

1. The deed of Hazel M. Gsell Diehl to Herbert R. Gsell and Bradley L. Gsell dated October 4, 1984 and recorded on June 3, 1985 in Franklin County Deed Book Vol. 931, Page 39 is a valid conveyance of the mountain land described in said deed effective October 4, 1984.

2. The deed of Hazel M. Gsell Diehl to Marie E. Thomas dated May 27, 1985 and recorded on May 28, 1985 in Franklin County Deed Book Vol. 930, Page 284 is an invalid conveyance of the mountain land and is herewith cancelled.

3. The Recorder of Deeds of Franklin County is ordered to cancel the deed of Hazel M. Gsell Diehl to Marie E. Thomas date May 27, 1985, and recorded in Franklin County Deed Book Vol. 930, Page 284.

Costs shall be paid by the defendant.

AMENDED ADJUDICATION

NOW, This 18th day of November 1987, the Court finds in favor of Herbert R. Gsell and Bradley L. Gsell, plaintiffs, and against Marie E. Thomas, defendant.

IT IS ORDERED AND DECREED THAT:

1. The deed of Hazel M. Gsell Diehl to Herbert R. Gsell and Bradley L. Gsell dated October 4, 1984 and recorded on June 3, 1985 in Franklin County Deed Book Vol. 931, Page 39 is a valid conveyance of the mountain land described in said deed effective October 4, 1984.

2. The deed of Hazel M. Gsell Diehl to Marie E. Thomas dated May 27, 1985, and recorded on May 28, 1985 in Franklin County Deed Book Vol. 930, Page 284 is an invalid conveyance of the mountain land and is herewith cancelled.

3. The Recorder of Deeds of Franklin County is ordered to cancel the deed of Hazel M. Gsell Diehl to Marie E. Thomas dated May 27, 1985, and recorded in Franklin County Deed Book Vol. 930, Page 284.

4. The Prothonotary of Franklin County shall immediately notify all parties or their attorneys of the date of filing this Amended Adjudication.

5. Costs shall be paid by the defendant.

Pursuant to Pa. R.C.P. 227.1 the motion for post-trial relief shall be filed within ten (10) days after notice of this adjudication.

This Amended Adjudication is filed in compliance with Pa. R.C.P. 1066, 1067, 1038 and 227.1.

BECHTEL V. WENGER, C.P. Franklin County Branch, No. A.D. 1985-86

Slip and Fall - Rule 4010 - Psychological Evaluation

1. A plaintiff's psychological state may be relevant to his cause of action in the areas of damages or causation.

2. Defendant must demonstrate a foundation for the need for psychological testing.

H. Anthony Adams, Esq., Counsel for Plaintiff

Daniel K. Deardorff, Esq., Counsel for Defendant

WALKER, J., August 1, 1986:

This action arises out of injuries suffered by the plaintiff while on the defendant's property. The plaintiff alleges that he slipped on a puddle of grease in the defendant's garage and, in attempting to break his fall, he pulled a metal plate down which fractured his arm. During the defendant's deposition, the defendant stated that the plaintiff had offered him \$500 to break the plaintiff's arm. During the plaintiff's deposition, the plaintiff admitted to having tried to kill himself by self-inflicted wounds in 1981. Furthermore, the plaintiff's medical records indicate that he was suffering from severe anxiety and taking medication prior to this incident.

The defendant requested that the plaintiff submit to psychological tests and the plaintiff refused. The defendant filed a petition for this court to compel the examination; both sides subsequently briefed and argued the matter. The issue we are left to decide is whether, for the purposes of compelling the plaintiff to undergo testing, the plaintiff's mental state is "in controversy", within the meaning of Pa. R.C.P. 4010.

The defendant's motion to compel the plaintiff to undergo a psychiatric examination is granted.

The plaintiff argues that a physical or psychological examination, under Pa. R.C.P. 4010, is warranted only when it relates to the plaintiff's claim for physical or psychological damages. Otherwise, he contends, the physical or mental state is not "in controversy".

This is an unreasonably restrictive interpretation of Rule 4010. First, the rule is not limited to instances when only the plaintiff's physical or mental state is in controversy; it applies to *any* party. For example, a defendant may be ordered to undergo a psycho-

logical examination when he asserts incompetency as a defense to a contract action. Also, a defendant's visual ability may be at issue if he had undergone eye surgery prior to the accident in question. See, *Burke v. Bowen*, 8 D. & C. 3d. 109 (1978) (court ordered examination of the defendant's eyes when the defendant's visual capacity material to case).

Secondly, the plaintiff's psychological state may be relevant to an element of his cause of action other than damages, i.e., causation. In *Stocks v. Mattie*, 16 D. & C. 3d. 565 (1980), the plaintiff claimed that the car accident caused him mental impairment. The defendant requested that the plaintiff be compelled to undergo psychiatric examination in order to determine whether the plaintiff was mentally incapacitated and whether this incapacitation was caused by the accident. It is difficult to rely on *Stocks* because that court's decision to deny the examination ultimately hinged on other grounds, and there, mental injury was an element of damages. We believe, however, that the language in *Stocks* is broad enough to illustrate how a plaintiff's psychological condition may be "in controversy" with regard to causation as well as damages:

"The examination which defendant seeks will provide information that should assist defendant in evaluating the merits of plaintiff's claim and in preparing a defense to this claim." *Stocks*, 16 D. & C. 3d at 567.

The plaintiff's counsel fears that if we grant the defendant's request, a psychological examination may be ordered anytime credibility is at issue. His misapprehension is two-fold. The plaintiff's propensity for truthfulness is not at issue, rather, the examination is to probe the plaintiff's propensity for injuring himself. Also the defendant has unearthed a prior incident of self-inflicted wounds. By demonstrating a foundation for his belief in the plaintiff's infirmity, the defendant has satisfied the "good cause" requirement of Rule 4010. This last element fatally distinguishes this case from the one cited by the plaintiff *Yeagley v. INA*, 103 Dauphin 401 (1982), where no such foundation was laid for the defendant's request.

ORDER OF COURT

August 1, 1986, the defendant's petition for medical examination of the plaintiff is granted.

NOTICE OF ADVERTISING AND SUBSCRIPTION RATE CHANGES

To All To Whom It May Concern:

Please take NOTICE that, pursuant to action of the Board of Directors of Franklin County Legal Journal, taken at meeting on January 21, 1988, the following changes in subscription and advertising rates for the Franklin County Legal Journal will go into effect on July 1, 1988.

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¼ page, alternating weeks:	\$220.00	\$235.00
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