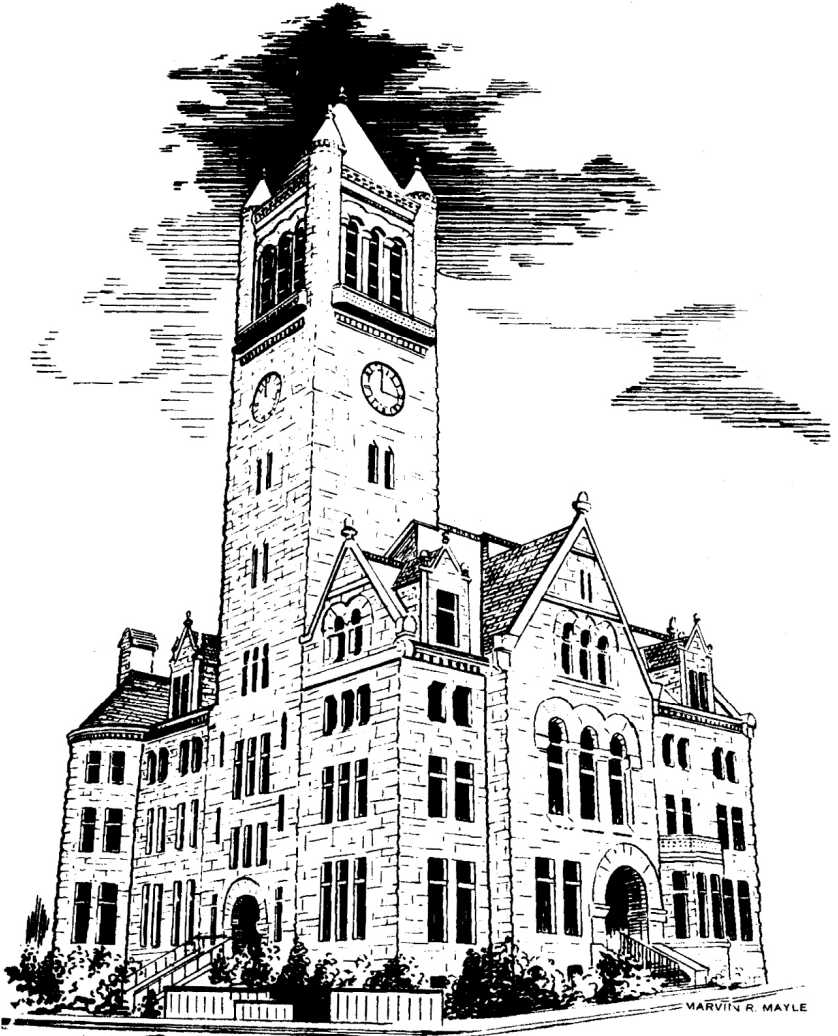


FAYETTE LEGAL JOURNAL

VOL. 83

JULY 4, 2020

NO. 27



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. Crossland and Melinda Deal Dellarose

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

FAYETTE COUNTY BAR ASSOCIATION Board of Directors

President: Louise D. Monaghan
President Elect: Gretchen A. Mundorff
Vice-President: Charles O. Zebley, Jr.
Secretary: Anne N. John
Treasurer: Vincent J. Roskovensky, II
Past President: James E. Higinbotham, Jr.

Executive Director: Garnet L. Gordon

Directors
 Jennifer M. Casini
 Rachel A. Clark
 Jeremy J. Davis
 Benjamin F. Goodwin
 Robert A. Gordon
 Sheryl R. Heid
 Margaret Zylka House
 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

COLLEEN BARBER, a/k/a COLLEEN K. BARBER, late of Luzerne Township, Fayette County, PA ⁽³⁾

Executrix: Harriet Moser
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James Higinbotham

GREGORY EARL HAMAKER, late of South Union Township, Fayette County, PA ⁽³⁾

Personal Representative:
Samuel J. Davis, Esquire
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Samuel J. Davis

**RAYMOND KOSTKOWSKI, a/k/a
RAJMUND W. KOSTKOWSKI**, late of North Union Township, Fayette County, PA ⁽³⁾

Executrix: Alicja Broniszewski
1061 Meadow Ridge Drive
Connellsville, PA 15425
c/o Newcomer Law Offices, P.C.
4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Ewing Newcomer

BARBARA PATTERSON, late of Luzerne Township, Fayette County, PA ⁽³⁾

Executor: Thomas W. Allen
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James Higinbotham

MELODIE PHILLIPS, a/k/a MELODIE C. PHILLIPS, late of Champion, Fayette County, PA ⁽³⁾

Executor: Paul I. Phillips
300 North Market Street
Ligonier, PA 15658
Attorney: J. Dustin Barr

MARY STRCULA, late of North Union Township, Fayette County, PA ⁽³⁾

Administrator: Jason Strcula
102 De Angelo Drive
Pittsburgh, PA 15209
c/o 650 Rocky Drive
Boiling Springs, PA 17007
Attorney: Jacqueline M. Verney

JOSEPH C. THOMAS, late of Brownsville, Fayette County, PA ⁽³⁾

Executor: Jeffrey P. Thomas
6495 SW 128 Street
Pinecrest, FL 33156
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Anthony S. Dedola, Jr.

Second Publication

DELORSE FOWLER, late of Fairchance, Fayette County, PA ⁽²⁾

Executrix: Joan Lavor
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

ANNA HORVATH, a/k/a ANN HORVATH, a/k/a ANNIE HORVATH, late of South Union Township, Fayette County, PA ⁽²⁾

Executrix: Pamela Ann Minnick
452 Coolspring Street
Uniontown, PA 15401
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James Higinbotham

MELODIE C. PHILLIPS, late of Champion, Fayette County, PA ⁽²⁾

Executor: Paul I. Phillips
c/o 300 North Market Street
Ligonier, PA 15658
Attorney: J. Dustin Barr

LOIS SCHOLLAERT, a/k/a LOIS JANE SCHOLLAERT, late of Wharton, Fayette County, PA (2)

Executrix: Cindy McMahon
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, Pa 15401
Attorney: James Higinbotham

EUGENIA G. THOMPSON, late of Bullskin Township, Fayette County, PA (2)

Administratrix: Miranda Jane DeJarnat
5345 W 16800 N
Garland, UT 84312
c/o Stewart McArdle Sorice Whalen Farrell
Finoli & Cavanaugh, LLC
229 South Maple Avenue
Greensburg, PA 15601
Attorney: J. Douglas Farrell

MARY ANN TOTH, late of Washington Township, Fayette County, PA (2)

Administratrix: Monica Brannon
1263 Pinkerton Drive
Jefferson Hills, PA 15025
c/o 1202 West Main Street
Monongahela, PA 15063
Attorney: James W. Haines, Jr.

STEPHEN VICEK, a/k/a STEPHEN A. VICEK, late of South Union Township, Fayette County, PA (2)

Personal Representative: James A. Vick
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James Higinbotham

LESLIE ALLISON WALTERS, JR., late of Menallen Township, Fayette County, PA (2)

Executrix: Shelly Minnick
c/o Monaghan & Monaghan
57 East Main Street
Uniontown, PA 15401
Attorney: Gary D. Monaghan

First Publication

VIRGINIA JO DOLFI, late of Grindstone, Fayette County, PA (1)

Executrix: Deborah J. Simpson
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

DORRETTA W. HODGE, late of Bullskin Township, Fayette County, PA (1)

Personal Representative: John E. Hodge
c/o Watson Mundorff LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

GEORGE NEVLUD, late of Masontown, Fayette County, PA (1)

Personal Representative: Michele Nevlud
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James Higinbotham

SONDRA PAZICNI, a/k/a SONDRA L. PAZICNI, late of Uniontown, Fayette County, PA (1)

Personal Representative:
Donald W. Pazicni
c/o George & George, LLP
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

GEORGE RISHA, a/k/a GEORGE J. RISHA, a/k/a GEORGE JOHN RISHA, late of Uniontown, Fayette County, PA (1)

Executrix: Carol Risha
c/o Kopas Law Office
556 Morgantown Road
Uniontown, PA 15401
Attorney: John Kopas

JAMES E. SWANEY, late of South Union Township, Fayette County, PA (1)

Executrix: Cynthia M. Swaney
c/o Webster & Webster
51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

MARY DOROTHY WALLY, late of
 Uniontown, Fayette County, PA (1)
Executor: Joshua Daniel Wally
 c/o 84 East Main Street
 Uniontown, PA 15401
Attorney: Vincent M. Tiberi

SANDRA LYNN WEAVER, a/k/a SANDRA L. WEAVER, late of Ronco, German
 Township, Fayette County, PA (1)
Executrix: Jessica Everly
 c/o 39 Francis Street
 Uniontown, PA 15401
Attorney: Jack R. Heneks, Jr.

WALTER L. WILLIAMS, SR., a/k/a WALTER LEE WILLIAMS, SR., late of
 Lemont Furnace, Fayette County, PA (1)
Personal Representative: Mark Williams
 c/o Davis and Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: Gary J. Frankhouser

LEGAL NOTICES

NOTICE OF TRUST ADMINISTRATION

Notice is hereby given of the administration of The Marshall D. Livingston and Clara B. Livingston Living Trust dated February 19, 2003 pursuant to 20 Pa.C.S. § 7755c. Clara B. Livingston, Grantor/Settlor of the Trust died on April 9, 2020, late of Fayette County, and Commonwealth of Pennsylvania. All persons indebted to said Trust are requested to make payment, and those having claims or demands against the same will make them known without delay to:

Richard C. Livingston, Trustee, c/o John A. D'Onofrio, Esq. of D'Onofrio Law Office, P.C. located at 651 Holiday Drive, Ste. 400, Pittsburgh, PA 15220 having a phone number of 412-928-2068.

(1 of 3)

The Frank S. Pizzurro Revocable Trust dated August 10, 2007
 Frank S. Pizzurro, Sr., Deceased

TRUSTEE NOTICE

Frank S. Pizzurro, Sr., late of 179 Junior Street, Hopwood, Fayette County, Pennsylvania, having died on March 8, 2020 has been identified as the Grantor of the Frank S. Pizzurro, Sr. Revocable Trust dated August 10, 2007. Paulmena M. Pizzurro, the appointed Successor Trustee of said Trust requests all persons having claims against the estate or trust of the decedent make known the same in writing to her attorney, and all persons indebted to the decedent to make payment without delay.

Said claims shall be duly authenticated for settlement prior to the termination and distribution of the trust pursuant to the trust requirements.

Paulmena M. Pizzurro, Successor Trustee
 C/o Rosalie P. Wisotzki, Esquire
 310 Grant Street, Suite 1109
 Pittsburgh, PA 15219
 412-697-4499

(1 of 3)

IN THE COURT OF COMMON PLEAS OF
 FAYETTE COUNTY
 CIVIL ACTION – MUNICIPAL CLAIM
 ML. 1 OF 2020
 NO. 1004 OF 2020, G. D.

TOWNSHIP OF SPRINGFIELD,
 Plaintiff,

vs.

GERALD PRINKEY,
 Defendant.

NOTICE OF WRIT OF SCIRE FACIAS

TO GERALD PRINKEY, DEFENDANT:

The Township of Springfield filed a municipal lien in the Court of Common Pleas of Fayette County at ML. 1 of 2020 on January 7, 2020 against your property at 352 Hawkins Hollow Road, Springfield Township, Fayette County, Pennsylvania designated as Tax Parcel No. 35-09-0087, for the cost of demolishing the house located on that property, \$2,300, plus interest and record costs. That claim is still unpaid, and remains a lien against that property.

You are hereby notified that a writ of scire facias was issued by the Prothonotary on June 5,

2020 and you must file your affidavit of defense to said claim, if you have a defense thereto, in the Office of the Prothonotary within 15 days after the last date on which this Notice is published. If no affidavit of defense is filed within said time, judgment will be entered against you for the whole claim, and the property described in the claim will be sold by the Sheriff to recover the amount thereof.

Ernest P. DeHaas, III, Esquire
51 E. South Street
Uniontown, PA 15401
Attorney for Plaintiff

(3 of 3)

NOTICE

Notice is hereby given that Articles of Incorporation have been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on May 30, 2020, for a business known as M & R Transit Inc.

Said corporation has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the corporation are: The corporation has been organized to engage in the business of bus, van and motor vehicle transportation and all other related activities, and for any and all other lawful business for which corporations may be organized under the Business Corporation Law.

DAVIS & DAVIS
BY: James T. Davis, Esquire
107 E. Main Street
Uniontown, PA 15401

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
NO. 785 of 2020 G.D.
NOTICE OF PUBLICATION
JUDGE JOSEPH M. GEORGE, JR.

JUSTIN HIGMAN AND RANDI HIGMAN,
HIS WIFE
Plaintiffs,

vs.

JOHN WARISH AND ROSE WARISH, Their
Heirs, Successors and/or Assigns Generally,
Defendant.

TO: JOHN WARISH AND ROSE WARISH,
Their Heirs, Successors and/or Assigns
Generally,

Take notice that on April 27, 2020, the Plaintiffs, above mentioned, by and through their attorneys, Davis & Davis, filed their Complaint averring that they are the owner of the following described parcel of real estate. Said Complaint being filed in Quiet Title.

ALL that certain tract of land situate in Redstone Township, Fayette County, Pennsylvania, bounded and described as follows:

BEGINNING at a corner in the intersection of the road leading from Masontown to Brownsville and the street through the town of Republic; thence in the road leading to Brownsville, North 04° 34' East, 260.47 feet to a point in the said road; thence in center of public road now known as Steel Street, South 62° 26' East, 605 feet to a point in the center of the said public road now known as Steel Street aforesaid the place of beginning of the herein described tract; thence continuing in the center of said public road, South 62° 26' East, 125 feet to a point at the intersection of public road and private road of Republic Collieries; thence in said private road, South 27° 34' West, 122 feet to a point in said private road; thence through Republic Collieries and in center of private alley, North 62° 26' West, 125 feet to a point in said alley; thence through Republic Collieries Company, North 27°34' East, 122 feet to a point, the place of beginning, CONTAINING 0.35 acres, being a part of the J.D. VanKirk tract of 80.182 acres, and having erected thereon a two story double dwelling known as House Nos. 10 and 11.

TOGETHER with such rights and SUBJECT to any exceptions, restrictions, reservations and conditions as exist by virtue of prior recorded instruments, deeds or conveyances.

Tax Parcel No.: 30-26-0083

The within named Defendants appear to have an interest in said premises which creates a cloud upon Plaintiffs' title, whereupon the Plaintiffs have filed their Complaint as aforesaid asking the Court to enter a Decree terminating all rights that the Defendants may have in said premises and decree that the Plaintiffs have the full and free use and occupancy of said premises, released and forever discharged on any right, lien title or interest of said Defendants herein.

The service of this Complaint by publication is made pursuant to an Order of Court dated June 10, 2020, and filed at the above number and term.

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for 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 PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

THE FAYETTE COUNTY BAR
ASSOCIATION OF LAWYER REFERRAL
84 East Main Street
Uniontown, PA 15401

SHERIFF'S SALE

Date of Sale: August 20, 2020

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, August 20, 2020, 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

Stephen M. Hladik, Esquire
Hladik, Onorato & Federman, LLP
298 Wissahickon Avenue
North Wales, PA 19454

No. 2844 of 2019 GD
No. 116 of 2020 ED

Towd Point Mortgage Trust 2018-1, U.S. Bank National Association, As Indenture Trustee

(Plaintiff)

vs.

Kimberly R. Hawk in Her Capacity as Co-Executor of the Estate of Janet Kimmel, Deceased and Shelby D. Fuller n/k/a Shelby D. Herman in Her Capacity as Co-Executor of the Estate of Janet Kimmel, Deceased (Defendants)

By virtue of Writ of Execution No. 2844 of 2019

Towd Point Mortgage Trust 2018-1, U.S. Bank National Association, As Indenture Trustee (Plaintiff) vs. Kimberly R. Hawk in Her Capacity as Co-Executor of the Estate of Janet Kimmel, Deceased and Shelby D. Fuller n/k/a Shelby D. Herman in Her Capacity as Co-Executor of the Estate of Janet Kimmel, Deceased (Defendants)

Property Address 805 Mount Aetna Boulevard, Connellsville. PA 15425

Parcel I.D. No. 06-13-0038

Improvements thereon consist of a residential dwelling.

Judgment Amount: \$111,505.28

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

No. 95 of 2020 GD
No. 111 of 2020 ED

**LAKEVIEW LOAN SERVICING, LLC
4425 Ponce DeLeon Blvd
Mail Stop Ms5/251
Coral Gables, FL 33146**

Plaintiff

vs.

**GEORGE E. GASTER
Mortgagor(s) and Record Owner(s)
138 Woodside Oldframe Road
Smithfield, PA 15478**

Defendant(s)

ALL THAT CERTAIN LOT OF LAND SITUATE IN NICHOLSON TOWNSHIP, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 138 WOODSIDE OLDFRAME ROAD, SMITHFIELD, PA 15478 TAX PARCEL #24-12-008701

IMPROVEMENTS: A RESIDENTIAL DWELLING

SOLD AS THE PROPERTY OF: GEORGE E. GASTER

No. 2012 of 2019 GD
No. 362 of 2019 ED

Bayview Loan Servicing, LLC, a Delaware Limited Liability Company

PLAINTIFF
VS.

Robert F. Hixon
DEFENDANT

ALL that certain piece, parcel or lot of land situate in Nicholson Township , Fayette County, Pennsylvania, being designated as Parcel No. 1 in the Kenneth Amrick Plan, the plot whereof being recorded in the Recorder's Office of Fayette County, Pennsylvania, in Plan Book 17, page 7, and being fully bounded and described as follows:

BEGINNING at a point which is the Northeast corner of the land herein conveyed; thence by the westerly line of Parcel No. 2 in said plan and crossing T.R. 419, South 41 degrees 00 minutes East, 259.97 feet to a 2 inch pipe on line of other land of Kenneth Amrick, Grantor herein; thence by other line of Kenneth Amrick, South 49 degrees 00 minutes West, 85.49 feet to an iron pin, on line of land of L & J Equipment Company; thence by land of L & J Equipment Company, North 60 degrees 00 minutes West, 274.95 feet to a 2 inch iron pin; thence by land of Rolland & Nancy Herring, North 49 degrees 00 minutes East, 175.00 feet to a point, the place of beginning. Containing 0.7773 of an acre.

UNDER AND SUBJECT to all exceptions, reservations, easements and conditions as appear in prior instruments of record.

UNDER AND SUBJECT to the right of way of T.R. 419 as dedicated in said plan insofar as same is contained within the premises herein described.

BEING KNOWN AS (for informational purposes only): 128 Rockwell Road, Masontown, PA 15461

Parcel ID: 2404003902

COMMONLY KNOWN AS: 128 Rockwell Road, Masontown, PA 15461 TAX PARCEL NO. 2404003902

Phelan Hallinan Diamond & Jones, LLP

No. 1299 of 2019 GD
No. 113 of 2020 ED

Wei Mortgage LLC
Plaintiff

v.

Robert L. Hixon
Defendant(s)

By virtue of a Writ of Execution No. 2019-01299

Wei Mortgage LLC

v.

Robert L. Hixon

owner(s) of property situate in the GEORGES TOWNSHIP, Fayette County, Pennsylvania, being 105 Dry Knob Road, Smithfield, PA 15478-1245

Parcel No.: 14-25-0139

Improvements thereon: RESIDENTIAL DWELLING

STERN & EISENBERG PC
EDWARD J. MCKEE, ESQUIRE

No. 296 of 2020 GD
No. 97 of 2020 ED

U.S. Bank National Association, as Trustee for BNC Mortgage Loan Trust 2007-2 Mortgage Pass-Through Certificates, Series 2007-2

Plaintiff

v.

Marsha Shaffer
Defendants

SITUATE IN THE TOWNSHIP OF CONNELLSVILLE, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA, BEING KNOWN AS 825 North Jefferson Street, Connellsville, PA 15425.

PARCEL NO. 06-07-0003

IMPROVEMENTS- RESIDENTIAL REAL ESTATE

SOLD AS THE PROPERTY OF- MARSHA SHAFFER

No. 2567 of 2019 GD
No. 117 of 2020 ED

**21st MORTGAGE CORPORATION,
assignee of Residential Funding Company,
LLC, f/k/a Residential Funding Corporation,
assignee of Homecomings Financial Network,
Inc., assignee of First Union National Bank,
assignee of Parkway Mortgage, a division of
Midland National Life Insurance Company,
assignee of Parkway Mortgage, Inc.,
Plaintiff
v.
RUDOLPH V. SMITH and YMA Y. SMITH
Defendants**

ALL that certain lot or parcel of land situate in Luzerne Township, Fayette County, Pennsylvania, being Lot Numbered 14 on a certain plan of lots known as LaBelle, recorded in the Recorders Office of Fayette County, Pennsylvania, in Plan Book Volume 7, page 215.

BEING the same premises conveyed to Rudolph V. Smith and Yma Y. Smith, his wife, by deed of Elmer E. Carpenter and Nancy L. Carpenter, his wife, dated June 1, 1979, and recorded in the Office of the Recorder of Deeds for Fayette County, Pennsylvania, in Deed Book 1256, page 308.

Parcel No: 19-05-0047

*** END SHERIFF SALES ***

JUDICIAL OPINION

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

SCOTT S. MARTIN and JANEL G. MARTIN,	:
husband and wife, and DAVID C. BALSEGA and	:
MICHELLE M. BALSEGA, husband and wife,	:
Plaintiffs,	:
	:
vs.	:
	:
LUTHER BURCHINAL a/k/a L.W. BURCHINAL and	:
EMMA BURCHINAL, husband and wife, and JOSEPH G.	:
BURCHINAL and SARAH ELIZABETH BURCHINAL,	:
husband and wife, their heirs, successors, and assigns,	:
Defendants,	:
	:
and	:
	:
LAWRENCE L. KRUPA, LAWRENCE L. KRUPA, JR.,	:
BRIAN J. KRUPA, and MARK A. KRUPA,	:
Intervenors.	: No. 406 of 2016, G. D.

OPINION AND ORDER

VERNON, J. June 24, 2020

Before the Court is an Action to Quiet Title filed by Plaintiffs, Scott S. Martin and Janel G. Martin, husband and wife (“Martins”), and David C. Balsega and Michelle M. Balsega, husband and wife (“Balsegas”) to a strip of land abutting their houses approximately fifty feet wide by 227.7 feet long.

PROCEDURAL HISTORY

On February 29, 2016, Plaintiffs Scott S. Martin and wife, Janel G. Martin, and David C. Balsega and wife, Michele M. Balsega, (the “Martins” and “Balsegas”) filed a Complaint to Quiet Title asserting that they are neighbors fronting Liberty Street in Smithfield Borough, Fayette County and alleging adverse possession of a fifty foot strip of land (“disputed parcel”) between their properties. See, Complaint, ¶1-4. The Martins and Balsegas named as Defendants Luther Burchinal a/k/a L.W. Burchinal and wife, Emma Burchinal, and Joseph G. Burchinal and wife, Sarah Elizabeth Burchinal, their heirs, successors, and assigns, alleging that record title remains in the Burchinal name since the mid-1800s. Id. at ¶5-7.

By Order dated March 7, 2016, this Court permitted service by publication upon Defendants, Luther Burchinal a/k/a L.W. Burchinal and Emma Burchinal, husband and wife, and Joseph G. Burchinal and Sarah Elizabeth Burchinal, husband and wife, their heirs, successors, and assigns.

Lawrence L. Krupa, Lawrence L. Krupa, Jr., Brian J. Krupa, and Mark A. Krupa (the “Krupas”) petitioned the Court for leave to intervene and by Order dated May 10, 2016, the same was granted. Thereafter, the Krupas filed an Answer to Plaintiffs’ Complaint and New Matter, alleging the disputed parcel is specifically identified in the vesting deeds to both the Martins and Balsegas, and that the disputed parcel was laid out by plan dated 1927, recorded in the Fayette County Recorder of Deeds at Plan Book 5, Page 40, which depicts the parcel as a street. See, Answer and New Matter, ¶1-3. The Krupas further contend to be successors in title to Jennie S. Clemmer and M. Everett Clemmer, the founders of the 1927 plan. *Id.* at ¶4. The Krupas allege that they and “their successors” [predecessors] in title have use the disputed parcel for more than sixty years to access the adjacent Krupa farm lying behind the Martins’ and Balsegas’ homes. *Id.* at ¶4.

The Krupas further assert an inability to move farm equipment over a drainage ditch on their farm requiring access to their farm across the disputed parcel. *Id.* at ¶ 15. The Krupas allege by Deed dated April 8, 1927, recorded at Record Book Volume 476, Page 310, that the 1927 plan was specifically excepted and reserved for the right of ingress, egress, and regress for the use of all grantees and dedicated for the use of the public in general. *Id.* at ¶ 17.

The Krupas claim that the disputed parcel is a street not subject to adverse possession (*Id.* at ¶18); a right-of-way specifically reserved for use by future grantees including them (*Id.* at ¶19); that the Krupas themselves have adversely possessed the disputed parcel sufficient to vest ownership (*Id.* at ¶20); and that the Krupas use of the disputed parcel constitutes a prescriptive easement (*Id.* at ¶21). The Krupas further alleged that Plaintiffs began blocking the disputed parcel in 2015 and requested an injunction preventing the same.

By way of Reply to New Matter, the Martins and Balsegas denied the existence of a street over the disputed parcel alleging that the land was dedicated to the public in 1887, but never accepted by any public body as a public street. See, Reply to New Matter, ¶13-14. The Martins and Balsegas further contend that the filers of the 1927 plan and the grantors of the 1927 deed did not own any real property interest in the disputed parcel and could not create a street. *Id.* at ¶16-17. The Martins and Balsegas deny the remaining allegations.

FACTS

At the time set for nonjury trial, the parties stipulated to authenticity, but did not admit into evidence, the Krupas’ pre-marked Exhibits A through LL and NN through OO. N.T., 8/10/2018, at 2.

Nancy Bartko has lived at 70 Liberty Street since December 1974 across the street from the Balsegas’ house. *Id.* at 3-4. Bartko testified that she has never seen the strip of land in dispute used as a road, driveway, or other access to the Krupa farm. *Id.* at 5. Bartko recited that the Balsegas and Martins would park their cars and use it “like a driveway.” *Id.* at 6.

George Balsinger has resided with his daughter, Nancy Bartko, at 70 Liberty Street since 1993. *Id.* at 10. Balsinger testified that he has never seen the strip of land used as a road or for access, rather only parking by the Martins and Balsegas. *Id.* at 10. By cross-examination question, “Have you seen any of the Krupas driving tractors up and down Liberty Street?”, Balsinger answered that he saw the “father” Krupa take “a load of rocks back through there [...] a long time ago.” *Id.* at 10-11. Balsinger clarified that

he saw Lawrence Krupa, the father, take a tractor with a high lift through the disputed area turning off Liberty Street between the Martins and the Balsegas. *Id.* at 12-13. No time frame was established for this sighting.

Plaintiff Janel Martin testified that she has resided at 61 Liberty Street, on the southern side of the disputed tract, since 1998. *Id.* at 29, 51. Janel Martin testified from Exhibit 1, a Google Maps printout, that she testified showed her property and the Krupa fields. *Id.* at 32. From the Google Maps image, Janel Martin testified that “there is clearly a way to get in and out of [Krupa’s] field” and she marked that access with a star for the Court’s edification from Maple Street. *Id.* at 33-35. Janel Martin identified two pathways for Krupa to access his property without using the disputed tract of land. *Id.* at 35-36. She also identified a stream that runs behind her property. *Id.* at 37.

On Exhibit 2, Janel Martin identified the survey markers from the Krupas’ survey and noted their location in her flower garden, beside her house, and in her children’s playset. *Id.* at 38. Exhibit 3 showed what her “property used to look like before Mr. Krupa started driving through.” *Id.* at 38. Janel Martin introduced photographs of her property before and after the Krupas made tracks and ruts throughout the disputed parcel. *Id.* at 38-41. Janel Martin identified a gap that Mr. Krupa created in the trees when he started to drive through there sometime after May 2015 and testified to the grass that Mr. Krupa moved so that he could drive over the stream. *Id.* at 42.

Janel Martin explained a culvert runs behind her house and showed the Krupas’ fence post to the north of the culvert. *Id.* at 43. The stream is opened as it runs behind the Martins’ house, but the Borough installed a pipe and covered the stream starting behind the Balsegas’ property northerly in the direction of the elementary school. *Id.* at 44-45. In the photos submitted to the Court, Janel Martin testified that she observed Mr. Krupa throwing drywall, windows, and construction materials into the stream and that she reported his actions to the Borough. *Id.* at 46. Janel Martin testified that she was present and saw Mr. Krupa being directed by the Borough to remove the materials from the stream. *Id.* at 48.

Janel Martin testified that she had never witnessed anyone drive on the disputed parcel until the Krupas did in 2015. *Id.* at 51. Janel Martin submitted photographs throughout the years of her residence on Liberty Street showing the disputed parcel which depicted her own cars parked on the area and revealed no tracks from farm equipment. *Id.* at 52; see Exhibits 6-14. Exhibit 6 shows a Balsega car that was broken down and parked on the tract for years. *Id.* at 53. Janel Martin testified that she, her husband, and the Balsegas parked there daily and that she was a stay-at-home mother who was able to regularly observe the disputed parcel. *Id.* at 53-54. Photographs depict the Martins’ children’s swing set within the boundaries of the disputed property. *Id.* at 55. The Martin family historically took first day of school photographs in front of a tree on the disputed parcel. *Id.* at 56. The photographs also showed building materials that the Martins used to remodel their home, trucks, trailers, dirt piles, and a dumpster on the property throughout several years during construction. *Id.* at 62.

Janel Martin then submitted photographs taken in April 2016 of Mr. Krupa using his backhoe “ripping it up” and in 2017 spraying chemicals to kill grass and shrubs on the disputed parcel. *Id.* at 62-72; see Exhibits 14, 18.

On cross-examination, Janel Martin admitted that her deed references the disputed parcel as a 50-foot street. *Id.* at 74; see Exhibit B. The Martins stipulated that the Krupas have used farm machinery on the parcel since 2015. *Id.* at 96.

Ray Crumrine, a title abstractor, testified for the Martins and Balsegas that he has researched the recorded documents dating back to the Burchinals common title and

found no conveyance out of the Burchinal name of any interest in the disputed property. Id. at 100-104. Crumrine opined that the disputed property was not laid out as a street in the Smithfield Plan. Id. at 104.

The parties stipulated that there are references in the deeds to a street being in the location of the disputed parcel in the chains of title for both the Martins and Balsegas' properties. Id. at 110. Also, they agreed that Everett Clemmer was a predecessor in title for the Krupas' and Balsegas' tract. Id. at 112-120.

Plaintiff Scott Martin testified that within one month of moving into 61 Liberty Street that he had a conversation with Lawrence Krupa and that Krupa told him that there was a road on this now disputed parcel. Id. at 136-137. At the time, Scott Martin testified that he was new to the area and did not agree or disagree with Krupa's statement. Id. at 137. From the time he purchased his residence until 2015, Scott Martin never observed Krupas using the disputed tract. Id. at 137. When Krupas began using it in 2015, Lawrence Krupa tore out trees and dug up dirt to be able to access his farm through the disputed tract. Id. at 137-138. Lawrence Krupa put the dirt in the sunken area where the water was running to be able to cross to get to his property. Id. at 138.

Scott Martin testified that he put gravel on the disputed tract to create a parking area and then once he built a garage, he removed the gravel and planted grass. Id. at 139-140. Scott Martin also planted trees in this area and identified a walnut tree that has been there since the Martins moved in. Id. at 139-140.

On cross examination, Scott Martin admitted that he saw Lawrence Krupa with a tractor and trailer on the disputed parcel about one month after they moved to Liberty Street in 1998. Id. at 151-152. Scott Martin did not recall if Lawrence Krupa claimed the disputed parcel was a street or alley but did believe Krupa asserted a right to use it. Id. at 156. Scott Martin never saw the tract used for farm vehicles again until 2015.

Plaintiff David Balsega testified that he has resided on Liberty Street for thirty-five years and has never seen the disputed parcel used as a street prior to Lawrence Krupa going up and down "a couple years ago." Id. at 157-158. David Balsega testified that Lawrence Krupa never asserted ownership of the tract. Id. at 158. Balsega explained that he has always parked on the tract. Id. at 158. Balsega stated that the Krupas' surveyor inserted a pin within one and one-half or two feet of his sidewalk. Id. at 159.

Balsega had placed a shed on the disputed tract. Id. at 160. With regards to the culvert, Balsega believed it to have been installed in the 1930s by the WPA. Id. at 161. When Krupas began using the tract in 2015, he had to fill in part of the culvert and remove small sapling locust trees. Id. at 161. Balsega had parked an old red GMC Jimmy in the area unmoved from approximately 1997 or 1998 until 2003 or 2004.

Under cross-examination, Balsega admitted that the Krupas would occasionally come through on a tractor prior to 2015. Id. at 171. Balsega denied ever seeing the Krupas going through the area to pick corn or bring hay. Id. at 172. Balsega testified that he watched the Krupas traverse the disputed parcel less than ten times prior to 2015 and they did so without any confrontation. Id. at 172-173.

Upon this evidence, Plaintiffs rested.

David Shannon, a licensed land surveyor, was hired by Lawrence Krupa in 2006 to survey his farm. Id. at 14-16. Shannon testified that many deeds "were vague" and that he spent time investigating the surrounding properties. Id. at 17. Shannon opined that there was a street from Liberty Street to the Krupa tract. Id. at 18. Shannon refers to Plan Book 5, Page 4 as a source to identify the streets. Id. at 19. Shannon "didn't actually survey the street" but felt "confident that there was a gap there as referred to on the plan." Id. Shannon identified "two substantial headwalls out there that generally lie

within the area of the 50-foot street.” *Id.* A headwall is a “structure on each side on a drain that funnels the water into an underground pipe or an underground conveyance and basically prevents erosion on each end of the pipe.” *Id.* at 20. According to Shannon, the headwalls were evidence of some type of a crossing. *Id.* On cross-examination, Shannon admitted that he was not drawing any conclusion as to the legal status of the disputed property whether the road existed. *Id.* at 23. Shannon only noted a 50-foot gap off Liberty Street. *Id.* Shannon identified Plan Book 5, Page 40 (Exhibit CC) being a plan to divide the Krupa farm in 1927 and thereon identified a 50-foot street from Liberty Street. *Id.* at 25-26.

Lawrence Krupa, Jr. testified that his grandparents, Frank Krupa and Betty Krupa, owned the Krupa farm when he was born in the late 1970s and that they used the property for agricultural purposes of cattle and growing sweet corn. *Id.* at 180-181. Lawrence Krupa, Jr. testified that he used the disputed area “multiple times consistently” from 1988 until he moved in the year 2000 to drive between the farmhouse and Liberty Street. *Id.* at 181-182. Lawrence Krupa, Jr. would drive a tractor over the area multiple times a day when the Krupas were baling hay and drove his car through there when they would sell sweet corn. *Id.* at 182. He used the car to haul corn because it was convenient. *Id.* at 183.

When asked how the Krupas would access the farmland to plant corn, Lawrence Krupa, Jr. testified “we’d always use the 50-foot property.” *Id.* at 184. When the Krupas cultivated or sprayed the corn, they would take the machinery through the disputed parcel. *Id.* at 184-185. According to Lawrence Krupa, Jr., the only “safe” way to access the Krupa farm to bale hay was through the disputed property. *Id.* at 184. The other means of access to the Krupa farm are wet, not perfectly level, not very wide, and only accessible by traversing a culvert. *Id.* at 185. The Krupa farm would produce sweet corn from around July 4th until the first frost. *Id.* at 186. Lawrence Krupa, Jr. testified that there would be an average of eight varieties of sweet corn planted each year and as each crop was ready to harvest, there would be required 15-25 trips to the farm over the disputed parcel. *Id.* at 188. After he moved from the area in 2000, Lawrence Krupa, Jr. would return on weekends to help his family until approximately 2005 and during that time, he used the disputed property as ingress and egress to bale hay and plant and harvest corn. *Id.* at 189. Lawrence Krupa, Jr. denied that anyone ever attempted to stop him from using the disputed property and testified that there had never been a confrontation and that mostly everyone was friendly. *Id.* at 189.

Melvin Marks is employed as a worker for Smithfield Borough and is familiar with the disputed parcel of land. N.T., 9/28/2018, at 6-7. Sometime in 2018, Marks was summoned to fix the drainage ditch behind the Balsegas’ and Martins’ property. *Id.* at 7. David Balsega offered for Marks to use the “alley” to reach the drainage ditch rather than drive through his yard. *Id.* at 8-9.

Norbert James Borupski worked maintenance for Smithfield Borough from 1993 until 2004. *Id.* at 10-11. Borupski testified in 1998 that he would use the disputed property to access the drainage ditch to install pipes for approximately a one-month period. *Id.* at 11-12. According to Borupski, no one stopped him from using the property as access to the drainage ditch. *Id.* at 12.

Todd Libertino testified that he used the disputed property between 1992 and 1998 as access to the Krupa farm for the hayfield and cornfield. *Id.* at 13-14. Libertino would drive a tractor from Liberty Street to the Krupas’ cornfield multiple times a day. *Id.* at 14. Throughout a summer, Libertino estimates that he would use the disputed property fifty to sixty times and that no one ever tried to stop him. *Id.* at 15. Libertino

testified the access was from Liberty Street through the disputed property because the Krupas had electric fences for cattle. *Id.* at 16-17.

Ray Andrew Goodwin, Jr. testified that he was friends with Mark Krupa and that they worked together during high school from 1998 until 2002 at the Krupas' farm baling hay and picking corn. *Id.* at 18. Goodwin testified that they would use the disputed parcel multiple times each day traversing it in a pickup truck. *Id.* at 19.

Ronald Bowman worked for Lawrence Krupa from 1986 through 1999 and he also testified that he would use the disputed property throughout the summer making between fifty and one hundred trips during daylight hours. According to Bowman, no one ever tried to stop him. *Id.* at 21.

Joseph Destro of Beaver Creek Land Services was recognized as an expert in the area of land surveying. *Id.* at 23-25. Destro opined that a right of way over the disputed parcel was excepted and reserved out of the Martins' and Balsegas' deeds. *Id.* at 31.

Destro testified that the old stone culvert for access across the drainage ditch was a sign of utilization as a crossing. *Id.* at 50.

Robert Klink worked on the Krupa farm from the late 1980s through early 2000s and is the nephew of Lawrence Krupa. *Id.* at 54. Klink remembers using the disputed parcel to take the hay and hay baler across to the farm. *Id.* at 55. Klink testified that they used the disputed parcel for access "all through the year" as in the fall time they were planting corn in the fields and in the springtime, the fertilizer came through that way. *Id.* at 55. According to Klink, the only access to get the hay baler into the field was across the disputed parcel. *Id.* at 56.

Klink testified that the Krupa farm is divided by a drainage ditch. *Id.* at 57. The ditch prevents access to the fields except over the disputed parcel. *Id.* at 58. Klink testified that the field used to plant sweet corn was the one closest to the Plaintiffs' homes and that when they sold corn in the summer months, they would make three or four trips a day across the disputed parcel to pick the corn. *Id.* at 59. Klink testified that no one ever tried to stop him from using the disputed parcel as access. *Id.* at 60.

Irving Rice, Jr. testified that he used to work for Lawrence Krupa, Sr. in 1997 and 1998 and has remained friends with the Krupa family. *Id.* at 61. Rice used the disputed parcel for hay and corn trips while working for the Krupas. *Id.* at 62. When hay was being baled, Rice testified he would traverse the disputed parcel twelve times per day and two or three times a day to pick corn. *Id.* at 62-63. According to Rice, no one ever tried to stop him from using the disputed parcel.

Stacey Hall, the niece of Lawrence Krupa, Sr., testified that she used the disputed parcel when her grandparents still owned the Krupa farm. *Id.* at 63-64. Hall testified that she remembered using the disputed parcel for access to the Krupa farm as a child in the 1970s until she was married in the year 2000. *Id.* at 65-66. Hall stated no one ever attempted to stop her from using the disputed parcel. *Id.* at 66.

Robert Grimm testified that he is good friends with the Krupas and is familiar with the area. *Id.* at 67. Grimm stated that his grandfather was close to the Krupa family and he recalls a time in the 1960s as a child using a combine machine to access the Krupa farm over the disputed parcel. *Id.* at 67-69. Grimm testified that the combine was greater than twelve feet wide and as such, access to the Krupa farm was made over the disputed parcel. *Id.* at 69. In the 1960s, Grimm testified that no one interfered with his family's use of the disputed parcel to access the Krupa farm. *Id.* at 69. In junior high school in the 1970s, Grimm testified that he used the disputed parcel as access for the combine to the Krupa farm working for Frank Krupa. *Id.* at 70. Grimm also testified that around 2005 he would purchase hay from the Krupas and that his two-wheel drive

truck could not access the field “through the other part where the ditch was” so he traversed over the disputed parcel. Id. at 70.

Mark Krupa is a co-owner of the Krupa farm. Id. at 72-73. He was born in 1984 and recalls using the disputed parcel as ingress and egress as a child to pick corn and occasionally run the cattle back onto the fields. Id. at 73. Mark Krupa testified that the Krupas would sell corn along the roadway, at flea markets, to a supermarket, and to “hucksters” who purchased corn in bulk. Id. at 74. Mark Krupa testified that the Krupas regularly used the disputed parcel as access to the corn fields and for baling hay. Id. at 75. According to Mark Krupa, no one has ever interfered with his use of the disputed parcel. Id. at 77.

Mark Krupa described the terrain of his farm that a creek or drainage ditch runs through the center of the farm. Id. at 78. The passageway there is steep and usually very wet. Id. at 78. To cross the creek, a machine would have to go down the hill and back up and the pieces of farm equipment could not pass through that way. Id. at 78. If the Krupas use the disputed parcel to access their fields, they do not have to traverse the creek or drainage ditch on their own property. Id. at 79. According to Mark Krupa, no one has ever interfered with his use of the disputed parcel. Id. at 80.

Brian Krupa is also a co-owner of the Krupa tracts. Id. at 82-83. Brian Krupa testified that when he was a child in the early 1980s that his grandfather used the disputed parcel to access the Krupa fields for hay because traversing the drainage ditch resulted in the loads upsetting. Id. at 83. According to Brian Krupa, certain things like fertilizer shoots could not traverse the drainage ditch because they were ruined if they got wet. Id. at 83. This transportation required access across the disputed parcel. Id. at 83. The Krupas’ current hay rake uses hydraulic cylinders and cannot cross the drainage ditch without toppling and causing damage to the equipment. Id. at 84.

Brian Krupa testified that any stone they put into the drainage ditch washes away. Id. at 84. According to Brian Krupa, at least two times every year since 1996, he has taken a hay bale in and out of the farm via the disputed parcel. Id. at 84. When the Krupas used square hay bales, they used the disputed parcel because crossing the drainage ditch caused the hay to fall off the wagon. Id. at 84.

Brian Krupa testified that he used to jog through the area and across the disputed parcel. Id. at 85. Brian Krupa testified that he has used the disputed parcel for access to the farm for reasons other than hay or corn. Id. at 85. Recently, he has taken his children across the parcel for access to the farm because the other access was blocked by Memorial Day parade traffic. Id. at 85-86. Brian Krupa has also accessed the farm this way to retrieve topsoil for construction jobs. Id. at 86.

Until 2016 when the Martins called the police, no one had interfered with Brian Krupa using the disputed parcel. Id. at 91. In 1998, Mr. Martin came to the Krupa home and requested of Brian Krupa that he notify Mr. Martin prior to using the disputed parcel. Id. at 92. According to Brian Krupa, he told Mr. Martin that was not possible and instead, he just continued to use the parcel without providing any notice. Id. at 92-93. Brian Krupa testified that he has always driven slow through there because of the children that he saw playing. Id. at 93. Brian Krupa stated that he uses the disputed parcel for access to his farm between thirty and fifty times a year depending on the needs of the farm. Id. at 93-94.

In rebuttal, Janel Martin was recalled and denied ever having a conversation with Brian Krupa about a mobile home potentially being placed on the Krupa farm. Id. at 97. Janel Martin also rebuffed Brian Krupa’s testimony that the depressed curb was a sign of access. Rather, she stated that the area is used for parking. Id. at 98. Janel Martin

testified that she saw pictures of cars parked in the area long before she ever purchased her home. *Id.* at 98. Janel Martin recalled that she took her children's first day of school photos on the disputed parcel every year from the early 2000s through 2015 and testified that the photographs do not depict any tire tracks. *Id.* at 99-103. Janel Martin testified that she had never seen tire tracks on the parcel from the time she purchased the home until this dispute started in 2015. *Id.* at 103-104.

In further rebuttal testimony, David Balsega testified that the curb is shaped in the manner it appears because that is the area that he parks his car. *Id.* at 107-108. Balsega installed the gravel in the flat part for his parking use. *Id.* at 108. Balsega's opinion is that the sidewalk ends prior to the disputed parcel because the borough paved it in that manner as an acknowledgement that he parks there. *Id.* at 109.

Mark Krupa testified in surrebuttal that no tracks would be created when traversing the disputed parcel to bale hay because by the very nature of the farming act, hay can only be baled in dry conditions. *Id.* at 111. Mark Krupa explained that the farming equipment and truck have rubber tires that do not leave tracks on grassy areas. *Id.* at 112.

DISCUSSION

Martins' and Balsegas' Claim for Adverse Possession

The Court will first address the Martins and Balsegas claims for adverse possession. In order to do so, a factual determination must be made as to the record owner of the disputed parcel.

Plaintiffs alleged in their Complaint that the disputed parcel:

was owned by Defendants, Luther W. and Emma Burchinal, as a part of their farm then located in Georges Township, now the Borough of Smithfield, which lies to the east of [Plaintiffs'] properties, and to which they acquired title in the middle 1800's. As recited in deeds in the chain of title, Luther got into financial trouble, and, by an unrecorded assignment, assigned his interest to this farm to Defendant, Joseph G. Burchinal, for the purpose of selling his property to pay his debts. Joseph G. Burchinal sold the farm off in pieces starting in 1888, including selling some of the farm as lots in the plan recorded as "East Smithfield", Plan Book 1, page 41. The rest of the farm was sold in several larger pieces. [Plaintiffs'] homes were once a part of this farm.

See, Complaint, ¶5. The Krupas admitted the same and by way of further response, recited that "the Krupa Defendants' property and the Balsega Property was once part of the property owned by Luther W. Burchinal and later owned by Jennie S. Clemmer and M. Everett Clemmer (who created the 1927 Plan). See, Answer to Plaintiffs' Complaint, New Matter, and Demand for Jury Trial, ¶5.

Neither party submitted into evidence documents which vests title to the disputed parcel into the names of Luther W. Burchinal and Emma Burchinal. The Court will accept as true, the pleadings and admission that Luther W. Burchinal and Emma Burchinal were the record owners of the disputed parcel from the middle 1880s until 1888.

The parties did submit two deeds out of the Burchinal name. The first, by Deed, dated September 10, 1888 (Deed Book 81, Page 386), Joseph G. Burchinal, Assignee of Luther W. Burchinal, conveyed to Martha Sturgis thirty-six acres and sixty-seven perch-

es, therein reciting, “thence south thirty and one-half east seventy-five perches to stake in north line of Lot No. 43 in plan of East Smithfield.” This call in the metes and bounds description explicitly excludes the disputed parcel from conveyance by Joseph G. Burchinal, Assignee of Luther W. Burchinal.

By Deed, dated September 10, 1888 (Deed Book 78, Page 340), Joseph G. Burchinal, Assignee of Luther W. Burchinal, conveyed to Ewing McCleary two acres and seventy six perches, reciting “Said piece of land being situated on Liberty Street north of lot No. 15 and separated therefrom by a fifty (50) foot St. leading to said Sturgis residence as will appear by reference to plot of East Smithfield, recorded in the Office for recorded deed in and for Fayette Co. in Plan Book Vol. 1, page 41.” This deed, likewise, specifically excluded the disputed parcel from conveyance.

The exception and reservation of the disputed parcel in Deed Book 78, Page 340 combined with the boundary line in Deed Book 81, Page 386, and additionally no other conveyances identified out of Joseph G. Burchinal or Luther W. Burchinal, their heirs, successors, or assigns, the Court finds the disputed parcel is an orphaned tract from Joseph G. Burchinal, as Assignee of Luther W. Burchinal.

The Court can find no documentary evidence that the conveyances throughout the early 1900s through the 1920s were effectuated by parties who possessed an interest in fee simple with the ability to create a roadway or street over the disputed parcel. Specifically, the Krupas have failed to establish how title of the disputed parcel was ever conveyed from the Burchinals. No municipality has ever accepted a street over the disputed parcel. Further still, the Krupas have failed to establish any fee simple ownership of their predecessors in title that would have permitted a claim in fee as to the disputed parcel.

Turning now to the adverse possession claim of the Martins and Balsegas. The Martins’ property borders the disputed parcel to the south and the Balsegas are the neighbors to the north of the parcel.

Adverse possession is an extraordinary doctrine that permits one to achieve ownership of another’s property by operation of law; accordingly, the grant of this extraordinary privilege should be based upon clear evidence. *Flannery v. Stump*, 786 A.2d 255 (Pa. Super. 2001). One who claims title by adverse possession must prove actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the land for twenty-one years. *Weible v. Wells*, 156 A.3d 1220, 1224 (Pa. Super. 2017).

Each of the elements of adverse possession must exist in a claim of an ownership interest under the doctrine of adverse possession; otherwise, the possession will not confer title. *Johnson v. Tele-Media Co. of McKean County*, 90 A.3d 736 (Pa. Super. 2014). One who occupies land adversely for the prescriptive period gains an absolute, marketable title with the attendant right of possession. *Plauchak v. Boling*, 653 A.2d 671 (Pa. Super. 1995).

a. Actual Possession

Generally, to support a claim or defense based on adverse possession, nothing short of an actual possession, continued permanently, will be sufficient to take away from the owner the possession that the law attaches to legal titles. *Flickinger v. Huston*, 435 A.2d 190 (Pa. Super. 1981). The determination of what constitutes actual possession of the property for the purposes of adverse possession depends on the facts of each case, and to large extent on the character of the premises. *Watkins v. Watkins*, 775 A.2d 841 (Pa. Super. 2001). “Actual possession” of land for the purposes of adverse possession is dominion over the land; it is not equivalent to occupancy. There is no fixed rule by

which the “actual possession” of real property by an adverse possession claimant may be determined in all cases. *Id.* The requirements for actual possession of a property for purposes of adverse possession will necessarily vary based on the nature of the property. *Recreation Land Corp. v. Hartzfeld*, 947 A.2d 771 (Pa. Super. 2008).

There is no precise definition of what constitutes possession of real property; the determination of possession is dependent upon the facts of each case, and to a large extent the character of the land in question. In general, however, actual possession means dominion over the property; it is not the equivalent to occupancy. *Moore v. Duran*, 687 A.2d 822, 827 (Pa. 1996).

Here, the Martins and Balsegas established actual possession of the disputed parcel. Janel Martin testified that she and her husband have “taken care of the property for the entire time that [they] have lived there, mowed, picked up sticks, picked up nuts.” N.T., 9/28/2018, at 106. The disputed parcel is not enclosed by a fence or any type of barrier but has been at least partially blocked with parked cars. The Martins and their predecessor from 1986 through 1998, Michael B. Hutzel and Dianne L. Hutzel, and the Balsegas have all regularly and routinely parked on the disputed parcel. *Id.* at 52-54, 170. David Balsega parked a disabled car on the disputed parcel, unmoved, for several years. *Id.* at 53. The Martins regularly parked three of their cars on the parcel. *Id.* at 53. When undergoing construction on their home, the Martins used the disputed parcel to store building materials and piles of dirt. *Id.* at 59-60. Scott Martin placed gravel on the disputed area. *Id.* at 139. The Martins planted trees on the parcel. *Id.* at 139-140. The Balsegas had placed a shed on the disputed tract. *Id.* at 160.

Neighbors from across the street, Nancy Bartko and George Balsinger, confirmed that the Martins and Balsegas have used the disputed parcel as a parking area or driveway. *Id.* at 3-10.

Janel Martin submitted photographs of her children growing up from toddlers through adulthood, documenting their childhoods with photographs regularly taken on the disputed parcel. The Martins’ children’s playset was also placed on the disputed parcel. *Id.* at 38.

From this clear and convincing evidence, the Martins and Balsegas are in actual possession of the disputed property having used it consistently as an extension of their own yards.

b. Continuous

Further, in order for adverse possession to ripen into title, it is necessary to show that such possession has been continuous and uninterrupted for the full statutory period. *Id.* The law does not require that the claimant remain continuously on the land and perform acts of ownership from day-to-day. *Id.*

In order for adverse possession to ripen into title, it is necessary to show that such possession has been continuous and uninterrupted for the full statutory period. *Glenn v. Shuey*, 595 A.2d 606, 611 (Pa. Super. 1991). Temporary breaks or minor interruptions cannot destroy the continuity of possession. Abandonment or possession must be taken by the title owner. *Reed v. Wolyniec*, 471 A.2d 80, 85 (Pa. Super. 1983).

This Court finds that the Balsegas have continuously possessed the land without interruption or abandonment since 1983 and the Martins through their predecessor in title since 1986.

c. Exclusive, Visible, and Notorious

To constitute distinct and exclusive possession, it need only be a type of possession

which would characterize an owner's use. *Fred E. Young, Inc. v. Brush Mtn. Sportsmen's Ass'n*, 697 A.2d 984 (Pa. Super.1997). Exclusive possession can be established by acts, which at the time, considering the state of the land, comport with ownership; such acts as would ordinarily be exercised by an owner in appropriating land to his own use and the exclusion of others. *Lyons v. Andrews*, 313 A.2d 313, 315-316 (Pa. Super. 1973).

The words visible and notorious possession mean that the claim of ownership must be evidenced by conduct sufficient to place a reasonable person on notice that his land is being held by the claimant as his own. *Young, supra*. To constitute distinct and exclusive possession, it need only be a type of possession which would characterize an owner's use, it need not be absolutely exclusive. *Brennen v. Manchester Crossings, Inc.*, 708 A.2d 815 (Pa. Super 1998).

By performing maintenance of the disputed parcel as an extenuation of their own yards combined with the acts recited above, the Martins and Balsegas have satisfied the requirement of visible and notorious. As to exclusivity, Janel Martin testified credibly that prior to 2015, she had never witnessed anyone use the disputed parcel for ingress or egress. N.T., 8/10/2018, at 51.

David Balsega admitted that the Krupas would occasionally come through on a tractor prior to 2015 but denied ever seeing them bring corn or hay through the area. *Id.* at 171-172. Balsega testified that he observed the Krupas traverse the area less than ten times between 1983 and 2015 and admitted that he did not confront or stop them. *Id.* at 172-173.

In 1998 when the Martins purchased their property, Scott Martin went to the Krupa home and asked the Krupas to let him know before they took a trailer through the disputed parcel so that he could assure his children's safety. N.T., 9/28/2018, at 92.

The Krupas presented the testimony of family, friends, and employees who all testified that the disputed parcel was the means of ingress and egress for hay and corn seasons. Notably, Mark Krupa testified that the vehicles and farm equipment that the Krupas used to traverse all had rubber tires and that driving over grass would not leave tire tracks. *Id.* at 112. Thus, if true, no evidence of any Krupa use was "visible" on the land unless witnessed as it was occurring. This lasted until 2015 when Lawrence Krupa, Sr. intentionally damaged the disputed parcel by spraying chemicals to kill trees, grass, and shrubs, spun his tires causing ruts and destroying the ground, and removed saplings. *Id.* at 67-72.

Although the Court believes that the Krupas have traversed the disputed parcel throughout the years, their usage does not defeat the exclusive, visible, and notorious elements already established by the Martins and Balsegas. Specifically, the Krupas only used the property seasonally for hay and corn and not on any regular basis that was exclusive or visible.

By parking on the property, placing gravel and construction materials, maintaining it, cutting the grass, planting shrubs, placing a child's playset, and using it every day for various reasons this Court finds the possession of the disputed parcel to be exclusive to the Balsegas and Martins.

d. Hostile

Hostility will be found when the claimant possesses the property without permission of the title owner. *Glen v. Shuey*, 595 A.2d 606, 612 (Pa. Super. 1991). With regard to the requirement of hostility, the Court has stated: "While the word 'hostile' has been held not to mean ill will or hostility, it does imply the intent to hold title against

the record title holder.” *Vlachos v. Witherow*, 383 Pa. 174, 118 A.2d 174, 177 (1955). If all other elements of adverse possession are present, hostility will be implied. *Tioga Coal Co. v. Supermarkets Gen. Corp.*, 546 A.2d 1, 3 (Pa. 1988). Further, the true owner must affirmatively act to interrupt the adverse possessor’s use of the property. See *Reed*, supra.

Here, the element of hostility would require examination of the Martins and Balsegas acts as being “hostile” against the record owners – the Burchinals – and not against the Intervenors, the Krupas. It is the opinion of this Court that all other requirements for adverse possession have been met, and therefore the element of hostility is too.

e. Twenty-One Years – Tacking

In this Commonwealth, the statutory period for adverse possession is twenty-one years. *Watkins*, supra. Here, the testimony establishes that the Martins have resided on Liberty Street since June 1998 and the Balsegas since July 1983. N.T., 8/10/2018, at 29, 51; Plaintiffs’ Exhibits 6 and 7. The Balsegas can satisfy the statutory period based on their ownership since 1983, however, to establish twenty-one years, the Martins are required to tack a prior possessor’s interest to reach the statutory minimum.

Under certain circumstances, adverse possessors may fulfill the twenty-one-year requirement via tacking. In the context of adverse possession, tacking occurs when, “under certain circumstances, the periods of possession of prior owners may be added on to the period of possession of the present owners.” *Baylor v. Soska*, 658 A.2d 743, 744-745 (Pa. 1995).

Where, as here, the claimant of the disputed land has not possessed the land for the required twenty-one year period, the claimant must tack its predecessor’s period of adverse possession for adverse possession to exist. For possession to be tacked, there must be privity between the successive occupants of the property. *Watkins*, supra. Although property cases are by nature fact-bound, for purposes of tacking rights, the finder of fact should consider the totality of the circumstances and the context in which a predecessor’s prior use and interests are conveyed to its successor because “[t]here must be no secret that the adverse possessor is asserting a claim to the land in question.” *Zeglin v. Gahagen*, 812 A.2d 558, 565 (Pa. 2002).

By Deed, dated June 14, 1998 (Book 2114, Page 84), Dianne L. Hutzel conveyed her property at 61 Liberty Street to Scott S. Martin and Janel G. Martin. The Deed recorded at Book 2114, Page 84 did not purport to convey any interest in the disputed parcel by metes and bounds or description. Janel Martin testified that she has seen pictures of Hutzel’s car parked on the disputed parcel and that Hutzel had resided there for twelve years prior to 1998. N.T., 9/28/2018, at 98.

The actual possession of the Martins may be “tacked on” to the actual possession by their predecessor, Dianne Hutzel, due to the fact that there is privity between them. For our purposes, “privity” refers to a succession of relationship to the same thing, whether created by deed or other acts or by operation of law. *Glenn v. Shuey*, 595 A.2d 606, at 612, (Pa. Super. 1991).

The Court finds that the required period for adverse possession of the disputed parcel was established by Dianne L. Hutzel and passed in privity for tacking purposes through her conveyance and through her acts of ownership of the parcel to the Martins.

Consequently, the Martins and Balsegas have shown that they have obtained ownership of the disputed parcel by adverse possession.

Krupas' Claims

a. Successors in Title

In their Answer and New Matter, the Krupas allege to be successors in title to Jennie S. Clemmer and M. Everett Clemmer, the founders of the 1927 plan. The Krupas allege that they and “their successors” [predecessors] in title have use the disputed parcel for more than sixty years to access the adjacent Krupa farm lying behind the Martins’ and Balsegas’ homes.

As set forth, supra, the Court has made a factual determination that Jennie S. Clemmer and M. Everett Clemmer did not have any interest in the disputed parcel at the time of the 1927 plan. The Krupas have failed to prove they are successors in title to the disputed parcel from a record owner.

b. Disputed Parcel is a Street or Reserved Right-of-Way

Again, the Court has found that the series of conveyances in the early 1900s that purportedly created a street or reserved a right-of-way were not executed by the record owner of the disputed parcel, Joseph G. Burchinal, as Assignee of Luther W. Burchinal, and therefore were ineffective to create a street or right-of-way.

c. Adverse Possession by the Krupas

At the time set for trial, it appears to the Court that the Krupas did not proceed with a claim of fee ownership pursuant to adverse possession.

d. Prescriptive Easement

Lastly, the Krupas seek an easement by prescription over the disputed parcel. The Court finds credible that the Krupas and their predecessors have historically used this disputed parcel for access to certain portions of their farm. Their sporadic use continued unabated until questioned by the Martins in 2015. At that time, it became incumbent upon the Krupas to establish a right for their use of the disputed parcel as a means of ingress and egress to their farm.

An easement by prescription is created by an adverse, open, notorious, and continuous and uninterrupted use for a period of 21 years. *Waltmyer v. Smith*, 556 A.2d 912 (Pa. Super. 1989). A prescriptive easement is a right to use another’s property which is not inconsistent with the owner’s rights. *Id.* A prescriptive easement “differs markedly from an express grant easement, because the prescriptive easement is not fixed by agreement between the parties or their predecessors in interest.” *McNaughton Properties, LP v. Barr*, 981 A.2d 222 (Pa. Super. 2009).

A prescriptive easement is comparable to adverse possession with the exception that an easement by prescription does not require the possession or use to be hostile or to the exclusion of others. *Waksmunski v. Delginis*, 570 A.2d 88, 91 (Pa. Super. 1990). Furthermore, an adverse possessor acquires the land in fee whereas the prescriptive easement holder is only entitled to an easement-like use. *Soderberg v. Weisel*, 687 A.2d 839, 843 (Pa. Super. 1997). Necessity is not a requirement for creating a prescriptive easement. *Boyd v. Teeple*, 331 A.2d 433 (Pa. 1975).

Proof of an open, notorious, continuous, and uninterrupted use for the prescriptive period, without evidence to explain how it began, raises a presumption that the use is adverse and under a claim of right. *Kaufer v. Beccaris*, 584 A.2d 357 (Pa. Super. 1991). Additionally, upon proof of continuous adverse use for the prescriptive period, the burden shifts to the servient owner to prove the use began as permissive. *Gehres v. Falls Twp.*, 948 A.2d 249 (Pa.Cmwlth. 2008). An absence of objections will not establish a

permissive use; proof of permission is needed. *Id.*

In establishing a prescriptive easement, the requirement of continuous use of the property is somewhat less stringent than that required for adverse possession. In establishing a prescriptive easement, constant use need not be demonstrated in order to establish the continuity of use. *Newell Rod and Gun Club, Inc. v. Bauer*, 597 A.2d 667 (Pa. Super. 1991). Rather, continuity is established if the evidence shows a settled course of conduct indicating an attitude of mind on the part of the user that the use is the exercise of a property right. *Id.*

Without first considering the adverse nature required for a prescriptive easement, the Court finds that the Krupas claim fails on the remaining elements: open, notorious, and continuous and uninterrupted. The testimony of the Krupas' witnesses identified usage of the disputed parcel generally for less than half of the year – sometime in the spring to begin preparing the fields for corn planting through the first frost. N.T., 8/10/2018, at 186. This usage could be described, at best, as intermittent, and pales in comparison with the daily usage by the Martins and Balsegas. The Krupas' workers described using the disputed parcel between fifty and one hundred times in a year. *Id.* at 15, 21, 55, and 59. Brian Krupa testified that he would use the disputed parcel between thirty and fifty times per year. N.T., 9/28/2018, at 93-94.

The only testimony by the Krupas that the disputed parcel was used for anything other than ingress and egress during corn and hay seasons was by Brian Krupa who testified that he “jogged” through the area in high school, that he once traversed the parcel to avoid Memorial Day traffic parade, and that he retrieved dirt from the farm for a construction job. N.T., 9/28/2018, at 85-86.

The Court must note that the only other use of the disputed parcel by the Krupas occurred in 2015 when Lawrence L. Krupa, Sr. maliciously tore up the grass by spinning his tires, created ruts, and killed the grass, shrubs, and trees by spraying chemicals on the disputed parcel.

Accepting this testimony as true, the Krupas have failed to establish their use was open, notorious, continuous, or uninterrupted, and accordingly, have failed to establish an easement by prescription.

Although necessity is not an element for a prescriptive easement, the Court must note that it will not award an easement for convenience. Lawrence Krupa, Jr. testified that the disputed parcel was the safest means of ingress and egress because of the drainage ditch that separated the Krupas' own farmland. N.T., 8/10/2018, at 184. Brian Krupa explained certain farm equipment could not traverse the drainage ditch resulting in hay loads upsetting or damage to the equipment from the steeper nature of the ditch. N.T., 9/28/2018, at 83-84. The Krupas presented evidence of the disputed parcel being the only “safe” access to portions of their farm. The Court must note “safe” accessibility is a relative term considering the ability of the Krupas to safely access all portions of their land without traversing the disputed parcel by simply creating their own means of crossing the drainage ditch on their own property.

WHEREFORE, we will enter the following Order.

ORDER

AND NOW, this 24th day of June, 2020, following a non-jury trial on Plaintiffs' action to quiet title based on a claim of adverse possession as to a disputed parcel lying between the Martins and Balsegas, it is hereby ORDERED and DECREED that judgment is entered in favor of Plaintiffs and that Scott S. Martin and Janel G. Martin, husband and wife, are declared the fee simple owners of a parcel of land abutting their property fronting 25 feet wide on the east side of Liberty Street, and then running east from said street a distance of 227.7 feet, as acquired by adverse possession, and David C. Balsega and Michelle M. Balsega, husband and wife, are declared the fee simple owners of a parcel of land abutting their property fronting 25 feet wide on the east side of Liberty Street, and then running east from said street a distance of 227.7 feet, as acquired by adverse possession.

Intervenors, Lawrence L. Krupa, Lawrence L. Krupa, Jr., Brian J. Krupa, and Mark A. Krupa, claim for a fee simple interest as successors in title, claim that the disputed parcel is a street or right-of-way, claim for adverse possession, and claim for a prescriptive easement are DENIED in accordance with the foregoing Opinion.

Defendants, Luther Burchinal a/k/a L.W. Burchinal and wife, Emma Burchinal, and Joseph G. Burchinal and wife, Sarah Elizabeth Burchinal, their heirs, successors, and assigns, and Intervenors, Lawrence L. Krupa, Lawrence L. Krupa, Jr., Brian J. Krupa, and Mark A. Krupa, are hereby forever barred from asserting any right, lien, title, or interest in this parcel unless Defendants or Intervenors take action within thirty days of the date of this order consistent with Pa.R.Civ.P. 1066. If no such action is taken within thirty days, the Prothonotary of Fayette county is hereby directed to enter final judgment in favor of Plaintiffs upon their Praecepte requesting final judgment be entered.

BY THE COURT,
NANCY D. VERNON, JUDGE

ATTEST:
Prothonotary

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

IN RE: DESIGNATION OF :
BAIL AGENCY : NO. 250 MD 2020

ORDER

AND NOW, this 18th day of June, 2020, pursuant to Pennsylvania Rule of Judicial Administration 103(d), it is hereby ordered that Fayette County Criminal Rule 530, Designation of Bail Agency is adopted as attached hereto.

The Clerk of Courts is directed as follows:

- (1) Two copies and CD-ROM of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
- (2) One copy of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.
- (3) One copy of the Local Rule shall be sent to the Fayette County Law Library and the Editor of the Fayette Legal Journal.

The Administrative Office of Fayette County Courts is directed as follows:

- (1) Publish a copy of the Local Rule on the website of the Administrative Office of Fayette County Courts.
- (2) Thereafter, compile the Local Rule within the complete set of local rules no later than 30 days following the publication in the Pennsylvania Bulletin.

The adoption of the above listed Local Rule shall become effective thirty (30) days after publication in the Pennsylvania Bulletin.

By the Court,
JOHN F. WAGNER, JR.
PRESIDENT JUDGE

ATTEST:
CLERK OF COURTS

RULE 530

DESIGNATION OF BAIL AGENCY

The Fayette County Adult Probation and Parole Office, Pre-Trial Services Unit, is designated as the bail agency of the Court of Common Pleas of Fayette County.

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

*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