

*Duty to Maintain Cemetery - Township Supervisors - 53 P.S. Sec. 65728*

1. The showing of concern by a party for a cemetery does not necessarily negate a finding of abandonment or neglect.

2. Where no family members are willing to assume the responsibility for care of a cemetery and township supervisors have not requested the landowner to clean up the grounds, 53 P.S. Sec. 65728 requires the Supervisors to care for the cemetery upon petition of not less than twenty-five (25) township residents.

*Thomas J. Finucane, Esq.*, Counsel for Petitioners

*David S. Dickey, Esq.*, Counsel for Respondents

#### OPINION AND ORDER

KELLER, J., February 24, 1982:

This proceeding was commenced by the presentation of a petition seeking an order directing the Supervisors of Antrim Township to care for an unincorporated cemetery known as the Peter Kuhn Cemetery located in Antrim Township, Franklin County, Pennsylvania at a cost of not more than \$500.00 per year. An order was signed on November 18, 1981 directing the issuance of a Rule upon the Supervisors of Antrim Township to show cause why they should not be ordered to care for the cemetery as prayed for, and the Rule was made returnable January 21, 1982 at 1:30 o'clock p.m. at which time a hearing would be held on the matter. The answer of the Township Supervisors to the petition was filed on January 15, 1982, which inter alia denied that the cemetery grounds have been neglected; that there is no cemetery association or organization with assets or income to provide upkeep and care; and that there is no available source of funds for perpetual care of any lot or the cemetery in its entirety.

The hearing was held as scheduled and arguments by counsel for the petitioners and the respondents were heard. The matter is now ripe for disposition.

#### FINDINGS OF FACT

1. The respondents concede that not less than 25 residents of Antrim Township executed the petition.

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## LEGAL NOTICES, cont.

### NOTICE OF FILING ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, Pennsylvania, on March 10, 1982, for the purpose of obtaining a Certificate of Incorporation.

The name of the proposed corporation is NORLAND FAMILY PRACTICE P.C. The corporation is to be organized under and is a professional corporation within the meaning of the Professional Corporation Law of the Commonwealth of Pennsylvania, Act of July 9, 1970, P.L. 461, No. 160, 15 P.S. Sec. 2901 et seq.

The purpose or purposes for which the corporation has been organized are:

"to render medical services and to have all powers necessary or incidental thereto."

Edward I. Steckel, Esq.  
406 Chbg. Trust Co. Bldg.  
Chambersburg, Pa. 17201

3-19-82 IN THE COURT  
OF COMMON PLEAS  
OF THE 39TH JUDICIAL  
DISTRICT OF PENNSYLVANIA —  
FRANKLIN COUNTY BRANCH  
Misc. Doc. Vol. Y, Page 107

NOTICE IS HEREBY GIVEN that on March 3, 1982, the Petition of Mary Virginia Diehl was filed in the above named Court, praying for a decree to change her name to Margaret Elizabeth Diehl, and her maiden name to Margaret Elizabeth Moon.

The Court has fixed Thursday, the 29th day of April 1982, at 9:30 o'clock, a.m. prevailing time, in Courtroom No. 3 as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the said Petition should not be granted.

J. L. Doyle, Esq.,  
Attorney for Petitioner  
114 Walnut Street  
P.O. Box 512  
Waynesboro, Pa. 17268

3-12-82, 3-19-82, 3-26-82, 4-2-82

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

## LEGAL NOTICES, cont.

presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: April 1, 1982.

BIETSCH First and final account, statement of proposed distribution and notice to the creditors of Jean L. Bietsch, executrix of the estate of Julian C. Bietsch late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

BRICKER First and final account, state of proposed distribution and notice to the creditors of Eugene R. Bricker, Administrator c.t.a. of the estate of Norman B. Bricker late of Metal Township, Franklin County, Pennsylvania, deceased.

DELLING First and final account, statement of proposed distribution and notice to the creditors of Jack C. Hamaker executor of the estate of Wilter C. Delling late of Greene Township, Franklin County, Pennsylvania, deceased.

DIEHL First and final account, statement of proposed distribution and notice to the creditors of Betty P. Wingert executrix of the estate of Jessie K. Diehl late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

EGOLF First and final account, statement of proposed distribution and notice to the creditors of the Farmers & Merchants Trust Company executor of the estate of Wilma D. Egolf late of Fannett Township, Franklin County, Pennsylvania, deceased.

LENHARR First and final account, statement of proposed distribution and notice to the creditors of Betty L. Scott and Horace R. Scott executors of the estate of Margaret V. Lenharr late of Washington Township, Franklin County, Pennsylvania, deceased.

SPANGLER First and final account, statement of proposed distribution and notice to the creditors of Donald H. Long, administrator of the estate of Ola Pearl Spangler late of Greene Township, Franklin County, Pennsylvania, deceased.

SWARTZ First and final account, statement of proposed distribution and notice to the creditors of Harold Musey executor of the estate of Kathleen Swartz, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle  
Clerk of Orphans' Court of  
Franklin County, Pa.

3-5-82, 3-12-82, 3-19-82, 3-26-82

2. The respondents concede that the Peter Kuhn Cemetery is an unincorporated cemetery or burial ground located in Antrim Township, Franklin County, Pennsylvania at the rear of Lot No. 8 on the subdivision plan for Joseph V. and Eileen Tanzola, dated January 18, 1975, and recorded in Franklin County Deed Book Vol. 288B, Page 9.

3. The respondents concede that the owners of the land on which the cemetery is located are Joseph V. and Eileen Tanzola.

4. The tombstone of Peter Kuhn discloses that he was born on February 4, 1781, and died March 18, 1840. The only legible monument indicating an earlier burial date in the cemetery is that of Peter Kuhn, a son, who died June 5, 1839. Various other legible stones bear the family names of Scully, Smith, Stumbaugh, Gearhart, Brandt and Bush. The latest burial date among the legible inscriptions is March 24, 1862. Numerous gravestones in the cemetery have fallen over so that their inscription cannot be read or the inscriptions have become illegible.

5. On August 15, 1975, Thomas J. Finucane, Esq. wrote to Joseph V. Tanzola on behalf of the "Kuhn Family Association" indicating that it was understood Mr. Tanzola was in the process of subdividing his farm upon which the Kuhn family cemetery is located, and requesting some assurance be given that a right-of-way would be established in the subdivision plan to give sufficient access to the cemetery "for purposes of maintenance and visitation."

6. On December 9, 1975 David S. Dickey, Esq. wrote to Attorney Finucane advising that Mr. and Mrs. Tanzola had agreed to establish a 10 foot right-of-way along the northern and western side of Lot No. 8 on their subdivision in Antrim Township for access to the Kuhn family cemetery. Mr. Dickey proposed that the deed for Lot No. 8 contain the following restriction:

SUBJECT TO a right of way 10 feet in width, along and entirely inside the northern boundary line and western boundary line of said tract for ingress, egress and regress between said Township Route 340 and the Kuhn family cemetery which lies inside the western boundary line of said tract, all as shown on the above-recited subdivision plan, to be used by relatives of the persons buried in said cemetery and their guests provided, however, that the above-named grantees shall have the right to maintain a lawn on said right of way but shall

not have the right to plant trees or shrubbery thereon or to obstruct it in any manner, said right of way to be perpetual;

SUBJECT ALSO TO the right of the Board of Supervisors of Antrim Township and its agents, employees and contractors to use said right of way for access to said cemetery for the purpose of maintaining it, if such maintenance becomes necessary, and subject also to the right of the public to use said right of way for access to said cemetery in the event that the Board of Supervisors of Antrim Township assumes the maintenance thereof.

7. "A subdivision plan for Joseph V. & Eileen Tanzola" dated January 18, 1975 was admitted in evidence as petitioners' Exhibit 2. A right-of-way is shown on the North and West boundary of Lot No. 8, and a rectangle at the West end of the lot is marked "existing cemetery." The plot plan includes the legend "10' right of access is granted to any living relatives of persons buried in cemetery."

8. Photographs identified as being taken of the Peter Kuhn Cemetery in the Fall of 1981 show numerous old gravestones located in an area of heavy undergrowth, scrub trees, brush vines and weeds. Many of the gravestones are tilted and/or propped against other stones or trees. (Petitioners' Exhibits 1 through 6.)

9. Uncontradicted testimony of witnesses described the Peter Kuhn Cemetery as being approximately the size of Courtroom No. 3 (approximately 28½ feet by 38½ feet), and that it is cluttered with weeds, trees, brush, many groundhog holes and vines.

10. Descendants of Peter Kuhn have an annual family reunion. The group is alternatively referred to as The Kuhn Family Association, the Kuhn Family Reunion Group, and The Peter Kuhn Memorial Association. It is an unincorporated body and has no assets in its own right. There are approximately 60 members of the group who attend the annual reunion, and reside in Franklin County and primarily in the Antrim Township area.

11. The officers of the Association are Theodore R. Kuhn, President, Fred Nisewander, Vice President, and Susan Davenport, Secretary-Treasurer. The officers meet to plan the reunion approximately three months in advance of the established date. The group meets only at the time of the reunion. After the family reunion meal a collection is taken up

from those in attendance to defray the expenses of the reunion, and the sending of notices.

12. At the reunion meetings there have been discussions concerning the shameful condition of the Peter Kuhn Cemetery but none of the Kuhn Family have undertaken or expressed a willingness to undertake responsibility of clearing and cleaning the cemetery and maintaining it.

13. On cross-examination the President of the Association testified that it would not be impossible to raise sufficient money to have someone come in and clean up the cemetery but the members did not feel obligated to do so.

14. There is a Peter Kuhn memorial approximately one-half mile south of the cemetery. Theodore R. Kuhn, who is 78 years of age, personally maintains that monument by keeping it clean, repairing the fence, cutting back trees and mowing grass. That memorial has nothing to do with the cemetery and no burials have been made in connection with it.

15. Theodore R. Kuhn personally paid Attorney Finucane for his professional services in connection with securing the right-of-way to the cemetery from Mr. and Mrs. Tanzola.

16. Theodore R. Kuhn has visited the cemetery 8 to 10 times since 1975 for the purpose of showing it to relatives from all over the United States.

17. The reunion association has no funds for the care of the cemetery, and never spent funds on the care of it.

18. There is no perpetual care fund established for the Peter Kuhn Cemetery.

19. Immediately adjacent to the Peter Kuhn Cemetery is the Eby Cemetery which is in good condition and not in need of any care.

20. The Peter Kuhn Cemetery is not an abandoned cemetery.

21. The Peter Kuhn Cemetery is being neglected.

22. There is no evidence of any interest in the maintenance and care of the cemetery by the owners of the real estate.

23. There is no evidence that the Township Supervisors of Antrim Township required the removal of weeds, refuse and debris from the cemetery by the owner thereof.

#### DISCUSSION

Petitioners are before this Court seeking an order requiring defendants to care for burial grounds known as the Peter Kuhn Cemetery at a cost of not more than \$500.00 per year. The guidelines set forth in 53 P.S. Sec. 65728 describe the remedies established by the legislature for the problem of abandoned or neglected burial grounds. After reviewing all the evidence presented at the hearing, we conclude that petitioners have properly availed themselves of the relief requested and provided for by statute.

The initial determination in this case involves the issue of abandonment or neglect. Respondent disputes petitioners' claim of abandonment and neglect asserting that the showing of concern for the cemetery's upkeep must necessarily negate a finding of abandonment or neglect. Petitioners introduced several photographs of the cemetery as evidence illustrating its condition. The pictures reveal an area of land covered with a mass of undergrowth, bushes and overturned gravemarkers. To conclude that such a cemetery is not neglected would require a far stretch of the imagination. We feel that this burial ground is indeed neglected and that petitioners' request for care of the grounds has no effect on this finding.

The respondent is provided with a means of self-help in the case of abandoned or neglected cemeteries in 53 P.S. Sec. 65728. That section provides for notice to be given to the owner of the land on which the cemetery is located directing him to clean it up within thirty (30) days. If the owner fails to take the required action within the set time limits, then the township supervisors are authorized to clean-up the grounds at the owner's expense. The expenses of the clean-up are deemed to be a debt owed the township by the owner of the land and the supervisors may proceed to collect the debt as all other debts are collected. No evidence was presented at the hearing to suggest that respondent had taken any steps to take advantage of this remedy.

The supervisors cannot now be heard to complain that petitioners have wrongfully pursued the second remedy established by statute. On the contrary, petitioners have properly obtained the signatures of not less than twenty-five residents of the township where this cemetery is located on

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their petition asking that the supervisors bear the burden of care for these burial grounds. Their efforts precisely track the statute language and therefore, the provided relief must be granted.

This case is distinguishable from *In re Limestone Cemetery*, 24 D&C 2d 281 (1962) where the court entered a temporary order requiring the township supervisors to contribute to the care of an abandoned cemetery. The order contained a provision that a genuine effort was to be made to locate descendants of those buried in the cemetery and further, to assess the descendants' willingness to contribute to the cemetery's care before the court would enter a permanent order casting the burden on the supervisors. In the case presently before this Court, the descendants of those buried are known and have been identified as those attending an annual family reunion. However, these descendants are unwilling to assume the moral responsibility and duty to maintain and care for the family cemetery.

It is through the reunion group's president, Theodore Kuhn, that the matter of care for the cemetery was acted upon. While Mr. Kuhn has not only been willing to assume the obligations of caring for the Peter Kuhn Memorial to the best of his ability as president of the group, and has also expended his personal funds in seeking a resolution of the cemetery care problem, it is discouraging to see the apathy and lack of cooperation of the other members of the reunion group who have shunned their moral duty to care for their ancestors' burial grounds.

Since there are no family members willing to assume the responsibility for care of the cemetery and the supervisors have filed to request the landowner to clean-up the grounds, petitioners' request that defendants care for the cemetery at a cost of not more than \$500.00 per year must be granted.

#### ORDER OF COURT

NOW, this 24th day of February, 1982, after hearing on the petition submitted by residents of Antrim Township, Franklin County, Pennsylvania, praying for an Order directing the Supervisors of Antrim Township to care for the Peter Kuhn Cemetery, pursuant to the Act of 1933, May 1, P.L. 103, Article VII, Section 702, as amended, (53 P.S. 65728), it appearing to the Court that the cemetery grounds are being neglected although occasionally used for burial purposes, and that there is no cemetery association or organization with available funds to care for such cemetery, and that there is no avail-

able sources of funds for perpetual care of any lot or the cemetery in its entirety, it is ordered that the Supervisors of Antrim Township are directed to care for said Peter Kuhn Cemetery, located in Antrim Township, Franklin County, Pennsylvania, being the area identified as an existing cemetery at the rear of Lot 8 on the subdivision plan for Joseph V. and Eileen Tanzola, dated January 18, 1975, which plan is recorded herein by reference, at a cost of not more than \$500.00 in any one year, out of monies from the general fund of the Township, such cemetery to remain open to the public under the regulation and control of the Supervisors.

McCREA v. ZONING HEARING BOARD, C.P. Franklin County Branch, Vol. Y., Page 79

#### *Zoning Appeal - Variance - Burden of Proof*

1. An applicant must sustain the heavy burden necessary to warrant the grant of a variance and also the burden of proving unnecessary hardship.
2. To allow a variance, a zoning hearing board must find that there is no possibility of developing the property in accordance with its present zoning and that the variance requested represent the minimum variance that will afford relief.

*William C. Cramer, Esq.*, Counsel for Appellants

*J. Dennis Guyer, Esq.*, Counsel for Appellee

#### OPINION AND ORDER

KELLER, J., March 9, 1982:

The appellants filed an application for a variance with the Zoning Hearing Board of Washington Township, Franklin County, on October 13, 1981. After proper advertising and posting of the time and place of hearing, the Board conducted a public hearing on October 26, 1981, to consider the merits of appellants' application. The appellants and their son, Richard, appeared and testified at the hearing. Appellants were not represented by counsel.