

## LEGAL NOTICES, cont.

at 1524 Lincoln Way East, Chambersburg, Pa. The names and addresses of all persons owning or interested in said business are Donald E. Conley, 200 Garman Dr., Chambersburg, Pa.; Ramona P. Conley, 200 Garman Dr., Chambersburg, Pa. 17201.

(1-27)

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P. L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on January 31, 1978, an application for a certificate for the conducting of a business under the assumed or fictitious name of Don's Body Shop with its principal place of business at 1768 Lincoln Way East, Chambersburg, Penna. 17201. The names and addresses of all persons owning or interested in said business are Donald P. Crotty, 1768 Lincoln Way East, Chambersburg, Penna. 17201.

(1-27)

### IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF FRANKLIN COUNTY, PENNSYLVANIA, ORPHANS' COURT DIVISION

The following list of Trustees, Guardians of Minors, Guardians of Incompetents and Custodians Accounts will be presented to the Orphans' Court Division of the Court of Common Pleas, Franklin County, Pennsylvania for Confirmation: on February 2, 1978.

Foust: First & Final account of The Valley Bank & Trust Company, Successor to National Valley Bank & Trust Company, Guardian of the estate of J. Stanley Foust, an Incompetent Person.

GLENN E. SHADLE  
Clerk of the Orphans' Court  
Franklin County, Pennsylvania

(1-20, 1-27)

### IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF FRANKLIN COUNTY, PENNSYLVANIA, ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notices to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: February 2, 1978.

Knight First and Final account, statement of proposed distribution and notice to the creditors of Isabel E. Knight, Executrix of the estate of Jacob Frankliff Knight late of The Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

Hollinger First and Final account, statement of proposed distribution and notice to the creditors of Omar G. Hollinger, executor of the estate of Mabel G. Hollinger late of Montgomery Township, Franklin County, Pennsylvania, deceased.

Keyser First and Final account, statement of proposed distribution and notice to the creditors of

## LEGAL NOTICES, cont.

Robert E. Keyser, Administrator of the estate of Richard Paul Keyser late of Montgomery Township, Franklin County, Pennsylvania, deceased.

GLENN E. SHADLE  
Clerk of the Orphans' Court  
Franklin County, Pennsylvania

(1-6, 1-13, 1-20, 1-27)

### PLEASE NOTE:

We are well into the first month of 1978. Now is a good time to consider two matters.

FIRST: Our weekly circulation continues to increase, but we would like it to be even greater. Increased circulation makes the publication more vibrant, reduces the per copy cost/revenue ratio, and attracts commercial advertisers, thus creating a potential for improvement in content of the publication and lowering of expense to legal notice advertisers.

Please let the managing editor know about any potential subscribers!!!!

SECOND: Our Court Opinion pages are well over 150 before this issue goes to press. Soon, we intend to start a campaign to sell copies of the first bound volume inside Franklin County. George T. Bisel Company, of Philadelphia, is handling such sales outside Franklin County, and they report having received a considerable number of orders from all over the United States already. But we have the right to make direct sales in Franklin County. The revenue from such sales can be made a very important factor in the overall success of this publication. It should be borne in mind, the broader the sources of revenue, the more likely we can improve our Journal and reduce prices for subscriptions and legal notice advertising.

Please let the managing editor know about any potential purchasers of bound volumes!!!!

In paragraph 22 of the Complaint, the Harshmans alleged that they are deprived of household services that Karen would have rendered. A wrongful death action is to compensate the Plaintiffs for the pecuniary loss which could be suffered in the future because of death. *Pennsylvania Railroad Company v. Butler*, 57 Pa. 335 (1868). Therefore, Harshmans must plead that these services had an economic value to them and they have not done that. They will be required to do so.

Finally, paragraph 23 alleges the Harshmans will be deprived by Karen's death of the monetary support that she would have contributed to the household. Karen was an adult at the time of her death and in order for her parents to recover, according to Goodrich-Amram 2d, Sect. 2201:25 at page 247:

... it is necessary to determine what portion of the total earnings the survivors could reasonably have expected to receive and what personal services the decedent would have rendered them. This can be proven only by showing contributions made by the decedent in the past with sufficient regularity to justify a belief that they would have been continued by him in the future. Occasional gifts will not suffice, and, in the absence of proof of reasonably expectable contributions there can be no recovery for future pecuniary loss.

The Harshmans have not plead any regular monetary contributions by Karen to the household. Therefore, the Motion for a More Specific Complaint in this respect must be granted.

## ORDER OF COURT

NOW, this 10th day of November, 1977, the Preliminary Objections are granted. Plaintiff is directed to file an Amended Complaint within twenty (20) days from this date or suffer non pros. Exceptions granted to the Plaintiffs.

BROWN v. BROWN, C.P. Fulton County Branch, No. 4 August Term, 1975

*Assumpsit - Insurance - Right to proceeds - Fire loss - Husband and wife named insureds - Subsequent divorce - Practice - Compulsory non-suit as to co-defendant*

1. Plaintiff wife, with knowledge she is not a named grantee with husband in real estate acquired during marriage and where she has received no

promises of having any interest therein and where bulk of payments on the mortgage and note were by husband and his parents, owns no legal or equitable interest in the real estate and is entitled to no portion of insurance proceeds on the loss by fire, even though she and husband are the named insureds on a fire insurance policy providing coverage for improvements on the said real estate and personal property therein.

2. Plaintiff wife as to personal property owned by her and her husband as tenants by the entirety which was destroyed by fire, has a tenancy by the entirety claim to fire insurance proceeds which is altered to a tenancy in common claim of equal one-half shares upon their subsequent divorce.

3. Defendant husband, by his conversion of the entire insurance proceeds of fire loss is indebted to his former wife who is co-named insured in the amount of her one-half share of the personalty plus the value of her proven solely owned personalty where she has not abandoned her interest therein.

4. Defendant's present wife, a co-defendant, is entitled to a compulsory non-suit where no evidence is introduced that she either received any of the insurance proceeds or was involved in any of the facts in the case at bar.

*George E. Wenger, Jr., Esq., Attorney for Plaintiff*

*Lawrence C. Zeger, Esq., Attorney for Defendants*

#### DECISION

KELLER, J., November 25, 1977:

This action in assumpsit was tried without jury on November 3, 1977.

#### FINDINGS OF FACT

1. The plaintiff is Faye A. Brown, who was born on August 22, 1944; married to the defendant, Gene E. Brown on August 5, 1960, and divorced on February 10, 1975.

2. On July 30, 1962, the real estate known as 636 Maple Street, McConnellsburg, Pa. was conveyed to the defendant, Gene E. Brown, by deed of Charles Richard Mellott and Carolyn Joan Mellott, and recorded in Fulton County Deed Book Vol. 68, Page 143, for a consideration of \$8,000.00.

3. The purchase price for the said real estate was 100% financed via a mortgage in the amount of \$4,875.00; recorded

in Mortgage Book Vol. 17, Page 388, and the balance by a note. The plaintiff and the parents of Gene E. Brown, defendant, joined with the defendant in the execution of the mortgage and note.

4. The joinder of the parents of the defendant, Gene E. Brown, on the mortgage and note was necessary for the securing of the financing and purchase of the real estate.

5. There was at no time any promise of assurance, express or implied, written or oral given by the defendant, Gene E. Brown, to the plaintiff that she had or would have an interest in the real estate aforesaid.

6. The plaintiff knew at the time of the purchase of the real estate that she was not named as a grantee on the Mellott to Gene E. Brown deed.

7. At all times relevant a fire insurance policy was maintained with the Valley Mutual Insurance Company, Shippensburg, Pa. providing coverage for the improvements on the said real estate and the personal property therein. The plaintiff and the defendant, Gene E. Brown, were the named insureds. The plaintiff was aware of the existence of the fire insurance policy and its coverage.

8. The plaintiff and the defendant, Gene E. Brown, lived together for a period of approximately thirteen years and three months, and during that period the plaintiff recalled having employment from time to time for a period of approximately three years, plus working "off and on" for an unknown number of summers at Tuscarora Summit Inn as a waitress, bartender and cleaning lady. The plaintiff did use her income or a portion of it for family purposes, including contributing to payments on the mortgage and note.

9. The bulk of the payments on the account of the mortgage and note were made from income of the defendant, Gene E. Brown, who was regularly employed during the time of the parties' marriage.

10. During the period of the marriage there were times when the parties had financial difficulties and defaulted on payments due on the mortgage and note. Judgment was confessed on the note by the Fulton County National Bank and Trust Company, and it was necessary for the parents of Gene E. Brown, defendant, to pay the then remaining balance due of approximately \$2,400.00. The defendant, Gene E. Brown, has been making payments to liquidate this obligation to his parents.

11. The plaintiff left the marital home on November 5, 1973. She returned to the home on two occasions early in 1974 to remove some of her clothing, personal effects, and miscellaneous items, not including furniture.

12. The Sheriff of Fulton County accompanied plaintiff on both visits to the home to prevent any breach of the peace.

13. The defendant, Gene E. Brown, followed the plaintiff through the house while she selected the items she wished to take with her. She was not permitted to take any items which the defendant, Gene E. Brown, or either of the children of the parties might use.

14. Thirty days after the plaintiff had removed from the home the defendant, Gene E. Brown, changed the locks on the home doors. The plaintiff was not supplied with new keys for those locks.

15. During the marriage and while the parties were living together various items of personal property individually owned by the parties or their children, and a substantial amount of furniture and furnishings purchased by either the husband or wife, or both, for the use of the family were acquired and accumulated in the home. In addition, various items of furniture and furnishings were acquired by the husband or wife individually or as tenants by the entireties by gift from various relatives.

16. In 1974, the defendant, Gene E. Brown, commenced an action in divorce against the plaintiff. Mrs. Brown secured the services of Harry S. Geller, Staff Attorney to Legal Services, Inc. to represent her. There were negotiations by Mr. Geller on behalf of the plaintiff to secure various items of furniture and furnishings claimed by her as her personal property. On December 19, 1974, Mr. Geller submitted the list of such items to counsel for Gene E. Brown. The list of claimed items was admitted in evidence in the case at bar as Plaintiff's Exhibit 1.

17. Gene E. Brown never agreed or authorized his counsel to agree that the items on Attorney Geller's list were the sole property of the plaintiff, and the plaintiff was never permitted to take possession of any of the items listed.

18. On January 27, 1975, the home at 636 Maple Street, McConnellsburg, Pa., and all of the contents therein were completely destroyed by fire.

19. The plaintiff was aware of the destruction of the house and its contents.

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## LEGAL NOTICES, cont.

To all parties in interest and claimants: A Schedule of Distribution of Sale will be filed by the U. S. Marshal on March 10, 1978, with the Clerk of Court, Scranton, PA. Distribution will be made in accordance with said Schedule unless exceptions are filed thereto within ten (10) days thereafter with the Clerk.

JOHN L. BUCK  
United States Marshal  
Middle District of Pennsylvania  
Scranton, Pennsylvania

(2-3, 2-10, 2-17)

**Members of the Franklin County Bar Association, PLEASE NOTE:** Remember Bar Admission Day, Wednesday, February 8, 1978, at 9:30 o'clock, A.M. This ceremony is important not just to our new members, but to all of us, not as a mere tradition, but as a reminder of our own commitments to the public, the profession and the Courts and of our fellowship in this growing Bar Association.

"In a government which is emphatically styled a government of laws, the least possible range ought to be left for the discretion of the judge. Whatever tends to render the laws certain, equally tends to limit that discretion; and perhaps nothing conduces more to that object than the publication of reports. Every case decided is a check upon the judge. He cannot decide a similar case differently, without strong reasons, which, for his own justification, he will wish to make public."

— U. S. Circuit Court Judge William Cranch, from the Preface of 1 Cranch (United States Supreme Court) Reports (Circa 1803)

"That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected."

— John Marshall, C.J., *Marbury v. Madison*, 1 Cranch (U. S. Sup. Ct.) 137 (1803), at pp. 175 and 176

## SHERIFF'S SALES

Pursuant to Writ of Execution issued on Judgment Nos. 1975-297 & 1976-24 of the Court of Common Pleas of the Thirty-Ninth Judicial District, Franklin County Branch, I will sell at public auction sale in Court Room No. One of the Franklin County Court House, Memorial Square, Chambersburg, Pennsylvania, at One O'clock P.M. on Friday, February 24, 1978 the following real estate improved as indicated:

ALL the following described real estate, together with the improvements thereon erected, lying and being situate in Peters Township, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at an iron pin at lands now or formerly of Vance; thence by lands now or formerly of Vance, North 80 degrees 26 minutes East, 473.4 feet to an iron pin; thence by same, South 5 degrees 47 minutes East, 538.98 feet to a post; thence by lands now or formerly of Leab, South 3 degrees 40 minutes West, 113.37 feet to an iron pin; thence along the North side of the street, North 87 degrees 55 minutes West, 140.26 feet to a point; thence by same, South 54 degrees 50 minutes West, 310.69 feet to a point; thence by lands now or formerly of Vance and through an iron pin on line, North 35 degrees 55 minutes West, 355.52 feet to an iron pin; thence by same, North 11 degrees East, 465.01 feet to an iron pin at lands now or formerly of Vance, the place of beginning. CONTAINING 8.327 acres, more or less, as shown by draft and survey of William L. Arrowood, dated March 20, 1964, and revised April 3, 1964.

BEING THE SAME REAL ESTATE which Ronald D. Hess and Harue Hess, his wife, by Deed dated January 6, 1976, and recorded among the Deed Records of Franklin County, Pennsylvania, in Deed Book Volume 721, Page 478, conveyed to Donald D. Hess.

And having erected thereon a single family dwelling of conventional design having concrete block foundation with full basement area and cement floor. Exterior walls are of concrete or cinder block and asphalt shingle roof. Interior walls are plaster.

Seized and taken in Execution as the real estate of Ronald D. Hess, under Judgement Nos. 1975-297 and 1976-24.

TERMS: The successful bidder shall pay 20% of the purchase price immediately after the property is struck down, and shall pay the balance within ten days following the sale. If the bidder fails to do so, the real estate shall be re-sold at the next Sheriff's sale and the defaulting bidder shall be liable for any deficiency including additional costs. Any deposit made by the bidder shall be applied to the same. In addition the bidder shall pay \$20.00 for preparation, acknowledgement and recording of the deed. A Return of Sale and Proposed Schedule of Distribution shall be filed in the Sheriff's Office on March 8, 1978, and when a lien creditor's receipt is given, the same shall be read in open court at 9:30 A.M. on said date. Unless objections be filed to such return and schedule on or before March 22, 1978, distribution will be made in accord therewith.

FRANK H. BENDER, Sheriff of  
Franklin County, Pennsylvania

January 27, 1978

(2-3, 2-10, 2-17)

20. The plaintiff did not know whether the fire insurance policy had been continued with her as a named insured. The plaintiff made no claim for her loss to the fire insurance carrier, submitted no proof of loss, and joined in no proof of loss.

21. The plaintiff never received any payment from Valley Mutual Insurance Company or any other company or individual for property loss she suffered as a result of the fire.

22. The plaintiff never endorsed any check of Valley Mutual Insurance Company issued as a result of the said fire.

23. The defendant, Gene E. Brown, did present a claim to the Valley Mutual Insurance Company for the loss of the home and contents. He remembered executing and acknowledging a proof of loss form before a Notary Public. He did not remember signing the plaintiff's name to the proof of loss, but conceded that he might have.

24. The defendant prepared a five page list of "articles destroyed" identifying the same by description, age, condition and purchase price. The insurance adjuster for Valley Mutual Insurance Company inserted in a column immediately to the left of the "purchase price" column, his valuation of each item. By stipulation of counsel for the parties the said list was admitted in evidence as plaintiff's Exhibit 4, and further by stipulation, it was agreed that the items listed would have, for the purposes of this trial, the value ascribed to them by the insurance adjuster.

25. Valley Mutual Insurance Company issued its draft on March 19, 1975, in the amount of \$20,488.57 payable to Gene E. Brown and Faye Brown, and Fulton County National Bank and Trust Company. The check proceeds were allocated \$13,566.80 to the real estate loss, and \$6,921.77 to the personal property loss.

26. The Valley Mutual Insurance Company check was endorsed "Gene Brown" and "Faye A. Brown". The defendant, Gene E. Brown, testified that he did, without authorization, sign "Faye A. Brown" as an endorsement on the check, and did receive all of the proceeds of the check except \$2,479.96, which was paid to the Fulton County National Bank and Trust Company on March 24, 1975 in full payment and satisfaction of the outstanding mortgage on which the plaintiff and Gene E. Brown were mortgagors.

27. Norma Harff Brown, one of the defendants, is the present wife of the defendant, Gene E. Brown. The plaintiff

introduced no evidence that the present Mrs. Brown was in any way involved in any of the facts in the case at bar, and there was no evidence that she received any of the proceeds of the said fire insurance company check. At the conclusion of the plaintiff's evidence a compulsory non-suit was entered on her behalf.

28. The defendant testified that he could not remember all of the contents of the house after the fire, and, consequently, there were things not included on his list of "articles destroyed".

29. The defendant testified that he alone owned the house and that he believed all of the contents of the house belonged to him, and, consequently, all of the proceeds of the fire insurance company payment were due him after discharge and satisfaction of the mortgage. It was for this reason that he felt authorized to sign the plaintiff's name on the check and receive all of the proceeds, other than the balance due on the mortgage.

30. The plaintiff having had two opportunities to remove her own clothing and personal affects from the house did abandon her interest in any of her personal clothing and personal affects remaining therein at the time of the fire.

31. There was no credible evidence at trial that the plaintiff had abandoned her interest in any household goods and furnishings at any time.

32. The plaintiff claimed no interest or right of recovery in or on behalf of her daughter or son, and, consequently, she has no right or interest in the following items appearing on plaintiff's Exhibit 4:

Daughter's two lamps .....	\$10.00
Daughter's stuffed animals .....	25.00
Daughter's clothing .....	75.00
Son's airplane models .....	100.00
children's bookcase .....	15.00
Son's clothing .....	100.00
children's encyclopedia .....	125.00
	<u>\$450.00</u>

33. The evidence established the following items of personal property were the sole property of the plaintiff and were primarily or exclusively used by her:

Silver vase .....	\$20.00
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Polaroid swinger camera .....	10.00
sewing machine .....	150.00
cedar chest .....	75.00
portable record player .....	25.00
antique fruit bowl .....	53.00
guitar .....	30.00
	<u>\$363.00</u>

34. The evidence establishes that defendant, Gene E. Brown, was the owner and used primarily or exclusively or acquired subsequent to the separation of the parties, the following items of personal property:

5 gal. paint .....	40.00
canned food .....	10.00
refrigerated food .....	15.00
gun cabinet .....	45.00
clothing in closet .....	200.00
Woolrich hunting outfit .....	75.00
dress coat .....	30.00
CPO jacket .....	6.50
ski jacket .....	10.00
table saw and jointer .....	150.00
boxes floor tile .....	180.00
wristwatch .....	50.00
rings .....	50.00
	<u>\$861.50</u>

35. The portion of the Valley Mutual Insurance Company check above referred to properly allocated to household goods and furnishings owned by the plaintiff, Faye A. Brown, and the defendant, Gene E. Brown, as tenants by the entirety, was \$5,247.27.

36. It is observed that a mathematical error was made in the totalling of the adjusted value of "articles destroyed" appearing on plaintiff's Exhibit 4, and the correct adjusted total is \$7,011.77, rather than \$6,921.77, as paid by Valley Mutual Insurance Company.

37. No explanation was given at trial for the failure of the insurance carrier to pay the \$90.00.

38. The \$90.00 unpaid represents personal property owned by the plaintiff and her former husband as tenants by the entirety.

## CONCLUSIONS OF LAW

1. The plaintiff, Faye A. Brown, owned no legal or equitable interest in the real estate titled in the name of Gene E. Brown.

2. The plaintiff, Faye A. Brown, was entitled to no portion of the \$13,566.80 of the Valley Mutual Insurance Company check allocated to the real estate loss.

3. Defendant, Gene E. Brown, was entitled to the \$13,566.80 portion of the Valley Mutual Insurance Company check payable by reason of the real estate fire loss, less, however, the sum due the Fulton County National Bank as mortgagee.

4. The plaintiff, Faye A. Brown, solely owned personal property located in their former home to the value of \$363.00.

5. The plaintiff, Faye A. Brown, was entitled to receive from the proceeds of the Valley Mutual Insurance Company check the sum of \$363.00, representing her personal property.

6. The destruction on January 25, 1975 of the personal property owned by the plaintiff and her husband as tenants by the entirety created a tenancy by the entirety claim of the then husband and wife against the fire insurance carrier.

7. Under the Act of 1927, May 10 P.L. 884, Sect. 1, as amended; 68 P.S. 501, the divorce of the parties on February 10, 1975 altered their tenancy by the entirety claim to a tenancy in common with each having an equal one-half share.

8. The plaintiff, Faye A. Brown, was and is entitled to receive one-half of the \$5,247.27 proceeds of the Valley Mutual Insurance Company check, or \$2,623.64, as of the date of negotiation of the check on March 24, 1975.

9. By the conversion of the entire proceeds of the Valley Mutual Insurance Company check, less the sum due the mortgagee, Gene E. Brown, defendant, became indebted to the plaintiff, Faye A. Brown, in the total amount of \$2,986.64 as of March 24, 1975.

## DECISION

NOW, this 25th day of November, 1977, the Court finds for the plaintiff, Faye A. Brown, and against the defendant, Gene E. Brown, in the sum of \$2,986.64 with interest from March 24, 1975.

BRICKER v. METAL TOWNSHIP SUPERVISORS, C. P. Franklin County Branch, No. A.D. 1977-46

*Agency Regulations - DER - Sewage Facilities Act - Use of Holding Tanks*

1. Under the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535 (1965), 35 P.S. Sect., 750.1, et seq., the Pennsylvania Department of Environmental Resources has no authority to prohibit the use of holding tanks merely because of the absence of an official plan for their replacement.

2. The Department of Environmental Resources is limited under the Pennsylvania Sewage Facilities Act, supra, to adopting standards only for the construction and installation of holding tanks.

3. An official plan which does not permit the installation of a particular type of sewage system and which leaves the property owner with no sewage permit and no opportunity to use his land in what is otherwise a completely lawful manner is confiscatory and tantamount to a taking without due process of law.

*Robert D. Myers, Esquire, Attorney for Appellant*

*Jan G. Sulcove, Esquire, Attorney for Appellee*

*Eugene E. Dice, Esquire, Attorney for Commonwealth*

## OPINION AND ORDER

EPPINGER, P.J., November 22, 1971:

The Richmond Furnace area of Metal Township is sparsely populated, a section given over largely to vacation or recreation homes, occupied only on an intermittent basis. There is no commercial or industrial activity and only a limited amount of farming.

Eugene R. Bricker (Bricker) and his wife own a tract of land in the Richmond Furnace area. They have sold one of the lots, apparently contingent on whether a home can be built on it. This in turn depends on whether a sewage system can be placed on the lot.

Back in August of 1974, Bricker was given a permit to install an on-site sewage disposal system for this lot by the Metal Township (township) sewage enforcement officer. It is too bad he didn't go ahead and put it in because multiple barriers have been placed in the way of his use of the land for a residence site since the permit was revoked by the officer less