

Adams County Legal Journal

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NOTICE OF DISSOLUTION

Notice is hereby given to all persons interested or who may be affected, that SECTION A, WATER CORPORATION, with its mailing address of P.O. Box 31, Fairfield, Pennsylvania 17320, a non-profit corporation, by a vote of its board of directors and its membership, has elected to dissolve the said corporation, and that the board of directors is now engaged in liquidating the assets of the corporation, winding up and settling the affairs of said corporation so that its corporate existence shall be ended under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988.

Robert L. McQuaide, Esq.
Solicitor

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IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION
NO. 2012-S-738

In re: Evan James Ronald Fraley, a minor, by Tracy L. Townley, his mother and natural guardian

NOTICE OF HEARING ON PETITION
FOR CHANGE OF NAME

NOTICE IS HEREBY GIVEN that Tracy L. Townley has filed a Petition for Change of Name requesting the Court to change the name of her minor child from Evan James Ronald Fraley to Evan James Townley.

The Court has fixed August 3, 2012 at 9:00 a.m. in Courtroom No. 4, Adams County Courthouse, 111 Baltimore Street, Gettysburg, PA 17325, as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Richard E. Thrasher, Esq.
Puhl, Eastman & Thrasher
Attorney for Petitioner
220 Baltimore Street
Gettysburg, PA 17325

6/1

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on April 30, 2012 for the purpose of obtaining a Certificate of Incorporation for a proposed nonprofit corporation to be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, as amended.

The name of the corporation is: THE M.L.S. KING LIVING LEGACY GUILD.

The only person(s) owning or interested in a business are: Clifton and Clinton Bittle.

The purpose for which the corporation is organized is: Creating public awareness through the performing arts and education, advocating for historic preservation, and to have unlimited power to engage in and do any lawful act for which corporations may be incorporated under the Business Corporation Law Act of 1933, May 5, 1933, P.L. 364, as amended.

The initial registered office of the corporation is 107 East King Street, Littlestown, PA 17340.

Clifton and Clinton Bittle
185 Bittle Road
Littlestown, PA 17340
(717) 873-9534

6/1

NOTICE

NOTICE IS HEREBY GIVEN that Jamison Entwistle intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on August 3, 2012, and that she intends to practice law in the Law Office of Entwistle & Roberts, located at 66 West Middle Street, Gettysburg, Pennsylvania.

6/1, 8 & 15

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on May 7, 2012, for a domestic nonprofit corporation which was organized under the Nonprofit Corporation Law of 1988, 15 Pa. C.S. §5101 et seq. The name and address of the corporation is PATRIOTS PLACE, 305 Crooked Creek Road, Gettysburg, Pennsylvania 17325. The corporation was incorporated for the purpose of providing support, assistance, and respite for physically and combat-trauma wounded veterans, their spouses, and family caregivers during the veteran's recovery period.

Suzanne S. Friday, Esq.
Nauman, Smith, Shissler & Hall, LLP
200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, PA 17108-0840

6/1

CERTIFICATE OF ORGANIZATION

NOTICE IS HEREBY GIVEN that a Certificate of Organization was filed with the Department of State, Commonwealth of Pennsylvania for REVIVING TIME, LLC. The said company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

Kevin Warner
Manager

6/1

STAUFFER VS. HAINES

1. To determine if a complaint fails for legal insufficiency (demurrer), the court may only determine whether, on the basis of the allegations that the plaintiff pled, the plaintiff possesses a cause of action recognizable at law.

2. Generally, the Comparative Negligence Act superseded the common law doctrine of assumption of risk. However, the Comparative Negligence Act was later amended to address injuries arising from downhill skiing. The Pennsylvania Skier's Responsibility Act specifically retained the doctrine of assumption of risk as a defense with respect to the sport of downhill skiing.

3. For purposes of the Pennsylvania Skier's Responsibility Act, downhill skiing encompasses more than simply skiing down a hill. Downhill skiing includes those other activities directly and necessarily incident to the act of downhill skiing.

4. While Pennsylvania courts have not explicitly held that snowboarding is also included in the sport of downhill skiing, the courts have declined to distinguish between skiing and snowboarding for the purposes of the Pennsylvania Skier's Responsibility Act.

5. A collision between a skier and snowboarder is a risk that is common, frequent and expected, and, therefore, inherent to the sport of downhill skiing.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 11-S-1276, DON A. STAUFFER VS. VICTORIA
HAINES.

David M. Pollack, Esq., for Plaintiff

Bart W. Holmes, Esq., for Defendant

Campbell, J., December 6, 2011

OPINION

On August 24, 2011, Plaintiff, Don A. Stauffer, initiated this cause of action by filing a Complaint against Defendant, Victoria A. Haines. In his Complaint, Plaintiff alleges that on January 12, 2010, he was a business invitee at Ski Liberty ski resort in Carroll Valley, Adams County, Pennsylvania. At approximately 8:30 p.m., Plaintiff skied down the trail and was approaching the chair lift. Plaintiff alleges that Defendant, riding a snowboard, "kicked her board out in front of ... Plaintiff's path of travel," causing Plaintiff to fall. As a result of his fall, Plaintiff alleges that he sustained personal injuries, including a fractured right wrist and severe shock to his nerves and nervous system. Based on these facts, Plaintiff alleges negligence by Defendant.

On November 4, 2011, Defendant filed Preliminary Objections to Plaintiff's Complaint and her Brief in Support thereof. Defendant alleged that Plaintiff's Complaint is legally insufficient and should be

dismissed because Defendant owed no duty of care to Plaintiff based on the Pennsylvania Skier's Responsibility Act and case law interpreting the Act. Plaintiff filed his Response and Brief in Opposition to Defendant's Preliminary Objections on November 18, 2011.

It is well established under Pennsylvania law that when ruling on preliminary objections, the Court must accept as true all well-pleaded allegations of material fact as well as all inferences reasonably deducible from those facts. *Ballroom, LLC v. Commonwealth*, 984 A.2d 582, 586 n.3 (Pa. Cmwlth. 2009) (citations omitted). Preliminary objections will be sustained only where the case is clear and free from doubt. *Rambo v. Greene*, 906 A.2d 1232, 1235 (Pa. Super. 2006).

Defendant alleges that Plaintiff's Complaint is legally insufficient under Pennsylvania Rule of Civil Procedure 1028(a)(4). To determine if a complaint fails for legal insufficiency (demurrer), the court may only determine whether, on the basis of the allegations that the plaintiff pled, the plaintiff possesses a cause of action recognizable at law. *Adoption of S.P.T.*, 783 A.2d 779, 782 (Pa. Super. 2001). The court may not consider factual matters, no testimony or other evidence outside the complaint may be adduced, and the court may not address the merits of the matters represented in the complaint. *Id.*

Plaintiff's Complaint asserts negligence by Defendant. The common law elements of negligence are well established. Negligence is established by proving the following four (4) elements: 1) a duty or obligation recognized by law; 2) breach of that duty; 3) a causal connection between the conduct and the resulting injury; and 4) actual damages. *Grossman v. Barke*, 868 A.2d 561, 566 (Pa. Super. 2005), *appeal denied*, 889 A.2d 89 (Pa. 2005).

Pennsylvania's General Assembly adopted the Comparative Negligence Act, 42 Pa. C.S.A. § 7102, which provides a system of recovery based on the comparative fault of the parties. **42 Pa. C.S.A. § 7102.** Generally, the Comparative Negligence Act superseded the common law doctrine of assumption of risk. *Hughes v. Seven Springs Farm, Inc.*, 762 A.2d 339, 341 (Pa. Super. 2000). However, the Comparative Negligence Act was later amended to address injuries arising from downhill skiing. **See 42 Pa. C.S.A. § 7102(c).** The Pennsylvania Skier's Responsibility Act provides the following:

(c) Downhill skiing.

- (1) The General Assembly finds that the sport of downhill skiing is practiced by a large number of citizens of this Commonwealth and also attracts to this Commonwealth large numbers of nonresidents significantly contributing to the economy of this Commonwealth. It is recognized that as in some other sports, there are some inherent risks in the sport of downhill skiing.
- (2) The doctrine of voluntary assumption of risk as it applies to downhill skiing injuries and damages is not modified by subsections (a) and (b).

Id.

Section 7102(c) specifically retained the doctrine of assumption of risk as a defense with respect to the sport of downhill skiing. See *id.*; *Bell v. Dean*, 5 A.3d 266, 268 (Pa. Super. 2010). The assumption of risk defense is based upon the general principle that “a plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm.” *Bell*, 5 A.3d at 268-69 (quoting *Hughes*, 762 A.2d at 341 [citing **Restatement Second of Torts, § 496A**]). When the defense applies, a defendant owes no duty of care to a plaintiff, and a plaintiff’s negligence cause of action must fail. *Bell*, 5 A.3d at 269. To determine if the assumption of risk doctrine applies to downhill skiing:

[f]irst, [a] [c]ourt must determine whether [the plaintiff] was engaged in the sport of downhill skiing at the time of [his] injury. If that answer is affirmative, [a court] must then determine whether the risk ... is one of the “inherent risks” of downhill skiing, which [the plaintiff] must be deemed to assume under the Act.

Hughes, 762 A.2d at 344.

First, this Court must determine if Plaintiff was engaged in the sport of downhill skiing. For purposes of the Pennsylvania Skier’s Responsibility Act, downhill skiing encompasses more than simply skiing down a hill. *Hughes*, 762 A.2d at 344. Downhill skiing

“includes those other activities directly and necessarily incident to the act of downhill skiing.” *Id.* Those activities include:

boarding the ski lift, riding the lift up the mountain, alighting from the lift, skiing from the lift to the trail and, after a run is completed, skiing towards the ski lift to start another run or skiing toward the base lodge or any other facility at the end of the day.

Id.

Moreover, while Pennsylvania courts have not explicitly held that snowboarding is also included in the sport of downhill skiing, the courts have declined to distinguish between skiing and snowboarding for the purposes of the Pennsylvania Skier’s Responsibility Act. See, e.g., *Bell*, 5 A.3d at 269 n.2 (“[W]e decline to distinguish between skiing and snowboarding for the purposes of our disposition.”); *Crews v. Seven Springs Mountain Resort*, 874 A.2d 100, 104 n.5 (Pa. Super. 2005) (“We perceive no significant difference between skiing and snowboarding for the purposes of our analysis.”).

Instantly, Plaintiff was engaged in the sport of downhill skiing, as downhill skiing encompasses skiing towards a ski lift. *Hughes*, 762 A.2d at 344. Plaintiff pleaded that he skied down the ski trail and was approaching the chair lift at the time of the collision with Defendant. Therefore, based on Plaintiff’s Complaint, there is no dispute that Plaintiff was engaged in the sport of downhill skiing.

Next, this Court must determine if the risk of colliding with a snowboarder¹ was an “inherent risk” of downhill skiing. Plaintiff relies on *Crews v. Seven Springs Mountain Resort*, 874 A.2d 100 (Pa. Super. 2005), for the proposition that a collision between a skier and snowboarder is not an inherent risk to the sport of downhill skiing. However, Plaintiff’s reliance on this case is misplaced, as the instant case is distinguishable from *Crews*. In *Crews*, the plaintiff filed a complaint against a ski resort wherein he alleged that he was skiing when he was struck from behind by a high school student who was

¹ Plaintiff specifically pleads that “Defendant was on a snowboard when she kicked her board out in front of ... Plaintiff’s path of travel causing ... Plaintiff to fall to the ground and sustain personal injuries.” **Plf.’s Complt.** ¶ 5. Plaintiff gives no further explanation as to the incident with Defendant, specifically the meaning of “kicked her board out.” For purposes of this Opinion, this Court will characterize the incident between Plaintiff and Defendant as a collision.

allegedly snowboarding under the influence of alcohol. *Crews*, 874 A.2d at 101. The plaintiff in *Crews* specifically pleaded in his complaint that the snowboarder was underage and under the influence, that the underage drinking had started earlier in the day, and that the resort had notice that underage drinking had previously occurred at the resort. *Id.* at 102. The Superior Court in *Crews* held that the plaintiff did not assume the risk of being hit by a fellow sportsman who was using the ski resort's facilities while under the influence of alcohol because such a risk was not "inherent" to the sport of skiing. *Id.* Moreover, the Superior Court twice emphasized that the plaintiff's action would have failed if the claim arose from a mere collision with another skier or snowboarder. *Id.* at 102, 104.

The instant case is distinguishable from *Crews*. Here, Plaintiff's Complaint does not allege that Defendant was an underage snowboarder who was engaged in underage drinking. While Plaintiff, in his response to Defendant's Preliminary Objections, asserts that it is his belief that Defendant was underage and under the influence of alcohol, Plaintiff has not pleaded those facts in his Complaint. As such, this Court cannot consider such allegation when ruling on Defendant's Preliminary Objections to Plaintiff's Complaint. See *Adoption of S.P.T.*, 783 A.2d at 782 (stating that the court may consider evidence outside the complaint when ruling on preliminary objections in the nature of demurrer). Plaintiff's claim in the instant case must fail as Plaintiff has only pleaded a collision with Defendant, a snowboarder, which is an inherent risk of downhill skiing. See, e.g., *Bell*, 5 A.3d at 273 (finding that a collision between a skier and snowboarder is a risk that is common, frequent, and expected, and, therefore, inherent to the sport of downhill skiing); *Hughes*, 762 A.2d at 344 ("[T]he risk of colliding with another skier ... is one of common, frequent, and expected risks inherent in downhill skiing."). Therefore, Plaintiff's Complaint is legally insufficient, and Defendant's Preliminary Objection in the nature of demurrer is sustained.

Therefore, for the reasons stated herein, Defendant's Preliminary Objections are sustained. Accordingly, the attached Order is entered.

OPINION

AND NOW, this 6th day of December 2011, Defendant's Preliminary Objections to Plaintiff's Complaint are sustained. Plaintiff's Complaint is dismissed without prejudice. Plaintiff is granted twenty (20) days from the date of this Order to file an Amended Complaint.

ORDER

AND NOW, this 7th day of December 2011, Defendant's Preliminary Objections to Plaintiff's Complaint are sustained. Plaintiff's Complaint is dismissed without prejudice. Plaintiff is granted twenty (20) days from the date of this Order to file an Amended Complaint.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of 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 RICHARD DENIKE a/k/a RICHARD GEORGE DENIKE, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Administrator: Scott Denike, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF ROBERT C. GROVE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Deborah E. Horn, 62 Hunterstown-Hampton Road, Gettysburg, PA 17325

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

ESTATE OF THOMAS E. LARSON, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Evelyn M. Larson, c/o Erin J. Miller, Esq., Elder Law Firm of Robert Clofine, 120 Pine Grove Commons, York, PA 17403

Attorney: Erin J. Miller, Esq., Elder Law Firm of Robert Clofine, 120 Pine Grove Commons, York, PA 17403

ESTATE OF ARLENE B. MURRAY, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executrices: Johneta M. Yingling, 432 West Middle Street, Gettysburg, PA 17325; June F. Rea, 517 4th Street, New Cumberland, PA 17070

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

ESTATE OF NORMA L. POLAND, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Donna L. Troyer, 50 Sycamore Lane, Hanover, PA 17331

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

ESTATE OF PAUL D. SCOTT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Robert A. Scott, 640 Stone Jug Road, Biglerville, PA 17307

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

SECOND PUBLICATION

ESTATE OF ALLEN F. KASTEN, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executrix: Patricia Kasten, 5 Janet Trail, Fairfield, PA 17320

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

ESTATE OF LEONARD P. SHIPLEY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Leonard W. Shipley, 205 Deep Woods Court, Nashville, TN 37214; Faye E. Haker, 63 Myrtle Point Circle SW, Supply, NC 28462

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

THIRD PUBLICATION

(No Estate Notices Submitted)

NOTICE OF ACTION IN
MORTGAGE FORECLOSURE

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
COURT OF COMMON PLEAS
CIVIL DIVISION
ADAMS COUNTY
NO. 2012-SU-299

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE, SUCCESSOR IN
INTEREST TO BANK OF AMERICA,
NATIONAL ASSOCIATION, AS TRUSTEE
(SUCCESSOR BY MERGER TO
LASALLE BANK NATIONAL
ASSOCIATION) AS TRUSTEE FOR
MORGAN STANLEY MORTGAGE LOAN
TRUST 2066-7

vs.

MEENA GANGWAL

NOTICE

TO MEENA GANGWAL:

You are hereby notified that on February 28, 2012, Plaintiff, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION, AS TRUSTEE (SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION) AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2066-7, 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. 2012-SU-299. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 128-130 CARLISLE STREET, a/k/a 130 CARLISLE STREET, GETTYSBURG, PA 17325-1816 whereupon your property would be sold by the Sheriff of Adams County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, 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.

ADAMS COUNTY
COURT ADMINISTRATOR
ADAMS COUNTY COURTHOUSE
GETTYSBURG, PA 17325
(717) 334-6781, EXT. 213
LAWYER REFERRAL SERVICE
MIDPENN LEGAL SERVICES
128 BRECKENRIDGE STREET
GETTYSBURG, PA 17325
(717) 334-7624

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