

Adams County Legal Journal

Vol. 57


July 10, 2015

No. 9

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DIRECTORS, FAIRFIELD AREA SCHOOL BOARD VS.
CHARLES HATTER, RICHARD MATHEWS, WALTER
BARLOW, AGATHA FOSCATO, AND BRUCE LEFEBER,
DIRECTORS, FAIRFIELD AREA SCHOOL BOARD

This opinion is continued from the last issue (July 2, 2015).



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE STREET, ROOM 305, GETTYSBURG, PA 17325-2313. Telephone: (717) 334-1553

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CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on April 23, 2015, a Petition for Name Change was filed in the Court of Common Pleas of Adams County, Pennsylvania, requesting a Decree to change the name of Petitioner, Bridget Marie Boles, to Bridget Marie Lucente.

The court has affixed the 15th day of July, 2015 at 1:30 P.M. in courtroom No. 4, Third Floor, Adams County Courthouse, 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 request of the Petitioner should not be granted.

7/10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is Nolt's Mulch Products, Inc.

Henry O. Heiser, III, Esquire
104 Baltimore Street
Gettysburg, PA 17325

7/10

The considerations analysis provided by the Pennsylvania Supreme Court has been used by the courts of this commonwealth many times subsequent to *Kline* in determining whether a party is indispensable to an action, and the *Kline* considerations analysis is still good law. In the case of *E-Z Parks, Inc. v. Philadelphia Parking Auth.*, 521 A.2d 71 (Pa.Cmwlt. 1987), the plaintiff, *E-Z Parks*, sued the Philadelphia Parking Authority seeking to have a contract between the Pennsylvania Department of Transportation and the Authority declared void on the ground that the Authority had exceeded its power in entering into the contract. *E-Z Parks*, 521 A.2d at 72. The Authority filed preliminary objections, including a preliminary objection for failure to join the Department of Transportation as an indispensable party. The Court of Common Pleas of Philadelphia County dismissed the complaint without prejudice for failure of *E-Z Parks* to join the Department as an indispensable party. *Id.* at 72 – 73. *E-Z Parks* appealed to the Pennsylvania Commonwealth Court. The Commonwealth Court reviewed the Supreme Court's considerations criteria from *Kline*, above. In analyzing the *Kline* considerations, the Commonwealth Court found that “[h]ere the Department possesses a contractual right. This right is directly related to the claim of *E-Z Parks*, because *E-Z Parks* seeks to invalidate the contract between the Department and the Authority. In addition, the Department's right to continued performance of the contract is essential to the merits of the case. Moreover, the Department's interest is distinct from that of the Authority” *E-Z Parks*, 521 A.2d at 73. Additionally, the Commonwealth Court determined that “[o]f equal importance in considering whether the Department is an indispensable party is the fact that, as fee simple owner of the [property], the Department's right to the use and enjoyment of the property would be adversely affected by the litigation.” *Id.* The Commonwealth Court determined that if *E-Z Parks* was granted the relief it sought, namely to have the contract between the Department of Transportation and Authority voided, the Department's rights under the contract would be impaired. *Id.* The Commonwealth Court affirmed the Philadelphia Court of Common Pleas' order dismissing the plaintiff's complaint for failure to join the Department of Transportation as an indispensable party. *Id.* at 75.

The instant case is remarkably similar to *E-Z Parks*, in that both cases involve an absent party who is a signatory to a contract that the

moving party requests the court to void. In the instant case, Plaintiffs request that this Court void the actions of the Defendants relevant to Mr. Chain's contract because of violations of the School Code and the Sunshine Act, and reinstate Mr. Chain as Superintendent of the Fairfield Area School District. Essentially, Plaintiffs request the Court to rescind the Irrevocable Letter of Resignation signed by Mr. Chain and void the Settlement and Release Agreement signed by Mr. Chain and Defendant Hatter on behalf of the District.

Under the first *Kline* consideration, the Court must determine whether an absent party has a right or interest related to the claim. Mr. Chain, a party absent to this litigation, possesses contractual rights under the Settlement and Release Agreement. The Settlement and Release Agreement is directly related to the claim of the Plaintiffs and the Plaintiffs' requested relief which if granted would have the effect of voiding the Agreement.³ The second *Kline* consideration requires the Court to determine the nature of that right or interest. Under the Agreement, Mr. Chain possesses many rights, including the right to collect severance pay and benefits. The third *Kline* consideration requires the Court to determine whether that right or interest is essential to the merits of the issue. Clearly, Mr. Chain's right to continued performance of the Agreement, including his collection of severance pay and benefits, is essential to the merits of the instant case. Finally, the fourth *Kline* consideration requires the Court to determine if justice may be afforded without violating the due process rights of absent parties. If the Settlement and Release Agreement is voided, Mr. Chain's rights under the Agreement, including rights to severance pay and benefits, would be impaired. It is not possible for the Court to grant the relief that Plaintiffs request, which would have the effect of voiding the Agreement, without

³ Plaintiffs suggest that the Court could proceed without Mr. Chain and fashion a decision that would render Defendants' actions null and void but grant Mr. Chain the right to ratify the Agreement. Although this approach may have surface appeal we decline that invitation. The background averred by the Plaintiffs, although suggestive of impropriety, are allegations only at this point. It could well be that Mr. Chain, as an experienced superintendent, was well versed in his rights under the School Code, but determined that it was in his personal and professional interests to resign at that point. To litigate this matter further without his participation could result in the utilization of judicial resources to achieve a goal no different than the current status quo. Even if Plaintiffs would be successful the issue is moot if Mr. Chain does not wish to return to his prior position.

impairing Mr. Chain's rights regarding that Agreement to which he is a party. If the Court were to grant the relief Plaintiffs request, without Mr. Chain having the opportunity as a party to this action to protect his rights, the Court would be impermissibly violating Mr. Chain's rights to due process regarding the Agreement.

The Pennsylvania Supreme Court, in setting forth the *Kline* considerations, provided a test for determination if a party is indispensable to an action. In this Court's analysis of the *Kline* considerations in the instant case, it is clear that Mr. Chain has rights under the Agreement that he signed with the Fairfield Area School District that would be impaired if this Court granted Plaintiffs' requested relief without Mr. Chain having the opportunity to protect those rights as a party to the action. Just as the Department of Transportation had a right to the use and enjoyment of certain property that would be adversely affected by the claims of the plaintiff in *E-Z Parks*, Mr. Chain has a property right in the severance pay and benefits he is entitled to receive under the Agreement which could be adversely affected by the instant litigation. *See E-Z Parks*, 521 A.2d at 73. The Court finds that Mr. Chain is an indispensable party to this action, and the Court cannot proceed with Plaintiffs' claims without Mr. Chain's joinder as a party.

Plaintiffs have requested, in their Brief in Opposition, that if Mr. Chain is determined to be an indispensable party, that the Court join him in the action, such that he not be placed in breach of the agreement. Pennsylvania Rule of Civil Procedure 1032(b) states:

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter or that there has been a failure to join an indispensable party, the court shall order that the action be transferred to a court of the Commonwealth which has jurisdiction or that the indispensable party be joined, but if that is not possible, then it shall dismiss the action.

Pa.R.C.P. No. 1032(b). The issue that the parties present for the Court's determination, therefore, is whether it is possible for Mr. Chain, an indispensable party, to be joined in the action.

Plaintiffs admit in their Brief in Opposition that "Mr. Chain is prohibited from acting as a plaintiff in the instant action" but they blame the Defendants for crafting the terms of the Agreement so as

to include this prohibition.⁴ Defendants argue that Mr. Chain made a voluntary decision to resign and sign the Settlement and Release Agreement. Paragraph #8.a. of the Settlement and Release Agreement, titled “General and Specific Release,” states:

In consideration for the payments provided herein, Chain, on behalf of himself, his heirs and assigns, hereby releases and forever discharges District, its successors, affiliates and assigns, as well as any and all of its officers, directors, employees, agents and representatives, from any and all claims, demands, obligations, losses, cause of action and/or liabilities of any nature whatsoever, whether based on contract, tort or other legal or equitable theory of recovery, and whether known or unknown (but not including rights or claims that may arise after the Effective Date of Termination), specifically including but not limited to any alleged claims under the Pennsylvania Human Relations Act (PHRA), the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act (FMLA), the Americans With Disabilities Act (ADA), the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Pennsylvania Minimum Wage Act (PMWA), the Pennsylvania Wage Payment and Collection Law, the Pennsylvania Public School Code of 1949, as well as any alleged claim of wrongful termination or discharge from employment, breach of express or implied contract, or any other claim of violation of federal or state law, and/or municipal ordinance. Chain further agrees not to bring, continue, or maintain any legal proceeding of any nature whatsoever against the District, before any court, administrative agency or department, administrative law judge, arbitrator or any other tribunal or forum, by reason of or related to, any such allegations, claims, liabilities and/or causes of action.⁵

Paragraph #12 of the Agreement, titled “Voluntary Agreement and Representation,” states, in part:

⁴ Plaintiffs’ Brief in Opposition at 8.

⁵ Settlement and Release Agreement at 5.

Chain agrees and represents that:

...

E. The entry into and execution of this Agreement, including the Release, is his own free and voluntary act without compulsion of any kind;⁶

The Agreement appears to be signed by Defendant Hatter and Mr. Chain, and Plaintiffs have not alleged that Mr. Chain did not sign the Agreement. Pursuant to the Agreement, it appears that if Mr. Chain were to “bring, continue, or maintain any legal proceeding of any nature whatsoever against the District, before any court, . . . by reason of or related to, any such allegations, claims, liabilities and/or causes of action,” Mr. Chain would be breaching the Agreement.

The Court will not join Mr. Chain as a plaintiff in this action, which would have the effect of causing him to breach the terms of the Agreement. The Court is not aware of Mr. Chain’s position regarding Plaintiffs’ suit; however, it is telling that Mr. Chain has not joined in the action, has not separately sued the Board or School District, and has not requested reinstatement nor to have the Agreement voided for fraud, misrepresentation, duress, or any other reason. If Mr. Chain wished to join Plaintiffs as a party in this action, he certainly could have, and that would have been his carefully considered decision to risk breach of his Agreement and loss of benefits and performance under the Agreement against the possibility of his reinstatement and avoidance of the Agreement. That Mr. Chain has not pursued such an action is significant in estimating Mr. Chain’s position regarding Plaintiffs’ suit. While the Court would accept Mr. Chain’s voluntary joinder as a plaintiff in this action, the Court determines that it is improper to require Mr. Chain to become a plaintiff, effectively forcing him to breach the Agreement he signed.

Plaintiffs recognize that it would not be appropriate to join Mr. Chain as a defendant in the action, but they also argue that if Defendants believe Mr. Chain to be an indispensable party, that Defendants could join him as a defendant. As Plaintiffs argue, Pennsylvania Rule of Civil Procedure 2252 allows any party to “join as an additional defendant any person not a party to the action who may be (1) solely liable on the underlying cause of action against the joining party . . . [or] (4) liable to

⁶ Settlement and Release Agreement at 7.

or with the joining party on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the underlying cause of action against the joining party is based.” Pa.R.C.P. 2252. Plaintiffs, who have notably not requested any relief against Mr. Chain in their pleadings, admit that “Mr. Chain has no liability for or in decisions of the school board of directors.”⁷ Because Plaintiffs have not requested any relief against Mr. Chain, and because Plaintiffs admit that Mr. Chain is not liable under Plaintiffs’ action, the Court will not join Mr. Chain as a defendant.

Defendants’ preliminary objection pursuant to Pa.R.C.P. 1028(a)(5) for failure to join an indispensable and necessary party is sustained. The Court determines that Mr. Chain is an indispensable party to this action, and the Court declines to join Mr. Chain in this action which would have the effect of forcing him to breach the Settlement and Release Agreement he signed with the Fairfield Area School District. Pursuant to Pa.R.C.P. 1032(b), Plaintiffs’ Amended Complaint is dismissed without prejudice. Plaintiffs will have until close of business on Monday, June 15, 2015 to file an Amended Complaint joining Mr. Chain in this action. If Plaintiffs are unable to convince Mr. Chain to join their action, the action will go no further. Having dismissed Plaintiffs’ Amended Complaint, the Court finds it unnecessary to address the remaining preliminary objections.

Accordingly, the attached Order is entered.

BY THE COURT:

DATE: June 5, 2015

JOHN D. KUHN
Judge

⁷ Plaintiffs’ Brief in Opposition at 8.

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 DANIEL M. BUSHMAN, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Executors: Susan P. May, 470 Rake Factory Road, Biglerville, PA 17307; George D. Bushman, 7 Howard Drive, East Berlin, PA 17316

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

ESTATE OF KATHERINE IRENE CLARK, DEC'D

Late of Littlestown Borough, Adams County, Pennsylvania

Executrix: Brenda Kay Kram, 56 Riverview Drive, Lottsburg, VA 22511

Attorney: John A. Wolfe, WOLFE, RICE & QUINN, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF GARY S. ETZLER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executrix: Teresa M. Etzler, 5017 Patuxent Riding Lane, Bowie, MD 20715

Attorney: Bernard A. Yannetti, Jr., HARTMAN & YANNETTI, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF WALTER J. KACHELE, DEC'D

Late of Conewago Township

Executor: Ward E. Kachele, 50 Witmer Road, Hanover, PA 17331-9060

ESTATE OF JOHN W. MCCLEAF, A/K/A JOHN WILLIAM MCCLEAF, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Co-executors: Diane L. Witsotzkey, 70 Park Avenue, Gettysburg, PA 17325; Gregory W. McCleaf, 125 High Street, Orrtanna, PA 17353

Attorney: Phillips & Phillips, 101 West Middle St., Gettysburg, PA 17325

ESTATE OF JAMES B. MYERS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Perry R. Myers

Attorney: Vicky Ann Trimmer, Daley Zucker Melton & Miner, LLC, 635 N. 12th Street, Suite 101, Lemoyne, PA 17043

ESTATE OF HARRY EBBERT NEFF, DEC'D

Late of Baltimore County, Maryland

Executrix: Mary Easter Johnson a/k/a Mary Neff Johnson, 2505 Johnson Mill Road, Forest Hill, MD 21050

Attorney: John A. Wolfe, WOLFE, RICE & QUINN, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF ROY T. RINKER, JR., ALSO KNOWN AS ROY T. RINKER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executors: Gregory A. Rinker, 965 Hawksbill Street, Bethany Beach, DE 19930; Steven M. Rinker, 63 Stoney Point Road, New Oxford, PA 17350

Attorney: Elinor Albright Rebert, 515 Carlisle Street, Hanover, Pennsylvania 17331

SECOND PUBLICATION**ESTATE OF JOAN A. GOLASZEWSKI, DEC'D**

Late of Littlestown Borough, Adams County, PA

Executor: Mikealenna M. Orr, 26 Pennsylvania Avenue, Littlestown, PA 17340

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

ESTATE OF EUGENE C. PITZER, DEC'D

Late of Fayetteville, Franklin Township, Adams County, Pennsylvania

Executor: Gerald E. Pitzer, 106 West Yellow Hill Road, Biglerville, PA 17307

Attorney: John A. Wolfe, WOLFE, RICE & QUINN, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF ELIZABETH A. SANDERS, ALSO KNOWN AS BETTY A. SANDERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Dawn M. Tauscher, 320 Boundary Avenue, Hanover, Pennsylvania 17331

Attorney: Elinor Albright Rebert, 515 Carlisle Street, Hanover, Pennsylvania 17331

ESTATE OF GEORGE EDWARD WINNES, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: William E. O'Toole, III, P.O. Box 368, 312 West Main Street, Emmitsburg, MD 21727

Attorney: Christina M. Simpson, 28 East High Street, Gettysburg, PA 17325

ESTATE OF CRONGIE CLAYTON WYNE, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: Michele Compher, 790 Yellow Hill Road, Biglerville, PA 17307

Attorney: Gary E. Hartman, Esq., HARTMAN & YANNETTI, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF JACK DAVIS, DEC'D**

Late of Cumberland Township, Adams County, PA

Co-Executors: Bertha J. Davis, 480 Pumping Station Road, Gettysburg, PA 17325; Lewis A. Davis, 644 Preakness Drive, Walnut Creek, CA 94596; Ronald P. Milberg, 20663 Golden Ridge Drive, Ashburn, VA 20147

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

ESTATE OF NAOMI E. HIPPENSTEEL, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: Ronald L. Hippensteel, 805 Green Springs Road, Hanover, Pennsylvania 17331

Attorney: Elinor Albright Rebert, Esquire, 515 Carlisle Street, Hanover, Pennsylvania 17331

ESTATE OF CHARLOTTE RUTKOWSKI A/K/A CHARLOTTE M. RUTKOWSKI A/K/A CHARLOTTE MAY RUTKOWSKI A/K/A CHARLOTTE M. GRIFFIN, DEC'D

Late of Timonium, Baltimore County, Maryland

Executrix: Charlene H. Naff-Johnson

Attorney: Amy S. Eyster, 11 Carlisle Street, Suite 301, Hanover, PA 17331

ESTATE OF KATHLEEN B. SMITH, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executrices: Kimberly A. Evans, 300 Mumper Lane, Dillsburg, PA 17019; Patricia Ann Smith, 102 State Street, York Springs, PA 17372

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

