lands of Williams; thence North 11 degrees 24 minutes 45 seconds East, 404.95 feet to the place of beginning, as shown on draft of Byers v. Runyon attached hereto.

and said defendants are restrained from impeaching, denying or in anyway attacking plaintiff's title to said property.

The costs of these proceedings shall be paid by the defendants.

This decree nisi shall become absolute unless exceptions are filed thereto within ten (10) days from this date.

MELLOTT V. MELLOTT, C.P. Fulton County Branch, No. 195 of 1981-C

Custody - Order ignored by child - Mother's duty to enforce Order

1. Where a 17-year-old child refuses to visit with her father as requested under a visitation order, the Court will deny a request for an Order requiring visitation and will not sanction the custodial parent.

George E. Wenger, Jr., Esquire, Counsel for plaintiff

Jeanne W. McKelvey, Esquire, Counsel for defendant

OPINION AND ORDER

EPPINGER, P.J., April 12, 1985:

Chalmer and Donna Mellott are the parents of two daughters, Angela born July 22, 1969, and Dana born September 9, 1970. Great hostility between the parents was evident at the time of the break up of their marriage. The girls lived with their mother, and their father had no visitation arrangements. Then on December 1, 1981, the father filed a petition for custody of the children, with visitation rights to be granted to the mother.

When the petition was filed we appointed Dr. James W. Nutter, Ed.D. as child custody mediation officer in the case. The parties delayed meeting with Dr. Nutter so the first hearing was not set in the case until April 6, 1982. After the hearing was set, but before evidence was taken, the father petitioned for visitation with the

children, and on February 12, 1982, he was given visitation custody of the two children every third weekend from 6:00 p.m. Friday until 6:00 p.m. Sunday. The order contained a provision that the father should not exercise his visitation in the presence of a female not related to him by blood or marriage.

Next the father filed a petition that this limitation on his visiting with the children was a form of invidious discrimination and requested an order that the limitation be applied to both the parties. The court denied the request as submitted and suggested the father proceed by a rule to show cause.

The hearing on the principal matter, custody, was set for April 20, 1982, but on that date the father filed a petition for a rule on the mother to show cause why she should not be held in contempt for denying the father visitation custody as ordered. That rule was returnable ten days after service. An answer was filed.

On May 14, because of the apparent hostility between the mother and the father and because the children seemed to require their own counsel, the court appointed Stanley J. Kerlin, Esquire, to represent them. It seeming to be impossible to get the family together, the court on June 17, 1982, ordered them all to participate in counseling with Dr. Nutter, hoping in this way that a visitation schedule could be worked out.

June 10, 1982, a further petition for contempt was filed and a rule returnable in fifteen days was issued.

During this time the court had the family under observation on several occasions. In retrospect it might have been better just to have had a full hearing, made an order, and gotten it over with. But we faced the situation where one daughter, the older, did not want to visit with her father and said she would not. The court calculated that counseling before the hearing would be better than trying to pick up pieces after an order had been made, which it seemed would be very difficult to enforce.

After the counseling and the report of Dr. Nutter, the court had the family together again. This time we ordered that the children visit with their father every other weekend. It is our recollection that all parties accepted this order. On July 27, 1982, the father again filed a petition asking that the mother be held in

contempt. We issued a rule which was returnable in twenty days. The rule was not answered, but counsel did not move for a hearing until September 21, 1982, asking at the time that the court set a date for a hearing on the custody matter along with hearings on the various contempt petitions. We signed an order for such hearings, and set October 5 as the time for hearing.

Following the hearing we made an order which continued the earlier arrangements. This was an attempt to get two very hostile children to spend some time with their father. The father appealed from this order, and on March 4, 1983 he was directed to file a statement of reasons. By March 6, 1983, the hearing judge was hospitalized and disabled for some time and was unable to write a supplemental opinion. However, Judge Keller, the lone available judge on the two judge court did a masterful job in interpreting what he thought the hearing judge's intentions were.

The order that was appealed was one that continued the visitation every other weekend with the father which we had inaugurated earlier.

The father's appeal was upheld and the matter was returned to the court for a full hearing. The record that went up on appeal could not possibly reflect all that the court had gone through to foster even the slightest movement in the girls' respect for their father and willingness to be with him. The older daughter simply would not think about spending more time with him; she didn't want to spend what she was spending.

So after we were required to hold a new hearing, the older daughter cut off all her visitation with the father, refusing to see him at all. We surmise that she saw a second hearing as a threat that she might be required to spend more time with him so she decided to spend none.

At the second hearing, the father now had a different attorney. Counsel were required under an order we issued to provide memoranda on the case within ten days of the hearing. We received the memoranda from the mother's attorney, but more than a year has passed and we have received nothing from the father's attorney. We assume that the visitation is going as it was at the time of the hearing, the younger daughter seeing the father from time to time and the older daughter not at all. It is very

tempting to let the thing ride, let it work itself out. Since the father is the moving party and he is doing nothing, why not leave it alone? Some accommodations must have been reached. But we must bring it to a close.

The children are Angela Dawn Mellott to be seventeen in July and Dana Lynn Mellott now fifteen and a half years old. They have been residing with their mother Donna J. Mellott since November, 1982. At the time of the hearing the mother was residing with a Mr. House, who is divorced and the relationship at that time seemed to be one that would mature into a marriage. (They may be married by now.)

The home in which the four of them are living is a spacious three-bedroom mobile home located on ground owned by a relative of House. Each child has her own bedroom. The relationship between Donna Mellott and Ronald House is a loving, caring one and his being with the children has had no adverse effect on them.

The children are required to perform household duties and the four of them do things as a family unit. House treats the children fairly and is interested in them.

Donna and House are employed full time. Satisfactory arrangements have been made for the children to get to the school bus.

The father lives by himself in a rented three-bedroom house. His residence is within several miles of the place where his mother lives. When the girls were with him, he spent part of the period with his daughters and his girlfriend, Patsy Mellott, a widowed lady with three daughters.

The testimony of the court's child custody mediation officer, Mrs. Della Stapleton, was that Angela was more comfortable in her mother's home, feeling that her father does not pay enough attention to her. Dana, however, while preferring her mother's home, seems more comfortable than her sister in her father's home. During visitation periods with the father, he has offered the girls activities like horseback riding and snowmobiling.

Donna is working, earning $5.90 an hour at the time of the hearing. House makes $8.25 an hour as a mechanic. Chalmer, the father is employed at Mack Truck Company.

The mother has no church connection. During periods of visits with the father, he took them to Sunday School, but there was no mention that he attended himself.

At the beginning of this dispute, Donna came to the children's defense and did not require them to visit with their father. That was the subject of several of the contempt proceedings. More lately she has encouraged them to do so, but in this regard she has minimal influence especially over Angela. The latter is demonstrated in Angela's actions in refusing to visit with her father since June of 1984.

Angela has a strong willed desire and feeling that her father has committed various acts which offended her during the past periods of visitation and prior to that time. We have discussed this often with her and tried to make her see that whatever her father did that offended her, he was not beyond forgiveness. At the last meeting we had with the child, she said she would never forgive him for threatening to compel her to visit with him by "having her put away", or something like that. As we said, she is strong willed and is disobedient to the court's order. At the last hearing she was supported in her position by Mrs. Stapleton and Dr. Nutter. Both testified that she has reached the age where we should "listen to her". For them "listening to Angela" meant doing what she wanted; letting her set the ground rules for her participation in visitation with her father. Her present ground rules are that she is not going to do it.

Dana seems to have no trouble getting along with her father in the visitation setting. She has, on her own, expanded the period of time beyond those prescribed in the court order and wants to continue to do that, rather than have the court mandate something else. She is far better adjusted to the situation than is her sister.

Chalmer Mellott shows respect for the court's authority and his purpose in these proceedings is to share more time with his children. He was obviously hurt when in the early stages of this matter, the children did not visit him at all. He would not be seeing even Dana had he not brought this proceeding. The psychologist and the custody mediation officer suggested that to force Angela to spend time with her father would be detrimental to her emotional well-being. It may be that we have arrived at the point where the children decide what they want to do and the

Act is the statute under which this corporation is incorporated."

Jan G. Sulcove, Esq.
Black and Davison
209 Lincoln Way East
Chambersburg, PA 17201-0513
Attorneys

12-27-85

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: January 2, 1986.

ETTER: First and final account, statement of proposed distribution and notice to the creditors of Emery C. Etter, Jr., and Farmers and Merchants Trust Company, Co-Executors of the Estate of Frank L. Etter, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

HOLDEN: First and final account, statement of proposed distribution and notice to the creditors of Vivian L. Holden, Executrix, and the Farmers and Merchants Trust Company of Chambersburg, Executor of the Last Will and Testament of John W. Holden, late of Guilford Township, Franklin County, Pennsylvania, deceased.

HORN: First and final account, statement of proposed distribution and notice to the creditors of William N. Horn and Kenneth A. Horn, Executors of the Estate of Norman B. Horn, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

JOHNSON: First and final account, statement of proposed distribution and notice to the creditors of Charles E. Johnson, Executor of the Estate of Ethel S. Johnson, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

LEGAL NOTICES, cont.

ROWE: First and final account, statement of proposed distribution and notice to the creditors of H. Gene Hoover, Executor of the Estate of Russell C. Rowe, late of Montgomery Township, Franklin County, Pennsylvania, deceased.

STONER: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Executor of the Estate of Katherine M. Stoner, late of Chambersburg, Franklin County, Pennsylvania, deceased.

George B. Heefner
Acting Clerk of Orphans' Court of
Franklin County, Pennsylvania

12-6, 12-13, 12-20, 12-27

court is powerless by reasoning and persuasion to induce them to accept what seems to be a perfectly reasonable visitation program, and without legal means to enforce an order obviously being ignored by a child. Where the party in custody is attempting to have the child visit the out of custody parent and the child refuses, is it possible to fashion a sanction to get her to do it? It may not be. For if the child refuses to be with her father because of some imagined hurt, then would she ever return to him if he forced a sanction on her? And what would that sanction be? If we made an order requiring Angela to visit with her father or else, in her present state of mind she would likely select the *or else*. The father has already tried that tactic and instead of improving the situation it made it worse. He threatened to have her "put in a home" if she did not come to visit with him. Now that is one of the complaints she has against him.

Except for Angela's state of mind, we can find no reason why the children should not have regular visitation periods with him. Both the mother and the father have looked after the good health of the children, and the father provides medical insurance for them through his place of employment. The children look healthy.

At the time of the hearing the mother was living with a man to whom she was not married. That relationship had existed for nearly two years. Both the mother and her paramour testified that when the divorce proceedings between the mother and father are complete, there will be a marriage. There is nothing in the father's situation that would disqualify him from custody.

Both of the parents reside in the same school district. It would affect the children only slightly even if there was a shared custody order. The children would get on different buses when they were at their father's house, that is all.

At the beginning it was probably impossible to have actual shared custody of the children. It was not impossible to give the father some right in the decision making process involving the children. He was supporting them and providing medical insurance. Before he filed this action he was simply excluded from the family. Generally for shared actual custody to be exercised as between the parents, they must be able to cooperate. They were not.

Nevertheless, the first order that the court made was an attempt to regenerate some feeling between the children and their father and, in a way, to make him feel some involvement in what they were doing. But the order was appealed before it could have any such beneficial effect and when the matter was referred back to the court, Angela felt threatened — maybe her father would get some greater custody after all. She had been cooperating before the appeal, but not all that willingly.

There is no hope now for any kind of real shared custody. Both of the girls have matured further and both have more to say about what they are going to have to do. Both are very active in school and each has indicated they want things just the way they are: Angela - no visitation, and Dana - the kind of visitation she has now with the option on her own of working out longer periods with her father if she wants to do so.

As this proceeding came to a close, the father's counsel was only arguing for a return to the situation as it existed before the new hearing was granted. She was not urging what to all seemed impossible — real joint custody. Angela will have to awaken to a relationship with her father when she becomes old enough to realize that he has a need and a right to such relationship, and that he loves her, else why would he go through all of this? When that will happen, if ever, we cannot forecast. Dana may expand her relationship with her father and if she does, in the end, we are sure she will find it rewarding.

When this started out, the mother was hostile to the father. She had no intent of cooperating in having the children visit with him. He had hostile feelings toward her too and the two met in open conflict. We perceive that now the mother is willing that the children should be with their father, though much of that may be out of fear that some sanction will be imposed against her if she does not cooperate. Even a sanction against the mother would further elevate Angela's feelings against her father. So we are nowhere.

Under all of the circumstances, there is little to do except leave things the way they are. Dana will continue to live with her mother and visit with her father at least once every two weeks. Angela will live with her mother but we will not make an order requiring her to visit with her father.

ORDER OF COURT

April 12, 1985, custody of Angela Mellott and Dana Mellott, children of Donna J. Mellott and Chalmer J. Mellott, shall be in Donna J. Mellott, the mother.

Chalmer M. Mellott shall have visitation rights with Dana Mellott as now being practiced and on such additional occasions as may be worked out between the child and her father.

Angela Mellott being unwilling to spend any time with her father, his request for visitation or other custody with Angela is denied.

The parties shall each pay their own costs.

INDUSTRIAL VALLEY BANK V. FIRST NATIONAL BANK OF GREENCASTLE, C.P. Franklin County Branch A.D. 1983 - 328

Declaratory Judgment - UCC - Purchase Money Security Interest

1. Where a loan is made after a vehicle is purchased and no lien is documented on the manufacturer's certificate of origin at the time of purchase, the lender does not have a purchase money security interest despite the latersigning of a security agreement.

Stephen T. Burdmuy, Esquire, Counsel for plaintiff

David S. Dickey, Esquire, Counsel for defendant

ADJUDICATION AND VERDICT

EPPINGER, P.J., May 9, 1985:

Under an agreement made on November 24, 1980, Industrial Valley Bank & Trust Company (Valley) periodically made loans to Cambridge Wreckers, Inc., (Cambridge) of Cornwell Heights, Pennsylvania, to finance the purchase of the inventory of Cambridge. Valley retained a security interest in all of Cambridge's inventory and accounts receivable. The security agreement between Valley and Cambridge defines inventory as, "goods held for sale or lease or being processed for sale or lease in Debtor's