

# Adams County Legal Journal

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DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN the shareholders of Gettysburg Construction Co., a Pennsylvania corporation, with an address at c/o Wayne D. Hill, 10 White Oak Trail, Gettysburg, PA 17325, have approved a plan to voluntarily dissolve the Company, and the officers of the Company are now engaged in winding up and settling the affairs of the Company under the provisions of Section 1975 of the Pennsylvania Business Corporation Law of 1988, as amended.

Teeter, Teeter & Teeter

8/12

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DUANE E. WILLIAMS V. HENRY L. TAYLOR; HENRY M.  
TAYLOR; HENRY L. TAYLOR, LLC; MT. VALLEY FARMS &  
LUMBER PRODUCTS, INC; NAWAKWA, LLC &  
SUSQUEHANNA BANK

1. To establish a prescriptive easement, a plaintiff must prove that, for a period of 21 years, the use of the property was all of the following: (1) adverse; (2) open; (3) notorious; and (4) continuous and uninterrupted.

2. Establishment of the prescriptive period does not necessitate the possession of the land continuously by only one person. A succession may be maintained by tacking the possessions of successive occupants to establish the prescriptive period if there is privity between the adverse possessors.

3. When one uses an easement whenever he sees fit, without asking leave, and without objection, it is adverse, and an uninterrupted adverse enjoyment for twenty-one years is a title which cannot be afterwards disputed.

4. The next element of a prescriptive easement is that the right of way must be used openly. Such a purpose is sufficiently shown where one goes upon the land and uses it openly and notoriously, as owners of similar lands use their property, to the exclusion of the true owner.

5. The third element of easement by prescription, notorious, is satisfied when the adverse person uses the land as the true owner would.

6. Lastly, a prescriptive easement requires that the use of the right of way be continuous and uninterrupted. The evidence need not show a constant use in order to establish continuity; rather, continuity is established if the evidence shows a settled course of conduct indicating an attitude of mind on the part of the user or users that the use is the exercise of a property right.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CIVIL 13-S-290, DUANE E. WILLIAMS V. HENRY  
L. TAYLOR; HENRY M. TAYLOR; HENRY L. TAYLOR, LLC; MT.  
VALLEY FARMS & LUMBER PRODUCTS, INC; NAWAKWA, LLC &  
SUSQUEHANNA BANK.

Delano M. Lantz, Esq., Attorney for Plaintiff

Brent C. Diefenderfer, Esq., Attorney for Defendant

Campbell, J., June 27, 2016

## OPINION

Before this Court is Plaintiff's Motion for Partial Summary Judgment filed March 2, 2016. For the reasons stated herein, the attached Order denying Plaintiff's Motion for Partial Summary Judgment is entered.

In the present case, Plaintiff, Duane Williams, alleges that there are no genuine issues of material fact. Plaintiff has requested partial summary judgement on the following issues: (1) the alleged right of way from Fairfield Station Road to the 16 acre 120 perches tract is erroneous, null and void and (2) Defendants (individually or collectively) do not own or otherwise possess any easement or right of way across the Williams Tract for the benefit of any of the tracts now or formerly owned by any of the Taylor Defendants or Susquehanna.

Under the Pennsylvania Rules of Civil Procedure, a court may enter summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. ***Pa. R. Civ. P. 1035.2; Strine v. Commonwealth***, 894 A.2d 733, 737 (Pa. 2006). Summary judgment is only appropriate where the pleadings, depositions, answers to interrogatories, omissions and affidavits, and other materials demonstrate that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. ***Roche v. Ugly Duckling Car Sales, Inc.***, 879 A.2d 785, 789 (Pa. Super. 2005) (quotations and citations omitted). The burden of demonstrating the lack of any genuine issue of material fact falls upon the moving party, and, in ruling on the motion, the court must consider the record in the light most favorable to the non-moving party. ***Id.*** However, where a motion for summary judgment has been supported with depositions, answers to interrogatories, or affidavits, the non-moving party may not rest on the mere allegations or denials in its pleadings. ***Accu-Weather, Inc. v. Prospect Commc'ns Inc.***, 644 A.2d 1251, 1254 (Pa. Super. 1994). Rather, the non-moving party must, by affidavit or in some other way, provide for, within the Rules of Civil Procedure set forth, specific facts showing that a genuine issue of material fact exists. ***Id.*** Summary judgment is only appropriate in those cases which are free and clear from doubt. ***McConnaughey v. Bldg. Components, Inc.***, 637 A.2d 1331, 1333 (Pa. 1994).

In this case, there is a genuine dispute of material fact in regards to whether the Defendants possess any right of way across the Williams Tract. Defendants claim that they have a prescriptive easement across the Williams Tract.

To establish a prescriptive easement, a plaintiff must prove that, for a period of 21 years, the use of the property was all of the following: (1) adverse; (2) open; (3) notorious; and (4) continuous and uninterrupted.

*Odette's, Inc. v. Comm., Dept. of Conservation and Natural Resources, Bureau of State Parks*, 699 A.2d 775, 784 (Pa. Commw. Ct. 1997). See also *Burkett v. Smyder*, 535 A.2d 671, 673 (Pa. Super. 1988).

Plaintiff argues that Defendants have not satisfied the 21 year period necessary for an easement by prescription. Plaintiff argues that H. L. Taylor admitted that the Defendants did not take logging trucks across the Beal, Bowling, and Williams tracts before Mt. Valley Farms acquired the Rash tract on May 31, 1991. See H. L. Taylor Depo. Vol. II, p. 308, I. 15 – p. 309, I. 7; App. 341a-342a; Plaintiff's Motion, Para. 102. If Defendants did not cross these tracts until 1991, this falls short of the 21 year period required for easement by prescription.

Defendants argue that H. L. Taylor stated in his deposition that Defendants' hauled logs from the landing area of the Beal tract since 1973, every four to five years. See App. Pg. 293a, II. 14-22; Defendants' Response, Para. 102. If Defendants hauled logs every four to five years since 1973, the 21 year period for easement by prescription is satisfied.

To support the allegation that their predecessors used the right of way, Defendants have provided several deeds that include a right of way. See App.10a-13a, App.14a-23a, App. 32a-33a.

Establishment of the prescriptive period does not necessitate the possession of the land continuously by only one person. A succession may be maintained by tacking the possessions of successive occupants to establish the prescriptive period if there is privity between the adverse possessors.

*Lednak v. Swatsworth*, 33 Pa. D. & C.3d 535, 537 (Pa. Commw. Ct. 1984). See also *Stark v. Lardin*, 1 A.2d 784, 786 (Pa. Super. 1938). Plaintiff and Defendants disagree as to whether Defendants'

predecessors' use of the right of way and Defendants' use of the right of way should be tacked together. See App. 293a; App. 325a-326a; Plaintiff's brief, p. 39.

The next element of a prescriptive easement is that the right of way in question must be used adversely. "[W]here one uses an easement whenever he sees fit, without asking leave, and without objection, it is adverse, and an uninterrupted adverse enjoyment for twenty-one years is a title which cannot be afterwards disputed." *Sterner v. Freed*, 570 A.2d 1079, 1082 (Pa. Super. 1990) (quoting *Garrett v. Jackson*, 20 Pa. 331, 335 (Pa. 1853)). Plaintiff argues that Defendants' use of the right of way was not adverse until after Plaintiff withdrew his permission in 1992. H. L. Taylor Depo. Vol. I, p. 90, I. 22- 91, I. 18; App. 284a-285a; Plaintiff's Motion, Para. 110. In response, Defendants argue that at the time of Plaintiff's withdrawal of permission, Plaintiff was not the owner of the land. Defendants' Response, Para. 52. Citing Plaintiff's motion, Defendants argue that Plaintiff had no legal authority to grant or withdraw permission until December 23, 2002 when he became legal owner of the land. See Plaintiff's Motion, Para. 15.

The next element of a prescriptive easement is that the right of way must be used openly. "Such a purpose is sufficiently shown where one goes upon the land and uses it openly and notoriously, as owners of similar lands use their property, to the exclusion of the true owner." *Robin v. Brown*, 162 A. 161, 161 (Pa. 1932). Plaintiffs allege that Defendants' use of the right of way was not open as evidenced by the locks, no trespassing signs, and truck utilized by Plaintiff to keep Defendants out of the land. H.L. Taylor Depo. Vol. I, p. 160, I. 24- p. 163, I. 7; App. 334a-337a; Taylor Depo. Vol. I, p. 109-110; App. 303a-304a; Plaintiff's Motion, Para. 111. Arguing the contrary, Defendants allege that Plaintiff admitted that he knew of Defendants' use of the right of way. Defendants' Response, Para. 111. Furthermore, Defendants argue that Plaintiff was away from the land for large spans of time and was unaware if anyone was using the right of way. See Ex. 1, Williams Depo., 14:24-15:11, 39:13-20, 81:14-21, 130:8-19, 131: 4-8, 133:3-15, 135:20-24, 142:11-13, 148:10-24, 160:22-24, 161:18-22.

The third element of easement by prescription, notorious, is satisfied when the adverse person uses the land as the true owner

would. *Robin*, supra. Plaintiffs argue that Defendants' use of the right of way was not notorious because the owners of the Beal tract, which Defendants would had to have crossed, were not aware of any such use. See W. Grothen Depo., p. 48, I. 18-20; App. 430a; Plaintiff's Motion, Para. 58. Defendants allege that the Beals visited their property sporadically, so the Beal family's ignorance of Defendants' use of the right of way does not prove that Defendants' use was not notorious. See Defendants' Response, Para. 113.

Lastly, a prescriptive easement requires that the use of the right of way be continuous and uninterrupted.

[T]he evidence need not show a constant use in order to establish continuity; rather, continuity is established if the evidence shows a settled course of conduct indicating an attitude of mind on the part of the user or users that the use is the exercise of a property right.

*Minteer v. Wolfe*, 446 A.2d 316, 319 (Pa. Super. 1982)(quoting *Keefer v. Jones*, 359 A.2d 735, 737 (Pa. 1976)). Plaintiff claims that Defendants' use of the right of way was "isolated and sporadic." Plaintiff's Motion, Para. 112. In response, Defendants argue that their use was continuous and uninterrupted citing evidence from H. L. Taylor and the historical purpose of the prescriptive right of way. Defendants' Response, Para. 112.

Plaintiff, the moving party, has failed to demonstrate that there lacks a genuine dispute of material fact. In considering the evidence in the light most favorable to the non-moving party, the Defendants, this Court finds that genuine issues of material fact exist.

Therefore, for the reasons stated herein, Plaintiff's Motion for Partial Summary Judgment is denied, and the attached Order is entered.

## 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 LLOYD S. HAWBAKER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Carol Ann Kelley, 80 Blacksmith Shop Road, Gettysburg, PA 17325; Dennis Thomas Hawbaker, 140 Hospital Road, Gettysburg, PA 17325

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

## ESTATE OF MURIEL A. MONN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Rodney E. Monn, c/o Jerry A. Weigle, Esq., Weigle & Associates, P.C., Shippensburg, PA 17257

Attorney: Jerry A. Weigle, Esq., Weigle & Associates, P.C., Shippensburg, PA 17257

## ESTATE OF CHESTER J. PENTLICKI, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executor: Stephen J. Pentlicki, c/o William R. Church, Esq., Keefer Wood Allen & Rahal, LLP, P.O. Box 11963, Harrisburg, PA 17108

## ESTATE OF RUTH C. SHABERLY, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Administrators: Melinda Weiss and Floetta Stein, c/o P.O. Box 606, East Berlin, PA 17316

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

## SECOND PUBLICATION

## ESTATE OF PETER J. FITZGERALD, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Mrs. Allyn M. Patterson, 200 Patterson Lane, Berkeley Springs, WV 25411

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

## ESTATE OF SHIRLEY IRENE TRENT KLINE, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Personal Representative: Tanya Maresa Henry, 1482 Braden Loop, Glen Burnie, MD 21061

## ESTATE OF ANNIE MAY KNISLE-GILBERT, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: Thomas Gilbert, 215 Old Mill Road, Gettysburg, PA 17325

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

## ESTATE OF WANITA P. ORNER, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executors: Linda D. Kopf, 829 Aylesbury Drive, Lancaster, PA 17601; Raymond E. Kopf, 829 Aylesbury Drive, Lancaster, PA 17601

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

## ESTATE OF CECIL L. SHOWERS, DEC'D

Late of the Borough of Bendersville, Adams County, Pennsylvania

Co-Executors: Michael D. Showers, 340 Middle Road, Aspers, PA 17304; Bradley C. Showers, 390 Middle Road, Aspers, PA 17304

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

## ESTATE OF MARTHA E. TIPTON a/k/a MARTY E. TIPTON, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: ACNB Bank, c/o Christine R. Settle, Vice President & Trust Officer, P. O. Box 4566, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

## ESTATE OF WILLIAM M. BOWLING, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Personal Representatives: Kathy J. Scott, 4840 Gray Hawk Dr., Waynesboro, PA 17268; William M. Bowling, Jr., 329 Georgetown Rd., Gardners, PA 17324

Attorney: Phillips & Phillips, 101 West Middle Street, Gettysburg, PA 17325

## ESTATE OF JAMES ROBERT CROUSE, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Kirk H. Dutterer, 70 Pine Grove Road, Hanover, PA 17331

Attorney: John J. Mooney III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## ESTATE OF CAROLYN C. DUKES, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Lynne C. Galloro, c/o Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

Attorney: Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

## ESTATE OF ROBERT L. HOLMES a/k/a ROBERT LEE HOLMES, DEC'D

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

Administrator: William P. Holmes, III, 1652 Eton Way, Crofton, MD 21114

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

## ESTATE OF ANNA M. KNAUB, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Personal Representative: Steven K. Kaub, c/o Jessica F. Greene, Esq., Keystone Elder Law P.C., 555 Gettysburg Pike, Suite C-100, Mechanicsburg, PA 17055

Attorney: Jessica F. Greene, Esq., Keystone Elder Law P.C., 555 Gettysburg Pike, Suite C-100, Mechanicsburg, PA 17055



**THIRD PUBLICATION CONTINUED**

ESTATE OF RICHARD P. KOZLOWSKI,  
DEC'D

Late of Oxford Township, Adams County,  
Pennsylvania

Personal Representative: Stefan N.  
Kozlowski, c/o Jessica F. Greene, Esq.,  
Keystone Elder Law P.C., 555  
Gettysburg Pike, Suite C-100,  
Mechanicsburg, PA 17055

Attorney: Jessica F. Greene, Esq.,  
Keystone Elder Law P.C., 555  
Gettysburg Pike, Suite C-100,  
Mechanicsburg, PA 17055

ESTATE OF DORIS A. PIPER, DEC'D

Late of the Borough of Littlestown,  
Littlestown, Adams County,  
Pennsylvania

Executor: James V. McLendon, 5138 Old  
Harrisburg Road, York Springs, PA  
17372

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

ESTATE OF NANCY M. SHANNON,  
DEC'D

Late of Latimore Township, Adams  
County, Pennsylvania

Personal Representative: Brian D.  
Shannon, c/o Jessica F. Greene, Esq.,  
Keystone Elder Law P.C., 555  
Gettysburg Pike, Suite C-100,  
Mechanicsburg, PA 17055

Attorney: Jessica F. Greene, Esq.,  
Keystone Elder Law P.C., 555  
Gettysburg Pike, Suite C-100,  
Mechanicsburg, PA 17055

