, PA 17331

ESTATE OF RICHARD E. SELBY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Chad Michael Clabaugh, 1314 Hillcroft Lane, York, PA 17403

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF ADRIENNE D. CAMEL, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Judith Camel, 133 West Street, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF BETTY J. DETTER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Ethan J. Eshbach, c/o John C. Herrold, Esq., Griest, Himes, Herrold, Reynosa LLP, 129 East Market Street, York, PA 17401

Attorney: John C. Herrold, Esq., Griest, Himes, Herrold, Reynosa LLP, 129 East Market Street, York, PA 17401

ESTATE OF CHRISTOPHER M. LITTLE, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administrator: James M. Little, Sr., c/o Stonesifer and Kelley, P.C., 209 Broadway, Hanover, Pennsylvania 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, Pennsylvania 17331

ESTATE OF LARRY R. MUMMERT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Patti L. Sheely, 513 Prince Street, Littlestown, PA 17340

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOAN L. PARDOE, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executor: Thomas E. Peach, 1910 Fluse Drive, Marriottsville, MD 21104

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF MAZIE J. SHRINER, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Co-Executors: Cecelia Miller a/k/a Cecelia Miller, 365 Goldenville Road, Gettysburg, PA 17325; Mark Shriner, 40 Diane Lane, Biglerville, PA 17307

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF EARLEEN M. SMITH, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Scott L. Kelley, Esq., Stonesifer and Kelley, P.C., 209 Broadway, Hanover, Pennsylvania 17331

Attorney: Scott L. Kelley, Esq., Stonesifer and Kelley, P.C., 209 Broadway, Hanover, Pennsylvania 17331

THIRD PUBLICATION**ESTATE OF CATHERINE CHARNLEY, DEC'D**

Late of Silver Spring, Montgomery County, Maryland

Executrix: Virginia Manzione, 136 Old Forest Circle, Winchester, VA 22602

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF SUSAN DAWN DUDEK, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Christopher G. Dudek, 23 Lake Meade Drive, East Berlin, PA 17316

Attorney: Thomas R. Nell, Esq., 130 W. King Street, PO Box 1019, East Berlin, PA 17316

ESTATE OF JESSIE A. GARVER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Jessie Brenda Bosley, 7135 Wolfgang School Road, Glen Rock, PA 17327-8877; Billie Carlisle-Young, 21960 Crested Quail Drive, Ashburn, VA 20148-7126

Attorney: Jeffery M. Cook, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF MILDRED H. GEORGIUS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Co-Executors: Charles R. Georgius, 7616 Anamosa Way, Derwood, MD 20855; Alice Ann Caltrider, 851 Muller Road, Westminster, MD 21157

ESTATE OF WILLIAM A. SMITH, DEC'D

Late of the Mt. Pleasant Township, Adams County, Pennsylvania

Administrator: Veronica Smith, 1815 Center Mills Road, Apt. 2, Aspers, PA 17304

Attorney: Clayton A. Lingg, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

THIRD PUBLICATION CONTINUED

ESTATE OF JAMES E. WAGNER, DEC'D

Late of Oxford Township, Adams
County, Pennsylvania

Executor: Joi Lynn Wagner, c/o Sharon
E. Myers, Esq., CGA Law Firm, PC,
PO Box 606, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA
Law Firm, PCPO Box 606, East
Berlin, PA 17316