

GETTYSBURG NURSING HOME ASSOCIATES v. CROFT,  
C.P. Franklin County Branch, No. A.D. 1982-112

*Assumpsit - Failure to plead within required time - Non-resident attorney - Pa. R.C.P. 126.*

1. Where a plaintiff fails to file a response to new matter within twenty days of service because his attorney resides out of county, the Court may disregard such an error in procedure where the other party is not prejudiced.
2. A non-residence attorney practicing in Franklin County is subject to the same standards of practice as though he lived in the county.

*Dennis M. Dunn, Esq., Attorney for Plaintiff*  
*John M. Keller, Esq., Attorney for Defendant, E. Ray Croft*  
*Robert C. Schollaert, Esq., Attorney for Defendant, Florence I. Croft*

MEMORANDUM AND ORDER

EPPINGER, P.J., November 5, 1982:

On July 18, 1982, E. Ray Croft filed an answer containing new matter in these proceedings. Gettysburg Nursing Home Associates (Gettysburg) was given notice to plead to the new matter within twenty (20) days. The affidavit of service filed by E. Ray Croft's (Croft) attorney indicates that the new matter was served upon Gettysburg's attorney on July 22, 1982. Gettysburg's reply to the new matter was filed on August 23, 1982 at 10:29 A.M. twelve (12) days after the time directed in the notice to plead.

On the same day at 11:58 A.M. Croft filed a petition for a rule to show cause why judgment should not be entered against Gettysburg for failing to file the reply to new matter within twenty days. An answer to the rule issued pursuant to Croft's petition was filed. No evidence was taken and the matter was submitted to the Court on brief by counsel for the parties.

Croft does not contend that he has been prejudiced by the late filing, but relies on Gettysburg's failure to comply with the notice to plead within twenty days. Gettysburg's attorney gives as his reason for failing to file the pleading on time the fact that he resides in Delaware County. Our comment is that a non-resident attorney practicing in Franklin County is subject to the same standards for practice as though he lived in the county and if the distance between his home and Franklin County makes it impossible for him to do the work timely, then he should refuse the retainer.

However, Pa. R.C.P. 126 permits us to disregard any error in procedure which does not affect the substantial rights of the parties. This is just such a case. Croft has not been harmed by the late pleading, which was filed before his petition attacking the late filing.

ORDER OF COURT

November 5, 1982, E. Ray Croft's petition to enter judgment against Gettysburg Nursing Home Associates for failing to file a reply within twenty (20) days is denied.

VOSS v. VOSS, C.P. Franklin County, Branch, No. F. R. 1979-285-S  
*Support - Paternity - Statute of Limitations - Presumption of Legitimacy*

1. The repeal of the criminal statute of limitations for support did not extinguish the civil right to support but only the ancillary criminal enforcement remedy.
2. The Pennsylvania Statute of Limitations for support actions is not violative of the Equal Protection Clause.
3. The presumption of legitimacy of a child born during marriage is not irrefutable.
4. Evidence of non-access, lack of sexual intercourse or impotency must be clear, direct, convincing and unanswerable, although it is not necessary that the possibility of access be completely excluded.

*David W. Rabausser, Esq., Assistant District Attorney, Counsel for Plaintiff*  
*Kenneth E. Hankins, Jr., Esq., Counsel for Defendant*

OPINION AND ORDER

KELLER, J., November 12, 1982:

This action was commenced on August 3, 1982, when Dolly Voss, plaintiff, filed a complaint for support against Herman K. Voss in Adams County. Plaintiff sought an order of support for