

LEGAL NOTICES, cont.

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Legal Reference Service of
Franklin and Fulton Counties
Franklin County Court House
Chambersburg, Pennsylvania 17201
Telephone No. - Chambersburg
(717) 264-4125, Ext. 213

COUNSELING SERVICE NOTICE

By law the Court in which this divorce case is commenced is required to notify the plaintiff and defendant of the availability of counseling sessions for both parties upon request of either party or by Order of Court.

The defendant is herewith notified that a list of qualified professionals who provide such counseling service is available at the Prothonotary's Office on request.

By filing of this complaint the plaintiff acknowledges having been advised by her attorney of record of the availability of counseling sessions and of a list of qualified professionals.

The choice of a qualified professional shall be at the option of the plaintiff and defendant and need not be selected from the list available on request. Arrangements for and the payment of the charges of the qualified professional shall be the responsibility of the parties and will not be included in the docket costs of this proceeding.

Kenneth E. Hankins, Jr.
Attorney for Plaintiff

COMPLAINT

Now comes the plaintiff, and for cause of action against the defendant, she complains and says:

1. Plaintiff is Sherry M. Sanchez, who lives and resides at 310 Mickeys Inn Lane, Chambersburg, Franklin County, Pennsylvania 17201.

LEGAL NOTICES, cont.

2. Defendant is Gabino Perez-Sanchez, who lives and resides in Durango, Mexico.

3. Plaintiff has been a bona fide resident of the Commonwealth of Pennsylvania, for at least six months immediately previous to the filing of this complaint.

4. Defendant, at the time of the marriage of the parties and ever since then, so far as is known to plaintiff, was and is a citizen and national of the Country of Mexico, and his last known residence was Durango, Mexico.

5. The plaintiff and the defendant were married to each other on April 9, 1977, in Manchester, New Hampshire.

6. There have been no prior actions for divorce or annulment of this marriage, in this or any other jurisdiction.

7. The marriage is irretrievably broken.

8. Plaintiff requests the Court to enter a decree of divorce.

I verify that the statements made in this complaint are true and correct, I understand that false statements herein are made subject to the penalties of perjury contained in 18 Pa. C.S. Section 3904, relating to unsworn falsification to authorities.

Sherry M. Sanchez
Date: July 21, 1986
Kenneth E. Hankins, Jr.
Attorney for Plaintiff

5-8-87

the \$5,000 bequest to Gladys Ford is "substantial". Suffice it to say, though, it seems unusual that someone who supposedly destroyed Imogene Risbon's ability to exercise her free agency would settle for such a small portion of the estate.

Incorporating the above discussion, appellant has also failed to demonstrate by clear and convincing evidence that Imogene Risbon lacked testamentary capacity. His appeal shall be dismissed.

ORDER OF COURT

December 19, 1986, the appeal of Richard Risbon is dismissed.

ALBERT E. HAAS, ET AL. V. BRUCE FOSTER, MD, ET AL.,
C.P. Franklin County Branch, AD 1985 - 259

Medical Malpractice - Depositions - Sanctions

1. For information to be discoverable, it need only be reasonably calculated to lead to the discovery of admissible evidence.
2. Where a question is easily answerable, it is not an undue burden for the defendant to answer it even if it may have been asked before.
3. The Court is not limited to imposing sanctions only where a party is in violation of a Court order.

Richard C. Angino, Esquire, Counsel for the Plaintiffs
Wayne R. Spivey, Esquire, Counsel for Defendant Foster
C. Kent Price, Esquire, Counsel for Defendant Foster
R. Stephen Shibla, Esquire, Counsel for Defendant Waynesboro Hospital

OPINION AND ORDER

WALKER, J., January 5, 1987:

FACTUAL HISTORY

Plaintiff, Marguerite Haas, filed a medical malpractice wrongful death action on behalf of herself and her deceased husband, Albert E. Haas, against Dr. Bruce Foster and the Waynesboro Hospital, defendants. Plaintiff alleges that her husband died as a result of Dr. Foster's negligence in failing to order follow-up tests for lung cancer. At the deposition of Dr. Bruce Foster, the plaintiffs' counsel asked Dr. Foster what procedures the doctor would follow if a patient needed treatment for a number of medical problems, e.g. heart trouble, the flu, fractures, and other conditions including a liver problem. When plaintiffs' counsel asked Dr. Foster what he would do if a patient tested positive for liver disease, defendants' counsel instructed Dr. Foster not to answer the question. Counsel for both parties argued briefly and then the deposition was concluded since they could not resolve this matter.

Plaintiffs' counsel subsequently filed a motion to compel Dr. Foster to answer a motion for sanctions, and a brief in support of these motions. Defendants' counsel responded by filing a brief alleging that the information requested was irrelevant and that the issue of Dr. Foster's follow-up treatment had already been asked several times and answered earlier in the deposition. Defense counsel also contends that sanctions cannot be imposed on him since he did not violate an existing court order. These are the issues that the court must now decide.

DISCUSSION

First, defense counsel argues that the decedent suffered from lung problems and that, therefore, plaintiffs' counsel's hypothetical question about a potential liver condition is irrelevant to the case. For information to be discoverable, it need only be "reasonably calculated to lead to the discovery of admissible evidence." Pennsylvania Rules of Civil Procedure, 4003.1. If there is any conceivable basis for relevancy, doubts are to be resolved towards relevancy and discovery should be permitted. *Yoffee v. Golin*, 45 D&C 2d 318 (1968). Here, plaintiff intended to show that Dr. Foster, a primary care physician, would refer patients to a specialist in certain instances. Plaintiff's line of inquiry would be relevant to her theory that decedent's death was caused by Dr. Foster's negligence in not having follow-up tests performed by a specialist.

Next, defendant complains that plaintiff's hypothetical questions were repetitious and that the issue of defendant's procedures had been fully covered by similar questions asked earlier in the deposition. Apparently defense counsel believes that the plaintiff had pursued this line of question so long as to constitute an unreasonable annoyance or undue burden on him, which would be prohibited by Pennsylvania Rule of Civil Procedure 4011 (b). Whatever annoyance this question about treatment of a specific liver problem may have caused the defendant, the court does not believe that it was unreasonable. Likewise, since the question was easily answerable, it was not an undue burden for the defendant to answer it. One who objects to discovery has the burden of establishing its nondiscoverability. *Wick v. Daley Mack Sales, Inc.*, 21 D&C 3d 399 (1980). The defendant in this case has failed to establish the nondiscoverability of the evidence.

Defendant's counsel's last argument, that the court may only impose sanctions when a party is in violation of a court order, is a blatant misstatement of the law. In support of this proposition, defendant's counsel cites Pennsylvania Rule of Civil Procedure 4019 (g) (1) conveniently omitting the introductory clause "except as otherwise provided." This clause allows the full force and effect of Rule 419 (a) (1) (viii) to remain intact which would permit the court to make an appropriate order if a party fails to make discovery or fails to obey an order of court with respect to discovery. See *Crawford v. Chambersburg Hospital*, 18 D&C 3d 121 (1980). It is dubious practice to further a legal argument on the assumption that the court will not on its own or when alerted by opposing counsel, read the pertinent statutory provisions.

Defendant's counsel sanctimoniously states that the plaintiffs' counsel walked out of the deposition without even attempting to contact the court. Defendant's counsel offers no explanation, why he himself failed to phone the court. Accordingly, defendant's counsel shall pay for the additional expenses (appearance fee only) of a stenographer appearing at the second deposition. And Dr. Foster shall be ordered to answer plaintiff's hypothetical question regarding his treatment of a potential liver disease.

ORDER OF COURT

January 5, 1987, after consideration of plaintiff's motion to compel and motion for sanctions in the above captioned matter

against the defendants Bruce Foster and The Waynesboro Hospital, and the defendants' response thereto, it is ordered that Dr. Foster's counsel shall pay for the additional appearance fee of a stenographer at the continued deposition and the doctor is directed to answer plaintiff's question regarding treatment for a potential liver problem and any other questions at the continued deposition.



13 West Main St.
P.O. Drawer 391
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THREE CONVENIENT LOCATIONS:
Potomac Shopping Center - Center Square - Waynesboro Mall

24 Hour Banking Available at the Waynesboro Mall

County, Pennsylvania, in Deed Book Volume 288C, Page 615.

BEING part of Tract No. 2 of 3 tracts of real estate which Nellie J. McLaughlin, widow, by her deed dated July 24, 1973, and recorded in the Recorder's Office aforesaid in Deed Book Volume 689, Page 1096, conveyed to Santo M. Pantano and Judy A. Pantano, his wife, GRANTORS.

TRACT NO. 2: BEGINNING at an iron pin at corner common to other lands of Santo M. Pantano and wife, Tract No. 1 above described, and other lands of John R. Jarrett and wife; thence by the latter, North 88 degrees 30 minutes East, 154.44 feet to an iron pin at corner of lands now or formerly of John E. and Delma M. Appleby; thence by the latter, North 89 degrees East, 219 feet to an iron pin at lands now or formerly of Glenn E. and Verda B. Fisher; thence by the latter, South 5 degrees 30 minutes East, 107 feet to an iron pin at corner of lands now or formerly of Robert H. Anderson; thence by the latter, North 89 degrees 30 minutes West, 315 feet to an iron pin at corner of other lands of Santo M. Pantano and wife; thence by the latter, North 35 degrees 35 minutes West, 117.93 feet to the iron pin, the place of BEGINNING. CONTAINING .805 acre and being Parcel B on the above recited subdivision plan.

BEING part of Tract No. 3 of 3 tracts of real estate which Nellie J. McLaughlin, widow, by her deed dated July 24, 1973, and recorded in the Recorder's Office aforesaid in Deed Book Volume 689, Page 1096, conveyed to Santo M. Pantano and Judy A. Pantano, his wife, GRANTORS.

BEING sold as the property of Donald F. Chlebowski and Betty L. Chlebowski, his wife, Write No. AD 1986-280.

SALE NO. 5

Writ No. AD 1987-76 Civil 1987
Judg. No. AD 1987-76 Civil 1987

Dauphin Deposit Bank and
Trust Company

—vs—

Leland S. Diehl and
Marion G. Diehl, his wife
Atty: David P. Perkins

ALL THAT CERTAIN following described lot of land situate in Southampton Township, Franklin County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the centerline of PA Route 533 at the corner of Lot No. 2 on the plan designated hereafter and presently owned by John Spidle; thence along the centerline of PA Route 533 South seventy-six (76) degrees fifteen (15) minutes thirty-eight (38) seconds East, two hundred four and no hundredths (204.00) feet to a point; thence south thirteen (13) degrees forty-four (44) minutes twenty-two (22) seconds West twenty-five and no hundredths (25.00) feet to a point into the intersection with Ashton Drive; thence continuing into Ashton Drive by a curve to the right having a radius of forty and no hundredths (40.00) feet, an arc distance of sixty-two and eighty-three hundredths (62.83) feet, a chord distance of fifty-six and fifty-seven hundredths (56.57) feet and a chord bearing of South thirty-one (31) degrees fifteen (15) minutes thirty-eight (38) seconds East to a point at the edge of Ashton Drive; thence continuing by Ashton Drive by a further curve having a radius of three hundred ninety-three and forty hundredths (393.40) feet, an arc distance of one hundred twenty-seven and forty-three hundredths (127.43) feet, a chord distance of one hundred twenty-six and eighty-seven hundredths (126.87) feet and a chord bearing of South twenty-three (23) degrees one (01) minutes seven (07) seconds West to a point at the edge of Ashton Drive; thence continuing by Ashton Drive South thirty-two (32) degrees seventeen (17) minutes fifty-three (53) seconds West thirty-six and seventy hundredths (36.70) feet to a point at corner of lands now or formerly of Kaphoe Development Corporation; thence by lands now or formerly of

Kaphoe Development Corporation North seventy-six (76) degrees fifteen (15) minutes thirty-eight (38) seconds West two hundred forty-four and no hundredths (244.00) feet to a point at corner of lands of John Spidle; thence along lands of John Spidle North twenty-one (21) degrees fifty-two (52) minutes eight (08) seconds East two hundred twenty-seven and twenty-eight hundredths (277.28) feet to a point, the place of BEGINNING.

BEING Lot 3 on subdivision plan prepared by Dougal & McCans, Inc., dated October 28, 1977, and revised January 13, 1978 and January 19, 1978 for Kaphoe Development Corporation. Containing 1.272 acres more or less. Said plan being approved by the proper municipal and county authorities and being recorded in the Recorder of Deeds Office in and for Franklin County, Pennsylvania, Plan Book 288C, Page 547.

BEING the same real estate which Kaphoe Development Corporation by deed dated August 25, 1983, and recorded in Franklin County Deed Book Volume 887, Page 266, conveyed to Leland S. Diehl and Marion G. Diehl, husband and wife.

SUBJECT to all conditions, restrictions, and reservations of record.

TOGETHER with the buildings and improvements erected thereon, having a street address of 1020 Orstown Road, Shippensburg, Pennsylvania 17257.

BEING sold as the property of Leland S. Diehl and Marion G. Diehl, his wife, Writ No. AD 1987-76.

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, June 22, 1987 at 4:00 P.M., E.D.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on June 26, 1987 at 1:00 P.M., E.D.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

5-15, 5-22, 5-29

against the defendants Bruce Foster and The Waynesboro Hospital, and the defendants' response thereto, it is ordered that Dr. Foster's counsel shall pay for the additional appearance fee of a stenographer at the continued deposition and the doctor is directed to answer plaintiff's question regarding treatment for a potential liver problem and any other questions at the continued deposition.

HANN AND WIFE, ET AL. VS. SAYLOR AND WIFE, ET AL.
C.P. Franklin County Branch, No. 144 of 1984 C, Equity

Equity - Easement by Implication

1. Where one portion of property is used for thirty years as access to another portion, a burden is established on the subservient property.
2. Evenly spaced tracts across land put the defendant on notice there was a right of way across the land.
3. There is a presumption of permanence of an easement as long as there are no circumstances to indicate otherwise.
4. A purchaser takes subject to visible, notorious easements which are not subject to an exception and he has no claim for damages against the seller for breach of warranty.

James M. Schall, Esquire, Counsel for plaintiffs

Robert B. Stewart III, Esquire, Counsel for defendants, David E. and Sandra P. Saylor

Stanley J. Kerlin, Esquire, Counsel for defendant, Harry E. Brant

OPINION AND DECREE NISI

WALKER, J., April 24, 1987:

Harry Brant owned a piece of property in Fulton County, Pennsylvania. For over thirty years he regularly drove over the southern portion of the property to get to the northern end where he would hunt, haul firewood and dump trash. Robert Hann, one of the plaintiffs, accompanied Brant throughout this period.