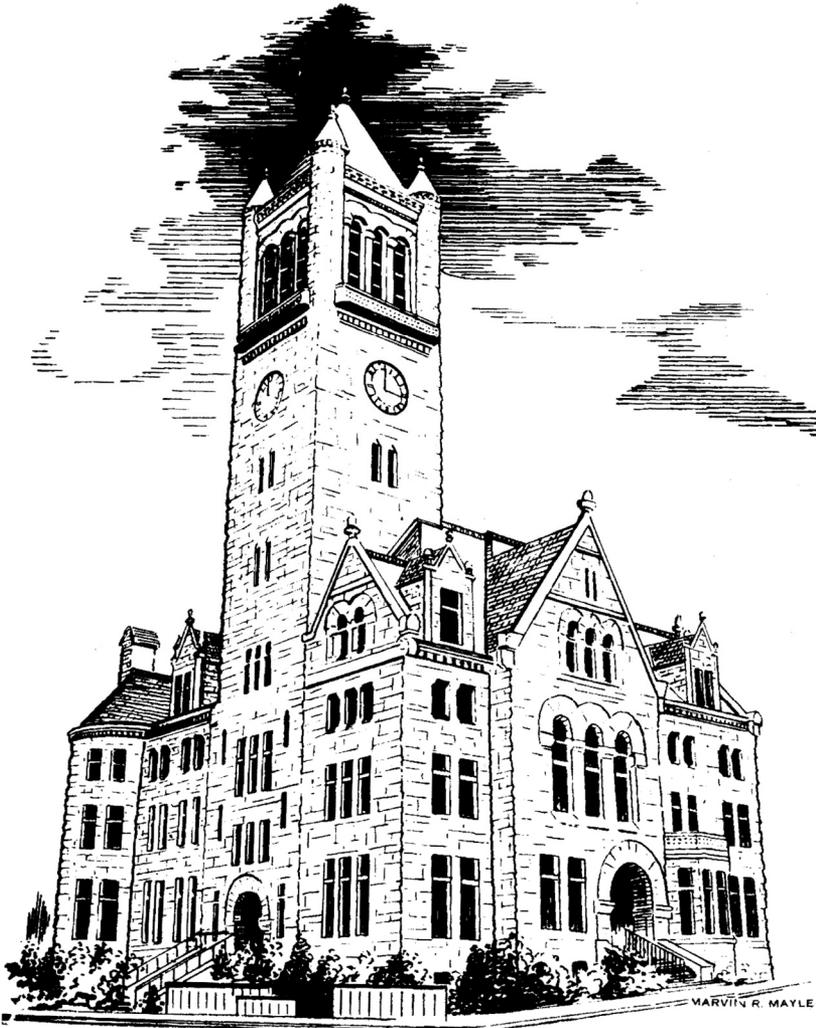


FAYETTE LEGAL JOURNAL

VOL. 84

JULY 31, 2021

NO. 31



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

Co-Editors: Garnet L. Gordon and Melinda Deal Dellarose

Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA

FAYETTE COUNTY BAR ASSOCIATION Board of Directors

President: Charles O. Zebley, Jr.
President Elect: Gretchen A. Mundorff
Vice-President: Mark D. Brooks
Secretary: Anne N. John
Treasurer: Louise D. Monaghan
Past President: Louise D. Monaghan
Executive Director: Garnet L. Gordon

Directors
 Jennifer M. Casini
 Rachel A. Clark
 Jeremy J. Davis
 Robert A. Gordon
 Sheryl R. Heid
 James E. Higinbotham, Jr.
 Margaret Zylka House
 John A. Kopas, III
 Wendy L. O'Brien
 Douglas S. Sholtis

ETHICS HOTLINE

The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

Call (800) 932-0311, ext. 2214.

LAWYERS CONCERNED FOR LAWYERS

Our assistance is confidential,
non-judgmental, safe, and effective

To talk to a lawyer today, call:
 1-888-999-1941
 717-541-4360

ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

BERTHA DANKO, late of Washington Township, Fayette County, PA (3)
Administratrix: Tanya R. Danko
 415 Victoria Street
 Belle Vernon, PA 15012
 c/o 300 Fallowfield Avenue
 Charleroi, PA 15022
Attorney: Richard C. Mudrick

DOROTHY L. GESSO, late of North Union Township, Fayette County, PA (3)
Executor: Darryl J. Gesso
 c/o Zebley Mehalov & White, P.C.
 18 Mill Street Square
 P.O. Box 2123
 Uniontown, PA 15401
Attorney: Mark M. Mehalov

DOROTHY J. MCFARLAND, late of Uniontown, Fayette County, PA (3)
Administratrix: Shannon Shaffer
 c/o Fitzsimmons and Barclay
 55 East Church Street, Suite 102
 Uniontown, PA 15401
Attorney: Ralph K. Barclay, Jr.

RAUL BERNAL MORALES, late of Uniontown, Fayette County, PA (3)
Administratrix: Kristen L. Behrens
 c/o Kristen L. Behrens, Dilworth Paxson, LLP
 457 Haddonfield Road, Ste. 700
 Cherry Hill, NJ 08002
Attorney: Kristen L. Behrens

Second Publication

FRANCIS D. BAER, a/k/a FRANCIS DONALD BAER, late of German Township, Fayette County, PA (2)
Executor: Francis D. Baer, Jr.
 314 Denney Road
 Uniontown, PA 15401
 c/o Newcomer Law Offices
 4 North Beeson Boulevard
 Uniontown, PA 15401
Attorney: Ewing D. Newcomer

STEPHANIE A. BALIK, a/k/a STEPHANIE BALIK, late of Nicholson Township, Fayette County, PA (2)
Executor: Joseph C. Takacs
 c/o John and John
 96 East Main Street
 Uniontown, PA 15401
Attorney: Simon B. John

DOLORES A. CHMIEL, late of North Union Township, Fayette County, PA (2)
Personal Representative: Walter F. Chmiel
 c/o Higinbotham Law Offices
 45 East Main Street, Suite 500
 Uniontown, PA 15401
Attorney: James Higinbotham

DONNA J. COCALIS, late of Point Marion, Fayette County, PA (2)
Executor: Joseph C. Cocalis
 119 Wright Street
 Point Marion, PA 15474
 c/o 76 East Main Street
 Uniontown, PA 15401
Attorney: Douglas S. Sholtis

CHERRY LEE GOSSETT, a/k/a CHERRY L. GOSSETT, a/k/a CHERRY GOSSETT, late of Brownsville, Fayette County, PA (2)
Personal Representative: Edgar A. Gossett
 c/o Dellarose Law Office, PLLC
 99 East Main Street, Suite 101
 Uniontown, PA 15401
Attorney: Melinda Deal Dellarose

GERALD L. MORGAN, late of Perryopolis Borough, Fayette County, PA (2)
Administratrix: Deborah Morgan
 740 Cemetery Road

P.O. Box 429
 Perryopolis, PA 15473
 c/o 823 Broad Avenue
 Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

THERESA PUJIA, a/k/a THERESA MARIE PUJIA, late of Connellsville, Fayette County, PA (2)

Personal Representative: Roseanne Jones
 512 Greenleaf Drive
 Monroeville, PA 15146
 c/o 208 South Arch Street, Suite 2
 Connellsville, PA 15425
Attorney: Richard Husband

NORMAN SPAW, late of Fayette County, PA

Administrator: Justin M. Spaw (2)
 163 Elizabeth Street
 Hopwood, PA 15445
 c/o 201 Liberty Street
 McDonald, PA 15057
Attorney: Herbert Terrell

WILLIAM R. HARDY, JR., late of Dunbar Township, Fayette County, PA (1)

Administratrix: Jennifer L. Maraugh
 c/o Molinaro Law Offices
 P.O. Box 799
 Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

FRANCIS G. RAUBAUGH, late of Bullskin Township, Fayette County, PA (1)

Administratrix: Vanessa E. Raubaugh
 c/o Molinaro Law Offices
 P.O. Box 799
 Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

CARL E. SLEASMAN, late of Saltlick Township, Fayette County, PA (1)

Personal Representative:
 Brent C. Sleasman
 311 East McPherson Avenue
 Findlay, Ohio 45840
Attorney: Richard A. Husband

First Publication

PHYLLIS M. BRUBAKER, late of Masontown, Fayette County, PA (1)

Personal Representative:
 Donna Jean Parish
 c/o Watson Mundorff, LLP
 720 Vanderbilt Road
 Connellsville, Pa 15425
Attorney: Robert A. Gordon

CECIL E. CASINI, late of Bullskin Township, Fayette County, PA (1)

Executrix: Jessica B. Casini
 109 Royal Lane
 Connellsville, PA 15425

CHARLOTTE M. GASKILL, late of Uniontown, Fayette County, PA (1)

Administrator: Jay R. Hagerman
 c/o Abernethy & Hagerman, LLC
 4499 Mt. Royal Boulevard
 Allison Park, PA 15101
Attorney: Jay R. Hagerman

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
ACTION TO QUIET TITLE
JUDGE LINDA CORDARO
No. 1035 of 2021, G.D.

JOSEPH A. CHOLOCK,
Plaintiffs,
v.

MARGARET C. PHILLIPS, her successors,
heirs, personal representatives, and assigns,
generally, REDEVELOPMENT AUTHORITY
OF THE COUNTY OF FAYETTE,
PENNSYLVANIA their successors, heirs,
personal representatives, and assigns, generally,
and SOUTH UNION TOWNSHIP, their
successors, heirs, personal representatives, and
assigns, generally,
Defendants.

**TO: MARGARET C. PHILLIPS,
her heirs, successors and assigns, generally,**

You are hereby notified that Joseph A. Cholock, has filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged that he is the owner in possession of that certain lot of land situate in South Union Township, Fayette County, Pennsylvania having a mailing address of 207 2nd Street, Uniontown, Pennsylvania.

Title to the above-described property was conveyed to Margaret C. Phillips, single, by a deed from Margaret C. Phillips, Executrix of the Estate of Nick Phillips, Sr., being recorded at the Recorder of Deeds Office at Record Book 607, Page 258.

Said complaint sets forth that the plaintiff is the owner in fee simple of the above-described premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

NOTICE

You are hereby notified that you have been sued in court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of

this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may entered against you by the court without further notice or any money claimed in the complaint, or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

**PENNSYLVANIA BAR ASSOCIATION
PENNSYLVANIA LAWYER REFERRAL
100 SOUTH STREET
P.O. BOX 186
HARRISBURG, PA 17108
1-800-932-0311**

By Jason F. Adams, Esq.
Adams & Adams
55 E. Church Street
Uniontown, PA 15401
(724) 437-2711

NOTICE

Notice is hereby given that a Certificate of Organization has been approved and filed with the Department of State for the Commonwealth of Pennsylvania in Harrisburg, Pennsylvania on January 25, 2021 for a Limited Liability Company known as BROOKDELL, LLC.

Said Limited Liability Company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania as revised and/or amended.

The purpose of the Limited Liability Company is acquisition, development, purchasing and the sale of realty and other lawful purposes for which a Limited Liability Company may be organized under the Business Corporation Law, as amended.

Donald McCue Law Firm, P.C.
813 Blackstone Road
Connellsville, PA 15425

SHERIFF'S SALE

Date of Sale: September 23, 2021

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, September 23, 2021, at 2:00 p.m. in Courtroom Number One at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (3 of 3)

James Custer
Sheriff Of Fayette County

STERN AND EISENBERG, PC
ANDREW J. MARLEY, ESQ.

No. 2307 of 2018 GD
No. 93 of 2021 ED

HSBC Bank USA, N.A., as Trustee for the registered holders of First NLC Trust 2007-1 Mortgage-Backed Certificates, Series 2007-1 Plaintiff

v.

Any and All Known and Unknown Heirs, Executors, Administrators and Devises of the Estate of Patricia A. Triplett a/k/a Patricia Ann Triplett a/k/a Patricia Triplett, deceased and Kenneth E. Triplett, solely in his capacity as heir to the Estate of Patricia A. Triplett a/k/a Patricia Ann Triplett a/k/a Patricia Triplett, deceased

Defendant(s)

SITUATE IN THE THIRD WARD OF THE BOROUGH OF MASONTOWN, FAYETTE COUNTY, PENNSYLVANIA, BEING KNOWN AS 3 Virginia Avenue, Masontown, PA 15461

PARCEL NO. 21020078
IMPROVEMENTS - RESIDENTIAL
REAL ESTATE

SOLD AS THE PROPERTY OF - Any and All Known and Unknown Heirs, Executors, Administrators and Devises of the Estate of Patricia A. Triplett a/k/a Patricia Ann Triplett a/k/a Patricia Triplett, deceased and Kenneth E. Triplett, solely in his capacity as heir to the Estate of Patricia A. Triplett a/k/a Patricia Ann Triplett a/k/a Patricia Triplett, deceased

KML LAW GROUP, P.C.
 Suite 5000
 701 Market Street
 Philadelphia, PA 19106-1532
 (215) 627-1322

No. 2073 of 2019 GD
 No. 91 of 2021 ED

**WINTRUST MORTGAGE, A DIVISION OF
 BARRINGTON BANK & TRUST CO., N.A.
 9700 W. Higgins Road., Suite 300
 Rosemont, IL 60018**

**Plaintiff
 vs.**

**NANCY ENGLE Solely in Her Capacity as
 Heir of Woodrow Allen Shaffer Deceased
 J.D. GRUBB Solely in His Capacity as Heir of
 Woodrow Allen Shaffer Deceased
 SHIRLEY MILLER Solely in Her Capacity
 as Heir of Woodrow Allen Shaffer Deceased
 DAVID SHAFFER Solely in His Capacity as
 Heir of Woodrow Allen Shaffer Deceased
 HARRY SHAFFER Solely in His Capacity as
 Heir of Woodrow Allen Shaffer Deceased
 ROBERT SHAFFER Solely in His Capacity
 as Heir of Woodrow Allen Shaffer Deceased
 RUSSELL SHAFFER Solely in His Capacity
 as Heir of Woodrow Allen Shaffer Deceased
 18 Cramer Avenue
 Uniontown, PA 15401**

Defendant(s)

ALL THAT CERTAIN LOT OF LAND
 SITUATE IN CITY OF UNIONTOWN,
 COUNTY OF FAYETTE AND
 COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 18 CRAMER
 AVENUE, UNIONTOWN, PA 15401

TAX PARCEL #38-15-0221

IMPROVEMENTS: A RESIDENTIAL
 DWELLING

SOLD AS THE PROPERTY OF: NANCY
 ENGLE Solely in Her Capacity as Heir of
 Woodrow Allen Shaffer Deceased, J.D. GRUBB
 Solely in His Capacity as Heir of Woodrow
 Allen Shaffer Deceased, SHIRLEY MILLER
 Solely in Her Capacity as Heir of Woodrow
 Allen Shaffer Deceased, DAVID SHAFFER
 Solely in His Capacity as Heir of Woodrow
 Allen Shaffer Deceased, HARRY SHAFFER
 Solely in His Capacity as Heir of Woodrow
 Allen Shaffer Deceased, ROBERT SHAFFER
 Solely in His Capacity as Heir of Woodrow
 Allen Shaffer Deceased AND RUSSELL
 SHAFFER Solely in His Capacity as Heir of
 Woodrow Allen Shaffer Deceased

KML LAW GROUP, P.C.
 Suite 5000
 701 Market Street
 Philadelphia, PA 19106-1532
 (215) 627-1322

No. 1037 of 2020 GD
 No. 97 of 2021 ED

**U.S. BANK NATIONAL ASSOCIATION, AS
 INDENTURE TRUSTEE, FOR THE CIM
 TRUST 2016-3, MORTGAGE- BACKED
 NOTES, SERIES 2016-3**

**3217 S. Decker Lake Drive
 Salt Lake City, UT 84119
 Plaintiff**

vs.

**SCOTT NEWELL Solely in His Capacity as
 Heir of Connie E. Newell Deceased
 VALERIE NEWELL AKA VALERIE
 GUALAZZI Solely in Her Capacity as Heir of
 Connie E. Newell Deceased
 ROBIN NICKLOW Solely in Her Capacity as
 Heir of Connie E. Newell Deceased
 1147 South Pittsburgh Street
 Connellsville, PA 15425
 Defendant(s)**

ALL THAT CERTAIN LOT OF LAND
 SITUATE IN CITY OF CONNELLSVILLE,
 COUNTY OF FAYETTE AND
 COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 1147 SOUTH
 PITTSBURGH STREET, CONNELLSVILLE,
 PA 15425

TAX PARCEL #05-15-0259

IMPROVEMENTS: A RESIDENTIAL
 DWELLING

SOLD AS THE PROPERTY OF: SCOTT
 NEWELL Solely in His Capacity as Heir of
 Connie E. Newell Deceased, VALERIE
 NEWELL AKA VALERIE GUALAZZI Solely
 in Her Capacity as Heir of Connie E. Newell
 Deceased AND ROBIN NICKLOW Solely in
 Her Capacity as Heir of Connie E. Newell
 Deceased

KML LAW GROUP, P.C.
Suite 5000
701 Market Street
Philadelphia, PA 19106-1532
(215) 627-1322

No. 2186 of 2019 GD
No. 104 of 2021 ED

PNC BANK, NATIONAL ASSOCIATION
3232 Newmark Drive
Miamisburg, OH 45342

Plaintiff

vs.

JOSEPH A. SHAY
Mortgagor(s) and Record Owner(s)
170 Easy Street0
Uniontown, PA 15401

Defendant(s)

ALL THAT CERTAIN LOT OF LAND
SITUATE IN CITY OF UNIONTOWN,
COUNTY OF FAYETTE AND
COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 170 EASY
STREET, UNIONTOWN, PA 15401

TAX PARCEL #38-10-0066

IMPROVEMENTS: A RESIDENTIAL
DWELLING

SOLD AS THE PROPERTY OF: JOSEPH
A. SHAY

McCABE, WEISBERG & CONWAY, LLC
123 South Broad Street, Suite 1400
Philadelphia, PA 19109
(215) 790-1010

No. 1870 of 2019 GD
No. 81 of 2021 ED

SunTrust Bank s/b/a Suntrust Mortgage, Inc.

Plaintiff

v.

Candie Tringes
Defendant

ALL that certain lot of land situate in
Redstone Township, Fayette County,
Commonwealth of Pennsylvania, being a portion
of Lot No. 110 and a portion of Lot No. 111 in
the Vankirk Addition to Republic, Pennsylvania,
a plan of which is recorded in the Recorder of
Deeds Office of Fayette County, Pennsylvania,
in Plan Book Volume 4, pages 8 and 9. Said lot
is more particularly Bounded and described as
follows:

BEGINNING at a point in the center of the

New Salem and Merrittstown public road at
corner or in line of the westerly side of North
Street; thence along the westerly line of said
North Street from the center of said road, North
29 degrees 54 minutes East 150 feet to the
southerly side of Oak Alley; thence along the
southerly side of Oak Alley, North 60 degrees
13 minutes West 90 feet to a point at the
dividing line between the eastern half of Lot No.
111 and the western half of Lot No. 111; thence
along said dividing line, South 29 degrees 54
minutes West 60.57 feet to a mark on wall;
thence by land now or formerly of Martin Lebak
and wife, South 60 degrees 13 minutes East
16.68 feet to a post; thence by same, South 22
degrees 48 minutes East 8.05 feet to a post;
thence by same, South 2 degrees 59 minutes
East 13.80 feet to a post; thence by same, South
25 degrees 31 minutes West 8.82 feet to a post;
thence by same, South 30 degrees 6 minutes
West 64.15 feet to a point in the center if the
above mentioned public road; thence along the
center line of the above mentioned public road,
South 60 degrees 13 minutes East 58.96 feet to
the place of beginning.

All that certain piece or parcel or Tract of
land situate in Redstone Township, Fayette
County, Pennsylvania, and being known as 1032
Main Street, Republic, Pennsylvania 15475.

Being known as: 1032 Main Street,
Republic, Pennsylvania 15475

Title vesting in Candie Tringes by deed
from James Frinzi dated June 26, 2015 and
recorded July 2, 2015 in Deed Book 3281, Page
1396 Instrument Number 201500006919.

Tax Parcel Number: 30-24-0199

*** END SHERIFF'S SALES ***

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE

E&O INSURED

WILL TRAVEL

ACCEPTING NEW CLIENTS

JOB POSTING

SOMERSET COUNTY CHILDREN AND YOUTH SERVICES EXTERNAL JOB ADVERTISEMENT

Assistant Solicitor (Full-time, contract position)

Starting salary: 59,703.00 + Health Insurance Benefits & Rich Retirement Plan

Somerset County Children and Youth Services (CYS) is currently accepting applications for the position of Assistant Solicitor. The Assistant Solicitor will handle all legal matters as directed for the Somerset County Office of Children & Youth Services providing advice/service to the Agency Administration of the Office of Children & Youth Services. For a full listing of job duties associated with this position, please see the “Job Openings” link on the Somerset County homepage (<http://www.co.somerset.pa.us/>).

Interested candidates should send a cover letter, resume or any other supporting documentation to:

Somerset County
Human Resources Director
300 N. Center Avenue, Suite 500
Somerset, PA 15501

Priority consideration will be given to candidates whose material is received on or before August 13, 2021. All applications will be held in the strictest confidence.

Somerset County is an Equal Opportunity employer and will not discriminate on the basis of race, color, national origin, sex or handicap in its activities, programs or employment practices.

JUDICIAL OPINION

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

MARY ANN SEPSI and	:	
DREW K. HARBARUGH,	:	
PLAINTIFFS,	:	
V.	:	
DON E. McDONALD and	:	
LUANN McDONALD, his wife,	:	Honorable President Judge John F. Wagner, Jr.
DEFENDANTS.	:	No. 1052 of 2019, G.D.

OPINION AND ORDER

Wagner, P.J.

July 2, 2021

This matter comes before the Court on Plaintiffs' request for a declaratory judgment that an easement exists for a portion of the property which was located on the boundary between their respective properties. The Plaintiffs further request a monetary judgment for the destruction of the plant beds by the Defendants.

FACTS OF THE CASE

The record reflects that in September, 1955, Donald and Margaret Hudak purchased Lot 6 in Block 2 of the Howard B. Johnson plan of lots and known as 76 Williams Street, Brownsville Township, Fayette County, Pennsylvania. Subsequently in 1959, the Hudaks acquired adjoining Lot 7. Thereafter, they expanded their residence which was located on Lot 6, by building an addition which included a garage, a porch and extended the kitchen above the new garage space. They also constructed a driveway with retaining walls on both sides of the driveway and steps from the driveway to a sidewalk which led into the addition on the side of the residence and into the rear yard. The Hudaks installed two plant beds with one along the side of the driveway and steps and a second plant bed in the rear of the residence.

The Defendants purchased a home across the street from the Hudaks' property. In 2013, after the death of Mrs. Hudak, the Defendants purchased Lots 6 and 7 from her estate. Lot 6 had a single family residence on the property and Lot 7 was a vacant lot. Eventually, they decided to sell Lot 6 but retained Lot 7. Prior to the sale of the property, the Defendant's built a fence on Lot 7. The fence was not placed on the boundary between the two properties, rather it was placed approximately ten (10) feet inside the property line between the two lots. They testified that they cleaned up the plant beds which were overgrown.

When the Plaintiffs contacted the Defendants about the possible purchase of the property, they were informed by the Defendants that they had a survey of the property, but it was never provided to the Plaintiffs. The Defendants did not provide a Seller's

Disclosure to the Plaintiffs at any time prior to the sale or after it. The Defendants failed to disclose that the steps, sidewalk and plant beds encroached on Lot 7 although they were aware of the encroachment. In May 2014, the Defendants sold Lot 6, the parcel with the residence on it, to the Plaintiffs without any third-party involvement. When the Plaintiffs purchased the property, they testified that while they were unaware of the exact property line, they concluded that the fence was on or near the property line. The Defendant, Don McDonald, insisted during his testimony that prior to the purchase of the property, the Plaintiffs knew where the property line was located and were intentionally trespassing on his property.

Two years after they purchased the property, Plaintiff Harbaugh, who is a landscape architect, refurbished the plant beds in the front and back of the property. The Defendants testified that they were aware of the improvements being made but did not inform the Plaintiffs' that the improvements were being made on plant beds that were located on Defendant's property and were not on Lot 6 but rather on Lot 7.

In 2018, the Plaintiffs hired a firm to mow the grass on the property, the Defendants then denied access to the Plaintiffs as Defendants asserted that the mowers were damaging their property when accessing Plaintiffs' back yard. Plaintiffs testified that this was the first time the Defendants formed them of the actual location of the boundary line between the properties and that the fence was placed several feet from the boundary line between the properties. The Plaintiffs then obtained their own survey of the property. The Plaintiff, Mary Ann Sepsi, testified that she did not know the exact location of the property line, but had been informed that the fence was not on the exact boundary but believed that her property went close to the fence line.

In 2020, while this action was pending, the Defendants took down the original fence and placed the fence within inches of the property line. The Defendants then destroyed portions of plant beds and mowed down many of the plants. The Plaintiffs stated that the damages caused by the Defendants to the plants was \$2,935.00. The Defendant Donald McDonald admitted that he ran his mower over the plants but asserts that they were already dead when he did so.

Approximately three feet of the sidewalk which runs along the side of the residence including a similar portion of the steps leading into the residence are located on Lot 7. The use of the sidewalk and steps are necessary for entry into the residence and to access the back yard.

DISCUSSION

The issue before the court is whether the Plaintiffs presented sufficient evidence to establish an easement by implication. To establish an easement by implication, three factors must be proved: first, a separation of title; second, that, before the separation occurs, the use which gives rise to the easement, shall have been so long continued, and so obvious or manifest, as to show that it was meant to be permanent; and third, the easement is reasonably necessary to the beneficial enjoyment of the land granted or retained. If an owner of land subjects part of it to an open, visible, permanent and continuous easement and then conveys that part, the purchaser takes subject to the benefit. When these factors exist, the grant or reservation of an easement is implied from the

conveyance, and the owner of the property which is subject to the easement is charged with notice of it and knowledge of that fact. As the easement must be open, visible, permanent and continuous, the purchaser and the seller are charged with notice of it.

Initially there was a severance of the two properties. The Defendants sold Lot 6 to the Plaintiffs in May, 2014. Second, the use of the sidewalk, steps and development of the plant beds was continuing, open, visible, and obviously meant to be permanent. The actual property line passed through the sidewalk and steps to gain access to the residence from the driveway and the sidewalk provided access to the backyard of Plaintiffs' property. Approximately two years after the Plaintiffs purchased Lot 2, they began to improve the condition of the plant beds by improving the soil and placing numerous plants to improve the appearance of the plant bed along the driveway and the one in the rear of the property. This was done with the knowledge of the Defendants who failed to raise any objection of the time of the improvements. Plaintiff Harbaugh testified that the beds were not expanded but only improved. Finally, the use of the area of the property was necessary for entering the residence and for access to the back yard and reasonably beneficial to the Plaintiffs enjoyment and use of the land.

When the Plaintiffs purchased the property, they were informed that the fence was not on the property line but they testified that there was no specific information as to the exact location was provided by the Defendants, primarily the husband, who was most involved in the negotiations. The Defendant testified that he was fully aware of the property line as he assisted his surveyor with placing the pins. The Defendant disputes the Plaintiffs statement that they did not know where the property line was located. He testified that he made them aware that pins were located on the exact property line. The Defendant's statements are not credible as it is inconceivable that a purchaser of property would knowingly purchase property where the property line was in such a location that it impaired access to their residence and to the rear yard. The property line ran a few feet into the sidewalk and the steps necessary for their access to the backyard and to entry into their kitchen.

At the time of severance, the Defendants were aware that an encroachment existed and that an easement or continued use of a portion of Lot 7 was necessary for the Plaintiffs to access their residence and back yard. The Plaintiffs continued to use the sidewalk, steps and improve the plants in the plant beds without comment by the Defendants that they were trespassing. Plaintiff Harbaugh is a landscape architect who testified that he and his mother enjoyed planting and improved the plant bed areas which ran along the side of the driveway and the one located in the rear of the property. He testified that they invested over six thousand dollars (\$6,000.00) in improving the beds but they did not increase the size of the plant beds. The Defendants, who live across the street, admitted that they were aware of the improvements and made no objection to the plantings or the use of the sidewalk and steps. They never informed the Plaintiffs that they were placing the plantings on the Defendant's property rather than their own.

More than four years after the severance of the properties, the Defendants suddenly objected to the actions of the Plaintiffs, relocated the fence and then destroyed many of the plants that had been placed in the plant beds. The Plaintiffs were using it in a settled course of conduct indicating an attitude of mind on the part of the users that the use is the exercise of a property right. *Keefer v. Jones*, 359 A.2d 735 (Pa. 1976). The Defend-

ants acquiesced to the use of the land by the Plaintiffs for a number of years. The initial placement of the fence indicates that the Defendants were aware that there would be ongoing use of the area by the Plaintiffs.

It is the Plaintiffs burden to establish that there is an easement by implication by clear and convincing evidence. *DePietro v. Triano*, 167 Pa. Super. 29 (1950). The credible testimony presented established an easement by implication that extended from the property line to the outside edge of the plant beds on Lot 7 for the use of the owners of Lot 6.

When the Plaintiffs refurbished the plant beds and made a substantial investment in improving the soil in the beds and the cosmetic appearance of the beds with new plantings along their driveway and in the rear of their residence. The Defendants intentionally relocated the fence during the course of this suit denying Plaintiffs access to the beds to maintain the plants contained in them. The Defendant testified that he destroyed the plants by mowing them down.

The Defendants are responsible for the loss to the Plaintiffs in the amount of \$2,935.00.

For these reasons, the Court issues the following Order:

ORDER

AND NOW, this 2nd day of July, 2021, after a non-jury trial, and based on the findings of fact and conclusions of law made by this Court, it is hereby ORDERED and DECREED that the Plaintiffs have proven the elements of an easement by implication for their steps, sidewalk and plant beds on Lot 7 owned by the Defendants. The Plaintiffs are hereby DIRECTED to submit a survey showing the boundary line of the easement running along the boundary between Lots 6 and the outermost edge of the current plant beds and provide the Court with a proposed final order containing a detailed description of the boundaries of the easement within thirty days of the date of this Order with proposed timeline for the removal or relocation of the fence.

It is further ORDERED and DIRECTED that the Defendants are liable to the Plaintiffs for the sum of \$ 2,935.00, the cost of replacing and restoring the portion of the plant beds destroyed by the Defendants. The Court will retain jurisdiction over this matter pending the entry of the final order described herein.

BY THE COURT:
Wagner, P.J.

ATTEST:
Prothonotary

FCBA BENCH BAR CONFERENCE

Save the Date

FCBA Bench Bar Conference will be held on

Wednesday, October 13th from
8:30 a.m. to 1:00 p.m. at

The Historic Summit Inn

Agenda to follow

*Quality... Experience... Results...
It's what your clients deserve.*

Medical Malpractice • Auto Accidents • Personal Injury



GISMONDI

& ASSOCIATES

412-281-2200

www.gislaw.com

700 Grant Bldg., 310 Grant St., Pgh., PA 15219