

LEGAL NOTICES, cont.

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 Notice 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: October 4, 1990.

Alleman: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Executor of the Estate of Rudy A. Alleman, late of St. Thomas Township, Franklin County, Pennsylvania, deceased.

Edwards: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Executor of the Estate of Helen Edwards, late of Quincy Township, Franklin County, Pennsylvania, deceased.

Hockenberry: First and final account, statement of proposed distribution and notice to the creditors of Judy Clayton, Executrix of the Estate of Neva Jane Hockenberry, late of Metal Township, Franklin County, Pennsylvania, deceased.

Lefley: First and final account, statement of proposed distribution and notice to the creditors of Orrstown Bank and Doris Brenize, Executors of the Estate of Velva B. Lefley, late of the Borough of Shippenburg, Franklin County, Pennsylvania, deceased.

Washabaugh: First and final account, statement of proposed distribution

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and notice to the creditors of Chambersburg Trust Company, Executor of the Estate of Joseph L. Washabaugh, late of Chambersburg, Franklin County, Pennsylvania, deceased.

Wiles: First and final account, statement of proposed distribution and notice to the creditors of Mae E. Wiles and Gregory L. Kiersz, Executors of the Last Will of Robert E. Wiles, Late of the Borough of Waynesboro, Franklin County, Pennsylvania deceased.

Robert J. Woods
Clerk of Orphan's Court
Franklin County, Pennsylvania

9/7, 9/14, 9/21, 9/28/90

SEPTEMBER 12, 1990

NOTICE IS HEREBY GIVEN - Pursuant to the provisions of the Act of Assembly of December 16, 1982, P.L. 1309 and its amendments supplements, there was filed with the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on April 4, 1990, an application for registration for the conducting of a business under the fictitious name of PARTY TIME DECOR with its principal place of business at 2 Center Square, Greencastle, Pennsylvania 17225. The name and address of the persons interested in said business are : Geraldine M. Sites, 25 North Main Street, Mercersburg, Pennsylvania 17236 and Kay D. Straley, 14 West Walters Avenue, Greencastle, Pennsylvania 17225.

Party Time Decor
2 Center Square
Greencastle, PA 17225

9/21/90

operates where the circumstances of the case show that lack of due diligence is imposable upon the plaintiff. Laches is a factual question which can be found only on an examination of all factual circumstances of the case generally. *Lehrer v. Montgomery County*, 18 Pa.Super. 493, 119 A.2d 816 (1956). The doctrine of laches was applied against an individual who was claiming an easement in *Aldine Realty Co., v. Manor Real Estate & Trust Co.*, 297 Pa. 583, 148 At 56 (1929).

In the case at bar, Gerald Barnett was actively pursuing the reopening of the old right-of-way prior to the 1971 meeting with Bruce Cutshall. After the meeting where we believe that Gerald Barnett made the oral agreement to abandon the old right-of-way, Gerald stopped his attempts to have the right-of-way reopened. During the subsequent fourteen (14) years, the defendants made improvements on their property in reliance on the plaintiffs' agreement to abandon the old right-of-way and to use the new one. We do not believe that the plaintiffs have established a reasonable explanation for their fourteen (14) year delay in asserting their claim to the old right-of-way. Therefore, the plaintiffs are barred by the doctrine of laches from asserting a claim to the old right-of-way.

DECREE NISI

NOW, April 16, 1990, plaintiffs' action for injunctive relief is DENIED. Costs to be paid by plaintiffs.

The Prothonotary shall notify the attorneys for the parties of the date of filing hereof, pursuant to Pa.R.C.P. No. 1517 (b).

MARTIN VS. WISE, C.P. Franklin County Branch, A.D. 1988-347

Amend Complaint - Punitive Damages - Restatement of Torts 3908

1. A petition to amend should be liberally allowed except where surprise or prejudice to the other party would result.
2. To justify punitive damages a plaintiff must show actual malice - a deliberate intention to commit an injury.
3. Where a claim is obviously based on negligence, a petition to amend resulting in punitive damages will be denied.

Peter B. Foster, Esq., Counsel for Plaintiff
John N. Keller, Esq., Counsel for Defendant

OPINION AND ORDER

Kaye, J., April 10, 1990:

This case is before the Court on petition of the plaintiff who is seeking to amend his complaint to include a claim for punitive damages. The plaintiff, in this case was injured in an automobile accident on October 31, 1986. The defendant was the driver of the vehicle in which the plaintiff was a passenger when the accident occurred.

The plaintiff maintains that certain factual allegations in the complaint support a claim for punitive damages, and he is seeking to amend his complaint to add a prayer for punitive damages.

The plaintiff's proposed amended complaint contains the following averments regarding the defendant's conduct:

- a) Operated his vehicle in excess of the lawful speed limit at the time of said accident;
- b) Failed to notice the imminence of an accident and to take the necessary steps to avoid the same;
- c) Failed to maintain the vehicle under proper and adequate control;
- d) Failed to notice the vehicle in front of his vehicle and to avoid hitting said vehicle without causing the accident which occurred;
- e) Failed to keep a proper lookout;
- f) Failed to see what he should have seen;
- g) Failed to do what he should have done;
- h) As a result of the reckless, careless and negligent actions of the Defendant, Plaintiff has suffered injuries which were and are serious and may be permanent.

Based on these averments, the defendant contends that he is entitled to ask for punitive damages.

The law is well-settled in Pennsylvania that although whether to allow an amendment to a complaint is within the discretion of the

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TRACT NO. 2. ALL the following described real estate lying and being situate in Hamilton and Gullford Townships, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at a point in the Conococheague Creek, thence in the said creek, North 4 degrees 59 minutes 50 seconds West, 193.40 feet to a drill hole in stone, thence across Legislative Route 26033, North 34 degrees 28 minutes 42 seconds East, 194.45 feet to a point; thence North 35 degrees 20 minutes 51 seconds East, 190.51 feet to a set iron pin, thence North 5 degrees 35 minutes 47 seconds East, 28.32 feet to a set iron pin; thence North 30 degrees 44 minutes 58 seconds East, 324 feet to a set spike in Township Route 466 (Camp Robin Hood Road); thence in said road, North 15 degrees 25 minutes 15 seconds East, 118 feet to an existing spike; thence North 17 degrees 25 minutes 15 seconds East, 108.24 feet to an existing iron pin; thence North 63 degrees 27 minutes 06 seconds East, 26.47 feet to an existing iron pin; thence North 63 degrees 27 minutes 06 seconds East, 26.47 feet to an existing iron pin; thence North 64 degrees 40 minutes 18 seconds East, 199.65 feet to existing iron pin; thence South 52 degrees 14 minutes 00 seconds East, 118.80 feet through an existing point on line to a point in the Conococheague Creek; thence in said creek, South 40 degrees 38 minutes 03 seconds East, 26.81 feet to a point in said creek; thence South 28 degrees 45 minutes 33 seconds West, 277.84 feet to a point in said creek; thence South 63 degrees 43 minutes 39 seconds East, 50.00 feet to an existing iron pin; thence South 37 degrees 00 minutes 45 seconds West, 197.38 feet to a point in said creek; thence North 71 degrees 26 minutes 02 seconds West, 35.00 feet to a point; thence South 30 degrees 53 minutes 50 seconds West, 149.49 feet to point; thence continuing in said creek; South 68 degrees 20 minutes 13 seconds West, 359.39 feet to a point; thence South 14 degrees 50 minutes 56 seconds West, 366.00 feet past an existing spike and to a point in the said creek, the place of beginning containing 4.4834 acres and being Parcels A and B as per survey of William A. Brindie Associates, entitled "Survey of Land Situate in Hamilton Township and Gullford Township, Franklin County, Pa., for Margaret C. Duncan", dated October 12, 1987. BEING sold as the property of Bernard P. Gryniuk and Valerie Gryniuk, his wife. Writ Number AD 1989-328.

TERMS

As soon as the property is knocked down to 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 29, 1990 at 4:00 P.M., prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on November 2, 1990 at 1:00 P.M., prevailing time 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
9/28, 10/5, 10/12, 90

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court, a petition to amend should be liberally allowed except where surprise or prejudice to the other party would result. *See e.g. Shroeder v. Acceleration Life Ins. Co.*, 377 Pa. Super. 521, 547 A.2d 1184 (1988); *Cucchi v. Rollins Protective Services Co.*, 377 Pa. Super. 9, 546 A.2d 1131 (1988), alloc. denied, *Sub nom. Rollins Protective Services, Inc. v. Cucchi*, Pa. , 562 A.2d 321 (1989), alloc. gr. Pa. , 561 A.2d 742 (1989); *Spain v. Vincente*, 315 Pa. Super. 135, 461 A.2d 833 (1983); *Stouffer v. Commonwealth, Department of Transportation*, Pa. Cmwlth. , 562 A.2d 922, 923 (1989).

In the instant case, defendant cannot claim surprise or prejudice in the proposed amendment, and we would in the usual course of things permit such amendment.

At oral argument, defense counsel indicated that if plaintiff were permitted to amend the complaint, he would file a demurrer to the claim for punitive damages. Thus, if we were to permit the amendment, we would simply be postponing resolution of the issue of whether plaintiff's proposed amendment arguably sets forth a basis for recovery of punitive damages. As both parties briefed this issue in the context of the instant proceeding, and both argued the merits of this issue, we see no reason not to proceed to this issue as though the amendment had been permitted, and a demurrer filed.

The Restatement of Torts §908 has been adopted in Pennsylvania on the subject of punitive damages. *See: Focht v. Rabada*, 217 Pa. Super. 35, 268 A.2d 157 (1970). Punitive damages are defined as those damages which are "...awarded against a person to punish him for his outrageous conduct." Restatement, Second, Torts §908 (1). Section (2) of §908 defines outrageous conduct as acts done with and "evil motive or with a reckless indifference to the rights of others." *See: Chambers v. Montgomery*, 411 Pa. 339, 192 A.2d 355 (1963). Punitive damages can be awarded if the defendant's conduct is malicious, wanton, reckless, wilful or oppressive. *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742 (1984).

To justify punitive damages, a plaintiff must show actual malice on the part of the defendant. *Walder v. Lobel*, 339 Pa. Super. 203, , 488 A.2d 622, 626 (1984). "Actual malice" is a synonym for "express malice", which is defined as "[a] deliberate intention to commit an injury" *Black's Law Dictionary*, (5th Ed, 1979).

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The plaintiff's allegations as set forth at 1-2 of this opinion, while setting forth a claim based upon negligence, fail by a wide margin to set forth actions which constitute acts done with "reckless indifference as well as with bad motive." *Focht v. Rabada, supra*. For this reason, we will deny plaintiff's petition to amend.

ORDER OF COURT

NOW, April 10, 1990, plaintiff's petition to amend the Complaint denied.

As we have proceeded in the interest of judicial economy as if defendant has entered a demurrer to the Complaint, plaintiff is granted twenty (20) days from the date hereof to file an amended complaint setting forth facts beyond those in the proposed amendment on the issue of punitive damages.

IN RE: 1989 RETURN OF SALE OF TAX CLAIM BUREAU OF FRANKLIN COUNTY, PA,*

C.P. Franklin County Branch, Misc. Doc. Vol. Z. Page 360

Presumption of Regularity - Notice - Method of Posting

1. The presumption of regularity of the acts of public office exists until the contrary appear and this applies to tax sale.
2. By filing exceptions to a tax sale, averring that the Tax Claim Bureau did not comply with statutory notice requirements, the presumption is overcome.
3. Notice in the form of publication, certified mail, and posting are required for a valid tax sale.
4. Where a notice is handed to tenant of the property the statutory posting requirement was not met.
5. A valid tax sale requires strict compliance with all notice provisions.

*Editor's note: For further identification, it is suggested by the editor that this case deals with the "Sandra S. Chider Tract" See, also, other identifying indicia in first paragraph of the Opinion of the Court.

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