

SHERIFF'S SALES, cont.

and Deed to Richard Boyer, et ux, dated July 24, 1970, and recorded in Franklin County Deed Book Volume 652, page 620.

BEING the same real estate which was conveyed to R. Johnston Bittner by Deed of Roy G. Summers and Margaret H. Summers, his wife, dated April 1, 1953 and recorded in Franklin County Deed Book Volume 440, page 452.

TOGETHER with the right-of-way appurtenant to this real estate being a private lane 22 feet in width, more or less, extending southwardly from the southern boundary of said real estate to Pennsylvania State Highway Route No. 16, for ingress, egress and regress.

TRACT NO. 1-A: BEGINNING at a point at the western side of a lane at the northeast corner of lands conveyed by Earl O. Rinehart and wife to Daniel Barkdoll and wife by Deed dated April 17, 1940, recorded in Franklin County, Pa., Deed Book Volume 309, page 599, now owned by John N. Flaunt Estate; thence across said lane along other lands of R. Johnston Bittner, Tract No. 1 herein, formerly Roy G. Summers and wife, N 82° E 22 feet, more or less, to a point on the eastern side of said lane at corner of lands conveyed by Walter H. Wishard and wife by deed dated July 12, 1951, recorded in said Deed Book Volume 418, page 592, to Charles S. Gardner and now occupied by Red Run Drive-In Theatre; thence along the eastern side of said lane and the said lands conveyed to Charles S. Gardner, S 5° 38' W 77.4 feet, more or less, to a point on the eastern side of said lane at the southwestern corner of the lands conveyed to Charles S. Gardner as aforesaid; thence across said lane, S 82° W 22 feet, more or less, to a point on the western side of said lane at the southeastern corner of lands formerly of Daniel Barkdoll and wife, now John N. Flaunt Estate; thence along the western side of said lane and lands of John N. Flaunt Estate, N 4° 58' E 80 feet, more or less, to a point in said lane at Tract No. 1 herein, the place of beginning.

BEING the same real estate which Walter H. Wishard and Maude Inez Wishard, his wife, by Deed dated May 8, 1953, recorded in Franklin County, Pennsylvania, Deed Book Volume 440, page 455, conveyed to R. Johnston Bittner.

TRACT NO. 2: BEGINNING at a point in the center of State Road at line of lands now or formerly of W. F. Brown and running thence S 21° 5' W 386.6 feet to an iron pin at lands now or formerly of Mamie Kauffman; thence by said Kauffman lands, S 69° 13' E 139 feet 11 inches to a stone at lands now or formerly of George Smith; thence by said Smith lands and lands now or formerly of Charles Rogers, N 21° 5' E 386.6 feet to an iron pin in the center of said State Road; thence with the center of said State Road, N 69° 13' W 139 feet 11 inches to the place of beginning.

CONTAINING 1 acre and 86 perches as shown by draft of John H. Atherton, C. S., dated March 11, 1929, and recorded in Franklin County, Pennsylvania: Deed Book Volume 233, page 527.

BEING the same real estate which Edgar W. Hollinger and Doris H. H. Hollinger, his wife, by Deed dated April 1, 1946, and recorded in Franklin County, Pennsylvania, Deed Book Volume 349, page 536, conveyed to R. Johnston Bittner; said deed incorrectly stating that the real estate described contained 1 acre and 6 perches.

TRACT NO. 3: BEGINNING at a point on a street leading southwardly from State Highway Route 28068, a corner of lands now or formerly of Edgar Z. Mann; thence with the latter, S 68° 10' E 50 feet to a point, a corner of Tract No. 2 herein; thence with the same, S 20° 50' W 322 feet 3 inches, more or less, to a point a corner of lands now or formerly of Frank Stuller; thence with the same, N 69° 13' W 50 feet to a point on said street; thence with said street, N 20° 50' E 322 feet 3 inches, more or less, to the place of beginning.

BEING Lots Nos. 11, 12, 13, 14, 15 and 16 as per plan of lots laid out for W. F. Brown, March 11, 1929, by John H. Atherton, C. S.

BEING the same real estate which George F. Patterson and Maggie E. Patterson, his wife, by Deed dated

SHERIFF'S SALES, cont.

August 27, 1948, recorded in Franklin County, Pa., Deed Book Volume 385, page 22, conveyed to R. Johnston Bittner.

BEING sold as the properties of R. Johnston Bittner, Writ No. A. D. 1980-299.

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, March 23, 1981 at 4:00 P.M., E.S.T. otherwise all money previously paid will be forfeited and the property will be resold at the hour 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

State Farm Mutual Automobile Insurance Company has no duty to provide liability insurance coverage in the above-captioned proceedings for Paul F. Sipes, Mark Sipes, Mary Ann Weitry and Leonard Painter.

LOCKE v. McCARTNEY, C.P. Franklin County Branch, A.D. 1979 - 54, In Trespass

Trespass - Motion for Summary Judgment - Pa. No-Fault Act - Serious and Permanent Injury

1. A physician's affidavit attached to the plaintiff's brief which describes plaintiff's injury as "serious and permanent" and elaborates on his conclusion with specific findings is sufficient to overcome a motion for summary judgment.

2. A court may not "second guess" a medical expert's finding and hold as a matter of law the plaintiff has not suffered "serious and permanent" injury.

Samuel Cohen, Esq., Counsel for Plaintiffs

Thomas J. Williams, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., December 10, 1980:

This action in trespass was commenced by the filing of a praecipe for a summons on March 1, 1979, and service of the same upon the defendant on March 6, 1979. A complaint in trespass was filed on June 4, 1979, and served on the following day upon the defendant. The plaintiffs were deposed by the defendant on April 23, 1980. The defendant also submitted interrogatories to the plaintiffs on April 1, 1980, and the same were answered and filed of record on September 17, 1980. The defendant's motion for summary judgment was filed September 25, 1980. The plaintiff's answer to the motion was filed October 14, 1980. A motion for summary judgment was placed on the Argument List and argument heard on December 4, 1980. The matter is now ripe for disposition.

The defendant's motion for summary judgment is predicated upon his contention that the plaintiff's pleadings, depositions and answers to interrogatories establish that the

plaintiff, Stanley H. Locke has not met the threshold requirements of the Pennsylvania No-Fault Motor Vehicle Insurance Act, which would permit him to maintain this action and, therefore, the motion should be granted. To the contrary the plaintiffs allege in their answer to defendant's motion, and contend in their brief, that Dr. Ernest E. Somers, a board-certified orthopedic surgeon, reported plaintiff, Stanley H. Locke, "sustained serious and permanent injuries in the nature of soft tissue and ligamentous damage and tears to the cervical spine at the level of C5-6 and of C6-7 with damage to the intervertebral disk between C5 and C6," and as a result thereof he is "completely disabled in regard to his ability to engage in heavy physical labor such as is required in the performance of work necessary to take care of his farm"; and the doctor estimated the permanent/partial disability was 60% of the whole person.

A copy of Dr. Somers' report to counsel for the plaintiffs was attached to the plaintiffs' brief. Counsel for the defendant stipulated at argument that Dr. Somers would testify, if called, in accordance with the information set forth in his report.

Pa. R.C.P. 1035 provides inter alia:

"(b) The adverse party, prior to the day of hearing, may serve opposing affidavits. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there was no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law..."

Section 301(a) (5) of the No-Fault Act (40 Pa. C.S. Sec. 1009.301(a) (5) permits recovery for non-economic detriment in the following pertinent subsections:

- (A) Serious and permanent injury;
- (B) Medicals in excess of \$750;
- (C) Medically determinable physical or mental impairment which prevents the victim from performing all or substantially all of the material acts and duties which constitute his usual and customary daily activities and which continues for more than 60 consecutive days.

In the case at bar, the facts do not indicate that the plaintiffs' medical expenses exceeded \$750.00 or that the plaintiff, Stanley H. Locke, was prevented from performing all or substantially all of his usual and customary daily activities for more than 60 consecutive days. In fact, it appears the medical expenses were substantially less than \$750.00, and Mr. Locke was

not prevented from performing his usual and customary daily activities as a supervisor of a cement laying crew for any time since the date of the accident. However, we have the report of

Dr. Somers describing Mr. Locke's injury as "serious and permanent" and elaborating on that conclusion with his specific finding, and the testimony of both plaintiffs that Stanley H. Locke is completely unable to operate his small farm and do the necessary work involved in that operation ever since the accident.

Whether or not the evidence presented at trial will establish Mr. Locke's injury as serious and permanent is irrelevant at this stage of the proceeding. In our judgment this Court has no right to "second guess" the qualified medical expert's finding and hold as a matter of law that the plaintiff, Stanley H. Locke, has not suffered a serious and permanent injury. In our judgment at this stage this constitutes a genuine issue as to a material fact. In addition, we are not prepared to say that the physical impairment reported by Dr. Somers which has prevented the plaintiff, Stanley H. Locke, engaging in his daily farming activities would not also overcome the threshold test of the No-Fault Act.

ORDER OF COURT

NOW, this 10th day of December, 1980, the Motion for Summary Judgment is denied.

Exceptions are granted the defendant.

IN RE: ADOPTION OF Y, C.P. Fulton County Branch, No. 51 of 1980 - OC

Adoption - Involuntary Termination of Parental Rights

1. A parent who makes support payments but has no contact with his child for seven years has not shown a continuing interest in the child nor a genuine interest to maintain communication and association with the child.

2. A parent who claims that he has not maintained contact with his child because the parent's presence upset the child has the burden of attempting to rectify that situation by seeing more of the child.