

# *Adams County* Legal Journal

Vol. 52

September 3, 2010

No. 16, pp. 100-105

## IN THIS ISSUE

COMMONWEALTH VS. HERSH

Helping families achieve  
their long-range financial  
goals is our business.

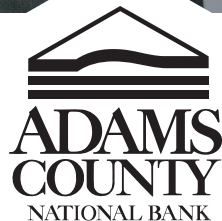
Ryan Fox  
*Trust Investment Manager*



**Trust and investment services from  
a bank with a long history of trust.**

For more information or a free  
consultation, please call 717.339.5178.

Member FDIC



## 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.

Subscribers should send subscriptions directly to the business office. Postmaster: Send address changes to Adams County Legal Journal, 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313.

Business Office - 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313. Telephone: (717) 334-1553

Periodicals postage paid at Gettysburg, PA 17325.

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

# 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. 10-S-447

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE FOR LONG  
BEACH MORTGAGE LOAN TRUST  
2004-3, ASSET-BACKED CERTIFI-  
CATES SERIES 2004-3

vs.

SCOTT P. THOMPSON  
NOTICE

TO SCOTT P. THOMPSON:

You are hereby notified that on MARCH 18, 2010, Plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR LONG BEACH MORTGAGE LOAN TRUST 2004-3, ASSET-BACKED CERTIFICATES SERIES 2004-3, 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. 10-S-447. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 9 FAWN TRAIL, FAIRFIELD, PA 17320-8127 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

9/3

## TRUSTEE NOTICE

Trust of Raymond E. Bange and  
Dorothy L. Bange Revocable Living Trust

Late of Conewago Township

Said Trust having been established to the undersigned, all persons indebted thereto are requested to make payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

Trustees: Dean E. Bange and Ray E. Bange

Linda Siegle, Esq.  
Law Offices of Douglas H. Gent  
1157 Eichelberger Street  
Suite 4  
Hanover, PA 17331

8/20, 27 & 9/3

## NOTICE OF DISSOLUTION

NOTICE IS HEREBY GIVEN that TACT, INC. has elected to dissolve voluntarily and has commenced winding up proceedings under the Pennsylvania Business Corporation Law of 1988.

Thomas P. Dunchack  
Sec/Treasurer  
TACT, INC.  
5356C Baltimore Pike  
Littlestown, PA 17340

9/3

## NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, September 10, 2010 at 8:30 a.m.

**PEKICH**—Orphan's Court Action Number OC-74-2010. The First and Final Account of Maria Pekich Paladino, Executrix of the Estate of George A. Pekich, late of Franklin Township, Adams County, Pennsylvania, deceased.

**WAGNER**—Orphan's Court Action Number OC-79-2010. The First and Final Account of Bruce L. Wagner, Executor of the Estate of Elise M. Wagner, late of Straban Township, Adams County, Pennsylvania, deceased.

**MITCHELL**—Orphan's Court Action Number OC-89-2010. The First and Final Account of Betty Jean Drost and Patricia Ann Troxell, Executrices of the Estate of Elmer A. Mitchell, late of Mt. Joy Township, Adams County, Pennsylvania, deceased.

Kelly A. Lawver  
Clerk of Courts

8/27 & 9/3

## COMMONWEALTH VS. HERSH

1. Hearsay is defined as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

2. The main consideration for determining when hearsay statements made by a child witness are sufficiently reliable is whether the child declarant was particularly likely to be telling the truth when the statement was made.

In the Court of Common Pleas of Adams County, Pennsylvania,  
Criminal, No. CR-720-2009, COMMONWEALTH OF PENNSYLVANIA VS. ANDREW DARVIN HERSH.

Shawn C. Wagner, Esq., for Commonwealth

Steve Rice, Esq., for Defendant

Kuhn, P.J., January 26, 2010

### OPINION ON DEFENDANT'S MOTION IN LIMINE

Presently before the Court is Defendant's Motion in Limine filed August 19, 2009, seeking to exclude various out-of-court statements allegedly made by Complainant. For the reasons set forth herein, said Motion is denied in part, the remainder is deemed moot.

### BACKGROUND

Defendant has been charged with several sexual offenses<sup>1</sup> for alleged inappropriate contact he had with his daughter, K.F.H.<sup>2</sup> Complainant made several out-of-court statements relating to the alleged incidents. By Memorandum dated January 5, 2010, the Commonwealth indicated that it was only seeking to introduce a statement Complainant allegedly made to her step-grandmother on June 14, 2008. The Commonwealth is seeking to admit this statement pursuant to 42 Pa.C.S. § 5985.1, a codified version of the ten-year exception to the hearsay rule. Defendant is seeking to exclude the statement, arguing it is not sufficiently reliable to fit this exception to the hearsay rule.

On November 30, 2009, the Court conducted a hearing on Defendant's Motion. At that hearing, Complainant's step-grandmother, Teresa Ann Burgess, testified that Defendant and his wife were divorced and Complainant was staying with Defendant on the night of June 12 – 13, 2008. **N.T. 23.** Complainant and her mother

---

<sup>1</sup> 18 Pa.C.S. §§ 3121(c) [Rape-Juvenile], 3125(b) [Aggravated Indecent Assault-Juvenile], and 3126(a)(7) [Indecent Assault-Juvenile].

<sup>2</sup> Hereinafter, "Complainant."

were living with Burgess and her husband. *Id.* at 22. Defendant returned Complainant to Burgess's home on the evening of June 13th. At approximately 7:00 a.m. on the morning of June 14th, Burgess entered Complainant's bedroom as she was waking up. *Id.* at 25. Burgess attempted to convince Complainant to go back to sleep and "at that point she got up and said, no, I want to get up and she walked around the bed and just blurted out to me that daddy put his pee-pee in my pee-pee." *Id.* Burgess responded "what" and Complainant repeated "daddy put his pee-pee in my pee-pee...I don't want to talk about it anymore because daddy told me and don't tell grandma either."<sup>3</sup> *Id.* Complainant also advised Burgess that whatever occurred did not hurt. *Id.* at 26.

On June 17, 2008, Complainant was interviewed at the Children's Advocacy Center (CAC).<sup>4</sup> Complainant told the interviewer that she had seen her father's "pee-pee" but indicated that he did not touch her with it, and she did not touch it. **Defendant's Ex. 1.**

#### DISCUSSION

Rule 802 of the Pennsylvania Rules of Evidence provides that "[h]earsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute." **Pa. R. E. 802.** Hearsay is defined as a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." **Pa. R. E. 801(c).** Section 5985.1 of the Judicial Code provides:

- (a) General Rule.—An out-of-court statement made by a child victim or witness, who at the time the statement was made was 12 years of age or younger, describing any of the offenses enumerated in 18 Pa.C.S. Chs...31(relating to sexual offenses)..., not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:

---

<sup>3</sup> "Pee-pee" is the phrase Complainant uses to describe genital areas. *Id.* at 16. "That was the normal words I believe that she would have used for her genital area...I mean other than this actual statement is somewhat, you know, a little unusual to hear that from a three-year-old, it was her normal language."

<sup>4</sup> A DVD copy of this interview was admitted into Evidence as Defendant's Exhibit 1.

- (1) the court finds, in an in camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability; and
- (2) the child either:
  - (i) testifies at the proceeding; or
  - (ii) is unavailable as a witness

The second element of Section 5985.1 is met in this case. During a separate in camera interview of Complainant, she indicated to the Court that she would have no problem testifying in front of her father and a jury about alleged incidents. If she refuses to do so at the time of trial, the Court will then determine her availability as a witness.

The remaining issues are the relevancy and reliability of the statement given to Burgess. Clearly the statement is relevant.<sup>5</sup> Defendant has been charged with Rape, Aggravated Indecent Assault, and Indecent Assault. Complainant's statement that her father placed his "pee-pee" into her "pee-pee" would be relevant to all three of the crimes charged.

The next issue is the reliability of the statement. Defendant argues that the statement is not reliable because first, at the CAC interview, Complainant effectively denied that Defendant placed his penis into her vagina, and second, Defendant's alleged confession given to the state trooper was to a different crime.<sup>6</sup> At the hearing, Defendant's

---

<sup>5</sup>The statutory elements for those offenses are as follows: "A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age." **18 Pa.C.S. § 3121(c)**. Aggravated Indecent Assault occurs when, "a person...engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures..." if it is done by force, without consent, or if the complainant is under the age of 13. **18 Pa.C.S. § 3125(a)**. "A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:... (7) the complainant is less than 13 years of age." **18 Pa.C.S. § 3126(a)(7)**.

<sup>6</sup>A confession, allegedly written and signed by Defendant, was submitted as Commonwealth's Exhibit 1. In that statement, Defendant "admitted" that between June 12th and 13th, 2008, he became sexually aroused while rubbing Complainant's naked buttocks. He also allegedly confessed that in April, 2008, he had an erection while in the shower with the complainant, his penis touched her, and he ejaculated.

counsel stated “[w]e believe that the statements are unreliable because this stuff didn’t happen...” **N.T. 38**. Defendant alleges that his “confession” was to an improper touching of the child while in the bathroom, but not to vaginal penetration.

There are several factors a court may consider in determining the reliability of a statement. *Fidler v. Cunningham-Small*, 871 A.2d 231, 235 (Pa. Super. 2005). These include, but are not limited to, the spontaneity and consistent repetition of the statement, the mental state of the declarant, the use of terminology unexpected of a child of a similar age, and the lack of motive to fabricate. *Id.* “The main consideration for determining when hearsay statements made by a child witness are sufficiently reliable is whether the child declarant was particularly likely to be telling the truth when the statement was made.” *Id.*

I conclude that the statement the Complainant purportedly made to her step-grandmother was reliable. The evidence available shows that Complainant spontaneously and voluntarily made this statement. She used a term for her genitalia that was common for her to use. She spoke of an incident that would not be common for a three-year-old to speak of. There is no evidence of any motive on the part of the Complainant to fabricate the statement. In fact, testimony from Ms. Burgess indicated that Complainant had a close relationship with her father and looked forward to her visits with him. **N.T. 50**.

The time, content, and circumstances of the statement also support a determination of reliability. This statement was made just one day after the Complainant returned from a visit with her father, and just after the period of time when the Defendant admittedly touched the Complainant’s buttocks and became aroused. The content of the statement, that her father had touched her in some inappropriate manner, was not the type of statement that would be normal for a three-year-old to say in jest. Furthermore, there is no evidence of prodding from Burgess, instead the child apparently blurted it out rather matter-of-factly.

The Court recognizes Defendant’s concerns, however, believes those concerns go more to the weight of the evidence than the reliability. Defendant’s alleged confession does not refer to any sort of penetration, but it does suggest an improper touching that could

arguably constitute indecent contact for purposes of Indecent Assault.<sup>7</sup> Furthermore, the Court viewed the CAC interview of the Complainant and agrees that during that interview the child effectively denied there was any sort of touching. However, this is more of a weight issue. As the Commonwealth points out in its Memorandum, there was testimony from Ms. Burgess that Complainant indicated her father told her not to tell anyone about the alleged incident. **N.T. 25.** The Commonwealth is correct in asserting that this could be consistent with Complainant's failure to discuss this with the CAC interviewer. Furthermore, observation of the interview indicated a child who was rather nervous and seemingly uncomfortable throughout the process. It is entirely likely that her spontaneous statement, made to her step-grandmother in the comfort of her own bedroom, is more reliable than what she stated to a stranger in an unfamiliar place. The Court also acknowledges that Complainant indicated to her step-grandmother that her father's alleged actions did not hurt, **N.T. 26**, which comports with Defendant's statement to the police that he did not engage in any form of penetration. However, we are dealing with a three-year-old child who might not understand the difference between penetration and mere touching. To a three-year-old child, mere rubbing in the genital area may seem like penetration. Therefore, although the child's statement seems to suggest penetration and other evidence seems to suggest mere touching, this difference does not diminish the reliability of the statement, at least to the extent that it still suggests some form of improper touching. This conclusion is consistent with all other evidence presently before the Court, including Defendant's alleged statement to police.

Accordingly, Defendant's Motion in Limine to exclude the statement Complainant allegedly made to her step-grandmother is denied.

The remaining portions of the Motion are deemed moot in light of the Commonwealth's Memorandum of January 5, 2010.

---

<sup>7</sup>Indecent contact is defined as "[a]ny touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person." 18 Pa.C.S. § 3101. Defendant allegedly confessed to touching his daughter's buttocks and experiencing an erection and to ejaculating while rubbing up against Complainant.

### ORDER

AND NOW, this 26th day of January, 2010, for the reasons set forth in the attached Opinion, the portion of Defendant's Motion in Limine filed August 19, 2009, seeking to exclude statements the Complainant allegedly made to her step-grandmother is denied. In light of the Commonwealth's Memorandum of January 5, 2010, the remaining portions of Defendant's Motion are deemed moot.



**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 MARY B. DEARDORFF, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

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

**ESTATE OF HELEN M. GROFT, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Robert J. Groft, 121 Frog Pond Hollow, Abbottstown, PA 17301

Attorney: Larry W. Wolf, P.C., 215 Broadway, Hanover, PA 17331

**ESTATE OF MABEL C. HANKEY, DEC'D**

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Dale A. Hankey, 940 Baltimore Road, York Springs, PA 17372; Helen Shultz, 152 Branch Circle, East Berlin, PA 17316

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

**ESTATE OF MARCELLA G. KESSLER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Jane M. Bankert, 5030 Lehman Rd., Spring Grove, PA 17362; Marian E. Altland, 11 S. Water St., Spring Grove, PA 17362

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

**ESTATE OF CONNIE E. KNOX, DEC'D**

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Wayne A. Weaver, 1799 Cold Springs Road, Fairfield, PA 17320

**ESTATE OF BRIDGET LYNN SCOTT, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Eric E. Scott, P.O. Box 664, Fairfield, PA 17320

Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, 66 West Middle Street, Gettysburg, PA 17325

**ESTATE OF RUTH ZIEL WEBER a/k/a RUTH Z. WEBER, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executors: Nancy W. Undercoffer and Kenneth D. Weber, c/o Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

Attorney: Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

**SECOND PUBLICATION****ESTATE OF ORA W. BOONE, DEC'D**

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrices: Connie E. Boyd, P.O. Box 313, 128 W. King Street, Littlestown, PA 17340; Peggy J. Boone, 15 Spicer Drive, Abbottstown, PA 17301

Attorney: Judith K. Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

**ESTATE OF ANTHONY LETO, DEC'D**

Late of Latimore Township, Adams County, Pennsylvania

Executor: Joseph Leto, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

**ESTATE OF JOHN T. ZALOUDEK, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: Harriett Ann Fox, 1068 Bair Rd., Hanover, PA 17331

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

**THIRD PUBLICATION****ESTATE OF CHARALAMBOS ARAHOVAS, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: William C. Kollas, c/o James W. Kollas, Esq., Kollas and Kennedy Law Offices, 1104 Fernwood Ave., Camp Hill, PA 17011

Attorney: James W. Kollas, Esq., Kollas and Kennedy Law Offices, 1104 Fernwood Ave., Camp Hill, PA 17011

**ESTATE OF EVELYN M. COCHRAN a/k/a EVELYN MAXINE COCHRAN, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: Ruthann Prange, 16 Harrison Brook Drive, Basking Ridge, NJ 07920

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

**ESTATE OF DAVID TAU, JR., DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: Eileen L. Tau Powers, 8610 Sinon Street, Annandale, VA 22003

**ESTATE OF FLORINE M. TERRICK, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Teresa L. Pelc, c/o R. Thomas Murphy, Esq., R. Thomas Murphy & Associates, P.C., 2005 East Main St., Waynesboro, PA 17268

Attorney: R. Thomas Murphy, Esq., R. Thomas Murphy & Associates, P.C., 2005 East Main St., Waynesboro, PA 17268

