

LEGAL NOTICES, cont.

into the mortgagors hereinafter recited.

BEING the same which Phillip A. Roth and Beverly R. Roth, husband and wife, by their deed dated June 5, 1981, and recorded in the office of the Recorder of Deeds of Franklin County, Pennsylvania, sold and conveyed unto C. Garry Hepworth and Rose D. Hepworth, husband and wife.

Together, also, with a right of way between Tracts 1 and 3 above, and Tract 2 above, more fully described and set forth in the Indenture of Rights of Way from Gary G. Smith and Elizabeth N. Smith to C. Garry Hepworth and Rose D. Hepworth, dated the 1st day of June, 1981, and recorded in the office of the Recorder of Deeds of Franklin County, Pennsylvania.

BEING sold as the property of C. Garry Hepworth and Rose D. Hepworth, husband and wife, Writ No. AD 1986-153.

SALE NO. 3

Writ No. AD 1986-202 Civil 1986
Judg. No. AD 1986-202 Civil 1986
The Richard Gill Company

vs.

Kenneth J. Winfield, Jr. and R. Jacqueline Winfield
Atty: Sheldon C. Jelin

ALL that certain lot, piece, or parcel of ground with the buildings and improvements thereon erected, situate, lying and being in the Township of St. Thomas, County of Franklin, and Commonwealth of Pennsylvania, bounded and described according to a survey made by Best-Angle Surveyors of Fort Loudon, Pennsylvania, dated October 12, 1980, as follows:

BEGINNING at an existing iron pin at lands of George Orth; thence along lands of Orth South 70 degrees West 116.82 feet to an existing locust stump; thence crossing Circle Drive South 62 degrees 30 minutes West 28.05 feet to a point at the southern edge of Circle Drive; thence crossing Circle Drive North 49 degrees West 236.28 feet to a point in the centerline of the old road bed; thence continuing with the centerline of the old road bed North 36 degrees 15 minutes West 61.71 feet to a point; thence due East 151.14 feet to a point in Circle Drive; thence along the centerline of Circle Drive, North 74 degrees East 186.45 feet to a point in Circle Drive; thence leaving Circle Drive South 5 degrees 15 minutes East 200.64 feet to an existing iron pin, the point of beginning. Having a street address of 9808 Circle Drive, Chambersburg, PA.

LEGAL NOTICES, cont.

BEING sold as the property of Kenneth J. Winfield, Jr. and R. Jacqueline Winfield, Writ No. AD 1986-202.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, October 20, 1986, at 4:00 P.M., E.S.T. Otherwise, all money previously paid will be forfeited and the property will be resold on Friday, October 24, 1986, at 1:00 P.M., E.S.T. in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff

Franklin County, Chambersburg, PA

9-19, 9-26, 10-3

court finds that petitionery has satisfied this burden by clear and convincing evidence that Harry has refused or failed to perform his parental duties for a period in excess of six months. As such, a decree shall be entered terminating his parental rights over Alan.

ORDER OF COURT

February 26, 1986, the court terminates the parental rights of Harry P. with respect to the child, Alan P.

MILLER AND WIFE v. NICHOLS AND WIFE, Franklin County Branch, A.D. 1985 - 10

Ejectment - Placement of Mailbox - Roadway Easement

1. A public use easement for country roads is that of passage only.
2. A private mailbox is not an instrument of public use for purposes of a road easement.
3. The placement of defendant's mailbox on plaintiff's land does not benefit the public in general.

E. Franklin Martin, Esq., Counsel for Plaintiffs

Gregory L. Kiersz, Esq., Counsel for Defendants

WALKER, J., February 12, 1986:

Defendants, Nichols, bought a tract of land in Washington Township, Franklin County, in January of 1984. Subsequent to moving in, the defendants were informed by the local postmaster that mail would not be delivered to the north side of the road where their property is situated.

In September of 1984, without securing plaintiffs' permission, the defendants placed their mailbox on plaintiffs' land, in the right of way on the south side of the road. The defendants refused plaintiffs' request that the mailbox be removed and plaintiffs brought suit.

The above facts have been stipulated by both parties, and the matter is before the court on plaintiffs' motion for judgment on the pleadings.

The issue is whether, as a matter of law, the defendant may maintain a mailbox on plaintiffs' land, designated as a right of way, as a "public use" easement for the purposes of depositing and receiving their mail. For the reasons discussed below, the court answers this question in the negative.

There appear to be no Pennsylvania cases on point, with regard to this issue. Whether this is, or is not, due to the seemingly de minimus quality of this type of dispute (i.e. 16 square inches of land) is a matter of conjecture. In any case, the controversy is now properly before the court.

The defendants state that the private ownership of the fee underlying the right of way is subject to a "public use" easement. The delivery of mail, they argue, is such a "public use" as to justify placing a mailbox on the right of way without consent from, or compensation to, the landowner.

The defendants offer a correct, general statement of the law. However, when applied to the facts of this case, the court is compelled to reach a different conclusion.

First, the scope of a public use easement for country roads is narrower than that which the defendants propound. Specifically, a public use easement for country roads is that of passage only. *46 South 52nd Street Corp. v. Manlin*, 398 Pa. 304, 157 A.2d 381 (1960). Plaintiffs' land is used as a right of way; that is, the general public may traverse across the land as a means of access to and from various destinations. Even under a most expansive interpretation, the court is unwilling to hold that the erection of a mailbox somehow falls within this function. This is particularly so because easements are to be interpreted narrowly and confined to the use for which they are granted. *Taylor v. Heffner*, 359 Pa. 155, 58 A.2d 450 (1948). *Dillon v. Klamut*, 278 Pa. Super. 126, 420 A.2d 462 (1980).

Secondly, a private mailbox is not an instrument of "public use" for the purposes of a public use easement. Public use easements, acquired through eminent domain, may provide

incidental benefits to private parties, but the public must be the primary and paramount beneficiary. *Price v. Philadelphia Parking Authority*, 422 Pa. 317, 221 A.2d 138 (1966). Clearly, the primary beneficiaries of the placement of the defendants' mailbox are the defendants themselves.

One attribute of instruments that are designated for public use and public good is, of course, that the benefit of the instrument somehow inures to the good of the community in general. Defendants cite *Manlin*, supra, as providing examples of such instruments: parking meters, telephone booths, wastepaper receptacles, and utility poles. All of these are available for use by the general public. In contrast, federal regulations provide stiff penalties for anyone, other than a postman or the addressee, who tampers with or uses a private mailbox. The placement of defendants' mailbox on plaintiffs' land does not benefit the public in general.

Finally, defendants argue that chaos would result if landowners could eject mailboxes from their properties. It would be no less chaotic if the court should hold that any number of mailboxes could be forced upon any landowner's property that is situated in a right of way.

The defendants are not totally without recourse, however. They are still free to contract with other landowners in order to secure a proper place along the delivery route for their mailbox. Failing that, they may rent a local post office box.

Plaintiffs' motion for judgment on the pleadings is hereby granted.

ORDER OF COURT

February 12, 1986, plaintiffs' motion for judgment on the pleadings is hereby granted.

GROSH v. REEDER, Franklin County Branch, Vol. 7, Page 338

Equity - Partition - Unmarried Couple - Interrogatories