

Divorce - Marital Residence - Temporary Award

1. The Court has authority to temporarily award the marital residence, pending equitable distribution, to a spouse having physical custody of a minor child.
2. The goal of the Court is to provide the child with a stable and permanent home.
3. Where a husband makes sporadic, unannounced, annoying visits whose only purpose is to disrupt and harass his wife and child, he will not be permitted to enter the marital home except on scheduled visits.

Martha B. Walker, Esquire, Counsel for Plaintiff
David W. Rabausser, Esquire, Counsel for Defendant

KELLER, P.J., October 30, 1989:

The Plaintiff, Bonnie L. Ommert, seeks an order awarding her exclusive possession of the marital home located at 5951 Sampache Drive, Shippensburg, PA, under Section 401(h) of the Divorce Code of 1980, 23 P.S. §401(h). Initially, the plaintiff filed her petition to award exclusive possession of the marital residence in the office of the Prothonotary on July 21, 1988, and an order was entered on the following day directing the issuance of a rule upon the defendant to show cause why the Court should not award exclusive possession. The rule was made returnable fifteen (15) days after service. On September 22, 1988 on stipulation of counsel and the parties, an order of court was entered continuing the hearing to provide counsel with an opportunity to research the issue of whether the Court has jurisdiction to entertain the proceeding. In the interim, the defendant, Robert E. Ommert, was authorized to request any of his personal property that he believed remained in the marital premises via his attorney to counsel for the plaintiff, and arrangements would be made for the delivery of the same or making available of that property to the defendant. In addition, it was noted that the defendant asserts a right to a possessory interest in the marital property as a tenant by the entirety, and a right to enter into that property, but he would refrain from any entry without specific permission of the plaintiff or her counsel. On September 14, 1989 the plaintiff filed a new petition to

award exclusive possession of the marital residence, and the Honorable William H. Kaye entered an order directing the issuance of a rule upon the defendant to show cause why the prayer of the petition should not be granted. The rule was made returnable fifteen (15) days after service and hearing was scheduled for October 3, 1989 at 9:30 a.m., if the defendant filed a responsive pleading. The answer to the plaintiff's petition was received by the Court on October 3, 1989. Hearings were held October 3 and 11, 1989. Counsel have submitted memoranda of law. The matter is ripe for disposition.

FINDINGS OF FACT

1. The plaintiff is Bonnie L. Ommert hereafter "Wife", who resides at 5951 Sampache Drive, Shippensburg, Pennsylvania.
2. The defendant is Robert E. Ommert hereafter "Husband", who resides at Pleasant Hall, PA with mailing address P.O. Box 73, Pleasant Hall, Pennsylvania.
3. The parties were married May 27, 1978 in Chambersburg, PA and separated October 21, 1987, when husband left the marital home to live with his girlfriend.
4. The parties are the parents of Kristy Nicole Ommert hereafter "Daughter" born March 16, 1980. She resides with plaintiff/wife in the marital home.
5. Plaintiff initiated an action in divorce on February 13, 1989. The matter is pending.
6. On June 18, 1988 husband entered the marital home and removed personal property. 83 United States Savings Bonds in the name of wife and daughter also disappeared.
7. Husband admitted that he entered the property on June 18, 1988 for the purpose of securing his clothing and in order to comply with wife's request that he get his things out of the home. He found the locks had been changed without notice to him and he used a credit card to open the doors. He conceded finding the United States Bonds but testified that he put them back where he found them. He stated that he was searching for his deed and mail that wife had intercepted and either thrown away or hidden.
8. At the October 11, 1989 hearing husband testified that he had not removed the bonds from the house, but had hidden them in a safe place in the house under daughter's toy chest in the livingroom. Subsequent to the closing of the evidence, counsel for the defendant/husband advised the Court and counsel for the plaintiff/wife that defendant believed that he had hidden them in one of two other places in the home.
9. By agreement of counsel, the Court directed both attorneys to meet at the marital home at an agreed upon time, take possession of the United

States Bonds; list them by amount, date and identity of ownership and then deliver them into the possession of counsel for the defendant/husband who would hold them for safekeeping pending disposition of the economic issues in the divorce case.

10. On July 2, 1988, husband entered the marital home, stripped the bedclothes off of wife's bed, removed cushions from an overstuffed chair, removed and upset drawers in wife's bedroom, then emptied a hall closet. Plaintiff's Exhibits 1 through 7 evidence the upset condition of the bedroom and hall closet.

11. Husband admitted that he had returned to the home on July 2, 1988 to get more of his personal property and personal things, and to hunt deeds and other papers. He admitted he pulled out the dresser drawers, pulled off the bedcovers, removed the cushions from the chair, and spilled the contents of the hall closet, while looking for his papers and his hat. He did not remember making the "jumble" in the foreground of plaintiff's Exhibit 3, and denied that the "mess" in the left corner of Exhibit 2 was done by him; except to place a cash box on top of the pile.

12. On the July 2nd entry, he found that wife had installed new locks and deadbolts without giving him notice.

13. On July 16, 1988, husband entered the marital home, turned the thermostat up to 90°, put glue in all of the door locks and removed the deadbolts. He took various items of personal property, including a snow blower, left a 10 inch screw on the kitchen table, removed a hose attached to an outside spigot, and attempted to saw a door knob off the back door.

14. Husband admitted all of the foregoing activities in his answer. He testified that he did not place the glue in the door locks or remove the deadbolts to harass wife, but rather give her the message, "Now you know how it feels to be locked out - remove them and replace the old locks." He discontinued sawing off the door knob to avoid damaging the blade when the door opened. It was an 8 inch lagger bolt rather than a 10 inch screw he left on the kitchen table.

15. Several weeks after July 16, 1988, husband again entered the marital home and removed all the replaced door locks, deadbolts, and knobs on the doors.

16. Wife had to replace the locks that had been filled with glue and all removed deadbolts, locks and door knobs at a cost in excess of \$300 to her.

17. On July 22, 1988, wife found drawings husband had left next to the woodstove in the marital home. She described the pictures as drawings of her posterior with a target painted on it that had been shot. (Plaintiff's Exhibits 8 and 9).

18. Husband testified that he did not intend to harass wife with Exhibits 8 and 9, which he agreed could have "been her rear end". He explained he was taking out his frustrations instead of doing something rash. He was frustrated because he wanted to talk to wife and couldn't as a result of having been served with notices that the home might be taken.

FIRST NATIONAL BANK AND TRUST CO.



13 West Main Street P.O. Box 391
Waynesboro, Pennsylvania 17268

(717) 762-8161

**TRUST SERVICES
COMPETENT AND COMPLETE**



Member F. D. I. C.



Citizens

NATIONAL BANK OF SOUTHERN PENNSYLVANIA

(717) 597-2191
(717) 762-3121
(717) 263-8788

Located in

Greencastle - Waynesboro - State Line - Chambersburg
Member FDIC

LEGAL NOTICES, cont.

Green Township
Franklin County, PA 17201

All interested persons may file comments in favor of, or in protest of the application in writing, with the Department of Banking, Commonwealth of Pennsylvania, 333 Market Street, 16th Floor Harrisburg, Pennsylvania 17101-2290. All comments to be considered must be received by the Department not later than fifteen (15) calendar days after the date of publication of this notice.

Valley Bank & Trust Company
55 South Main Street
Chambersburg, PA 17201

6/15, 6/22/90

NOTICE OF FILING APPLICATION FOR A REMOTE SERVICE FACILITY (RSF) BRANCH

Notice is hereby given that Valley Bank & Trust Company on June 14, 1990 filed an application with the Federal Deposit Insurance Corporation for consent to install a remote service facility in Sheetz, Inc. located at 5234 Philadelphia Avenue, Chambersburg, Green Township, Franklin County, Pennsylvania.

Any person wishing to comment on this application may file his or her comments in writing with the Regional Director of the Federal Deposit Insurance Corporation at its regional office, 452 Fifth Avenue, New York, New York 10018 before processing of the application has been completed. Processing will be completed no earlier than the 15th day following either the date of the last required publication or the date of receipt of the application by the Federal Deposit Insurance Corporation, whichever is later. The non-confidential portion of the application file is available for inspection within one day following the request for such file. It may be inspected in the Corporation's regional office during regular business hours. Photocopies of information in the non-confidential portion of the application file will be made available upon request. A schedule of charges for such copies can be obtained from the regional office.

Valley Bank & Trust Company
55 South Main Street
Chambersburg, PA 17201

6/15, 6/22/90

LEGAL NOTICES, cont.

NOTICE

Notice is hereby given that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on the 18th day of May, 1990, for the purpose of obtaining a certificate of incorporation. The name of the corporation organized under the Commonwealth of Pennsylvania Business Corporation Law of 1988, Act of December 21, 1989 (P.L. 1444, No. 177), 15 Pa. C.S. Section 1101, et seq., is ANTRIM MACHINE, INC., 8230 Michaux Drive, Fayetteville, Pennsylvania 17222. The purpose for which the corporation has been organized is to engage in and to do any lawful acts concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

Timothy W. Misner, Esquire
ULLMAN, PAINTER AND MISNER
10 East Main Street
Waynesboro, PA 17268

6/15/90

Alcohol or Other Drugs
a Problem?
Help is Only a
Phone Call Away
LAWYERS
CONFIDENTIAL
HELP-LINE
1-800-472-1177
24 Hours
Confidential
A Service Provided by
Lawyers Concerned for
Lawyers of Pennsylvania, Inc.

19. On November 30, 1988, wife found husband in the marital home taking more of his personal property, when he had not been granted permission by wife or her attorney to enter. He stated that he had a right to be there despite the court order of September 22, 1988.

20. On December 3, 1988, wife found a "nasty" note from husband on the kitchen table.

21. Husband recalled leaving the note on the table after he found a tablet filled with wife's love letters.

22. On December 19, 1988, daughter found a Christmas card from husband under the telephone in her bedroom. He had not been granted permission to enter the house at that time.

23. On February 8, 1989, daughter found a valentine under the telephone in her bedroom and a letter in her dresser from father. He had been granted no permission to enter the home.

24. Husband testified that he left the cards for daughter at the home because it was the only way he could get them to her; others had been returned marked "Refused".

25. Mother testified that if father mailed cards to daughter with his name on the return address, rather than his girlfriend, she would have given them to daughter but she will not give the child mail from father's girlfriend.

26. On August 4, 1989, father left a freezer which he had taken the year before in front of the garage door. It did not work when he had taken it and it didn't work when he returned it.

27. On August 27, 1989, father told daughter that he had on August 25, 1989 cut roses from the flower beds on the marital property and geraniums from planting urns on the front porch of the property. Wife testified that he left branches of buds in the flower beds and in front of the garage door.

28. Father admitted that he had cut the roses and geraniums to place on family cemetery lots because he didn't see any reason why he should buy flowers when there were plenty of them at the marital home. He denied leaving any rose branches or buds in the driveway, but felt one may have fallen out of his bag.

29. On September 21, 1989, wife saw husband in the front and back yard of the home just walking around and looking around for 10 minutes.

30. On September 22, 1989, wife received a call from Sharon Swisher, a neighbor, reporting that husband had been at the home while she was at work. She found the back door, the basement door, and the sliding glass door unlocked and mud on the diningroom and kitchen floor.

31. In July of 1989, husband called wife and said he would inspect the home and she agreed to the inspection. Her parents were present and he did go through the entire house.

32. In August he again notified wife that he was going to inspect the home and she denied him the right because she was fearful of him coming

in. She never received any notice from her counsel of any scheduled visits or inspections by husband.

33. Wife has found the home "upset" but no damage done since July 1988. There have been personal papers and items disturbed and doors have been left unlocked.

34. Wife testified that husband has his own residence and there is no need for him to come to the marital home because he now has all of his personal property. She feels very nervous, has lost approximately 50 lbs., and has trouble sleeping due to the fact that she never knows what she will find when she returns home. She also feels that his conduct has affected daughter, who also becomes upset and anxious when they find husband has been in the home. She and daughter want to live there in peace

35. Wife is willing to have husband make regular inspections of the home on a quarterly or semi-annual basis, if they are arranged through proper channels.

36. Wife did sell some items that would be marital assets at a yard sale in the summer of 1989. She offered to split the proceeds of the sale with husband, if he would help her price the items and help at the sale. He declined.

37. Sharon Swisher, a next door neighbor, knows husband and has seen him walking around the marital home in the summer of 1989. She described the vehicle driven by husband as a brown station wagon with "U.S. Mail" on the side and an orange light on the top. She also saw the same vehicle stopped in front of the marital home at 2:00 a.m. in August 1989.

38. Husband denied that he ever drove by the home at 2:00 a.m.

39. Husband described this proceeding as nothing but a trumped-up charge to exclude him from the home. He feels very disquieted about it because he worked so long and so hard to build that house. It "tears me up inside - I can't live with it - it's always on my mind - it bothers me." Husband denied that he ever had attempted to harass wife and claimed that all he ever wanted was to maintain "a level of equality". He feels that he has gone to great lengths to avoid her. He has no present intention of moving back into the home but he wants to maintain access to it because it is as much his as wife's.

40. Husband has never prepared a list of personal property he considers to be his and delivered it to his attorney so that arrangements could be made for it to be given to him, and he has never made a request via his attorney for the opportunity to inspect the premises or make a list of personal property that he believes belongs to him individually.

41. Husband does not believe wife is capable of taking care of the house because he found that she had failed to take care of a downspout, which he repaired.

42. Husband does not feel a regular scheduled inspection for him would ensure satisfactory maintenance of the home because the premises

FIRST NATIONAL BANK AND TRUST CO.



13 West Main Street PO Box 391
Waynesboro, Pennsylvania 17268

(717) 762-8161

TRUST SERVICES
COMPETENT AND COMPLETE



Member F. D. I. C.



Citizens

NATIONAL BANK OF SOUTHERN PENNSYLVANIA

(717) 597-2191
(717) 762-3121
(717) 263-8788

Located in
Greencastle - Waynesboro - State Line - Chambersburg
Member FDIC

LEGAL NOTICES, cont.

rance Corporation, whichever is later. The non-confidential portion of the application file is available for inspection within one day following the request for such file. It may be inspected in the Corporation's regional office during regular business hours. Photocopies of information in the non-confidential portion of the application file will be made available upon request. A schedule of charges for such copies can be obtained from the regional office.

Valley Bank & Trust Company
55 South Main Street
Chambersburg, PA 17201

6/15, 6/22/90

Alcohol or Other Drugs
a Problem?
Help is Only a
Phone Call Away
LAWYERS
CONFIDENTIAL
HELP-LINE
1-800-472-1177
24 Hours
Confidential
A Service Provided by
Lawyers Concerned for
Lawyers of Pennsylvania, Inc.

would be fixed up for his inspections and wife couldn't anticipate things like possible damage from a strike from Hurricane Hugo.

43. Husband wants free and equal access to the marital property and not according to any scheduled inspection time to ensure adequate maintenance.

44. On his entries into the home, he has observed among other things that a discharge pump in the basement was malfunctioning, and that a 3/8" line was leaking. When he mentioned the latter to wife, she told him she was having a plumber come in. He could have made the repairs without cost to her.

45. Husband asserted that being in the home is in part a matter of principle with him and also is an inconvenience for him not to be able to go into the home when he wishes.

46. Husband testified that he left the home because he couldn't love wife and her ego, and had found another woman and when he was told to leave, he did. He now pays rent for another home and has lived there since approximately October 1987.

The Court has broad equitable powers conferred upon it pursuant to §401(c) of the Divorce Code, which provides:

"In all matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this act, and may grant such other relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved in or concerned with the disposition of the cause." *Laczkowski vs. Laczkowski*, 344 Pa. Super. 154, 162, 496 A.2d 56 (1985).

Moreover, §401(h) specifically states:

"The court may award to one, each, or both of the parties the right to live in the family home for reasonable periods of time." *Id.*

Laczkowski, held that a court has authority to temporarily award the marital residence, pending equitable distribution of marital property to a spouse having physical custody of a minor child. *Id.* at 154. They support this conclusion with §102 of the Divorce Code which provides:

A. The family is the basic unit in society and the protection and preservation of the family is of paramount public concern. Therefore it is hereby declared to be the policy of the Commonwealth of Pennsylvania to: (1) Make the law for legal dissolution of marriage effective for dealing with the realities of matrimonial experience.

(2) Encourage and effect reconciliation and settlement of differences between spouses, especially where children are involved.

(3) Give primary consideration to the welfare of the family rather than the vindication of private rights or the punishment of

matrimonial wrongs.

(4) Mitigate the harm to the spouses and their children caused by the legal dissolution of the marriage.

(5) Seek causes rather than symptoms of family disintegration and cooperate with and utilize the resources available to deal with family problems*Id.* at 162-163.

The court in *Alva vs. Alva*, 45 D&C 3d 86 (1986), took into consideration three primary factors:

1. The severity of the offending conduct.
2. The effect on the minor children.
3. The relative ability to obtain alternate accommodations. *Id.* at 91.

The husband's conduct in the present case consists of entering the house unannounced, at will and without prior arrangements with wife, stripping the bedclothes off the bed, removing cushions, removing and upsetting dresser drawers, and emptying a hall closet. In other words, creating a mess in the marital home. On another occasion when he found the locks on the home changed, he put glue in all the door locks and removed the deadbolts, he started to saw off a door knob. A second time, he removed the locks after the wife had replaced them, he also left drawings which described her posterior with a target painted on it that had been shot. The wife found a nasty note another time. At no time had husband asked for permission to enter the home. In fact, he refuses to set up visits to the house. The wife testified that she feels very nervous, has lost 50lbs., and has trouble sleeping due to the fact that she never knows what she will find when she returns home. The minor daughter of the couple has become upset and anxious when they find the husband has been in the home. The defendant is living in another home since approximately October 1987. He has no present intention of moving back into the home, he just wants to maintain access to it because it is as much his as his wife's.

It is clearly evident that the minor child should have the benefit of living in an environment of stability without the trauma and stress of the difficulties created by husband's unexpected and unannounced visits to the marital home.

In *Gaither vs. Gaither*, 44 D&C 3d 1 (1987), the facts were similar to those in the case at bar. In *Gaither*, defendant left the marital home to take up residence elsewhere. He then began making infrequent and sporadic visits to the marital home. He would come

FIRST NATIONAL BANK AND TRUST CO.



13 West Main Street P.O. Box 391
Waynesboro, Pennsylvania 17268

(717) 762-8161

**TRUST SERVICES
COMPETENT AND COMPLETE**



Member F. D. I. C.



Citizens

NATIONAL BANK OF SOUTHERN PENNSYLVANIA

(717) 597-2191
(717) 762-3121
(717) 263-8788

Located in

Greencastle - Waynesboro - State Line - Chambersburg
Member FDIC

BAR NEWS ITEM

PENNSYLVANIA DEPARTMENT OF REVENUE
REALTY TRANSFER TAX

1989 COMMON LEVEL RATIO
REAL ESTATE VALUATION FACTORS

The following real estate valuation factors are based on sales data compiled by the State Tax Equalization Board in 1989. These factors are the mathematical reciprocals of the actual common level ratio. For Pennsylvania Realty Transfer Tax purposes, these factors are applicable for documents accepted from July 1, 1990 to June 30, 1991. The date of acceptance of a document is rebuttably presumed to be its date of execution, that is, the date specified in the body of the document as the date of the instrument. 61 Pa Code § 91.102

COUNTY	COMMON LEVEL RATIO FACTOR	COUNTY	COMMON LEVEL RATIO FACTOR	COUNTY	COMMON LEVEL RATIO FACTOR
Adams	10.87	Delaware	30.30	Monroe	4.88
Allegheny	4.33	Elk	3.58	Montgomery	18.87
Armstrong	4.83	Erie	8.70	Montour	11.24
Beaver	1.81	Fayette	7.09	Northampton	12.35
Bedford	10.75	Forest	2.53	Northumberland	10.75
Berks	14.29	Franklin	11.11	Perry	8.26
Blair	5.92	**Fulton	4.00	*Philadelphia	3.47
Bradford	6.45	Greene	4.69	*Pike	2.05
Bucks	19.23	Huntingdon	3.42	Potter	5.41
Butler	5.32	Indiana	7.09	Schuylkill	5.56
Cambria	4.05	Jefferson	3.80	Snyder	11.63
Cameron	1.86	Juniata	6.45	Somerset	6.71
Carbon	11.76	Lackawanna	3.76	Sullivan	2.77
Centre	15.63	Lancaster	5.46	Susquehanna	8.06
Chester	16.13	Lawrence	4.05	**Tioga	2.00
Clarion	6.13	Lebanon	8.93	Union	6.58
Clearfield	3.56	Lehigh	8.62	Venango	4.03
Clinton	2.07	Luzerne	10.53	Warren	2.10
Columbia	14.08	Lycoming	1.48	Washington	3.92
Crawford	1.62	Mckean	4.85	Wayne	9.26
Cumberland	12.05	Mercer	6.02	Westmoreland	2.63
Dauphin	1.43	Mifflin	5.95	Wyoming	6.33
				York	1.18

*Adjusted by the Department of Revenue to reflect assessment ratio change effective January 1, 1990.

**Adjusted by the Department of Revenue to reflect assessment base change effective January 1, 1990.

IT:KRI(ck):24

EDITOR'S NOTE: This information is exactly as appears on a sheet handed to us by the Recorder of Deeds Office of Franklin County, Pennsylvania, within the past week. Check with Department of Revenue, for accuracy, in specific cases.

and go as he pleased, he would do what he pleased in the house. Defendant did not physically abuse the plaintiff but his presence in the home harrassed and annoyed her. Defendant refused to schedule visits to the home. In this case, husband left the marital home to go live with his girlfriend. He would come back to the marital home whenever he desired, and proceeded to harrass his wife and child. He refuses to schedule his visits to the home.

We are faced with a pendente lite situation, and thus the mental and emotional health and welfare of the wife and child should not be compromised by the ever present knowledge that defendant can move in, out, and about the marital home with impunity. *Gaither* at 1.

We are mindful that the exclusion of a spouse from the marital home during the pendency of a divorce proceeding is a harsh remedy that will not be awarded lightly. The need for such an award must be clearly evident in the facts of each case. We are primarily interested in the welfare of the child. The best interests of the minor child is that she remain in the marital home. It would be inimical to the best interest and welfare of the wife and the child to permit their lives, both emotionally and physically, to be traumatically invaded by defendant's unilateral decision to come and go in the marital home. The interests and welfare to the plaintiff and child will be best served by maintaining the status quo ante as initiated by the defendant himself. See *Lackowski* at 154; *Alva* at 86; *Gaither* at 1.

The common law has traditionally treated property rights as both unique and omnifarious, but in this instant case such rights must yield to the common law doctrine of parens partria, the goal of which is to provide the child with a stable and permanent home. *Lackowski* at 154. Husband cannot expect to be permitted to enter the marital home when he pleases, leave when he pleases, and do as he pleases when he is in the home. His sporadic, unannounced, annoying visits merely serve to disrupt the life of his wife and child, and it serves only to harrass them. He refuses to schedule visits to inspect the house to ensure that satisfactory maintenance of the home is kept. He wants free and equal access and not according to any scheduled inspection time. We conclude the husband should not be permitted to enter the marital home except on scheduled visits. Wife and child are entitled to exclusive, peaceful possession of the

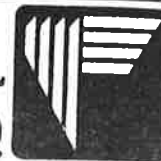
marital home without fear of being harrassed by defendant's unannounced visits and conduct.

DECREE

NOW, this 30th day of October, 1989, IT IS ORDERED AND DECREED THAT:

1. Exclusive possession of the parties' marital home located at 5951 Sampache Drive, Shippensburg, Franklin County, Pennsylvania is awarded to plaintiff, Bonnie L. Ommert, to be occupied and used as a home for herself and the parties' daughter, Kristy Nicole Ommert, born March 16, 1980, for a period of 12 months from this date or until the conclusion of the litigation concerning the equitable distribution of the marital property of the parties, whichever first occurs.
2. During the period of exclusive occupancy of the marital home, Bonne L. Ommert shall be responsible for the general maintenance and upkeep of the premises.
3. Robert E. Ommert, defendant, is enjoined from entering upon the real estate or into the marital home located at 5951 Sampache Drive, Shippensburg, Franklin County, Pennsylvania for a period of 12 months from this date, or until the conclusion of the litigation concerning the equitable distribution of the marital property of the parties, whichever first occurs; provided, however, the defendant may:
 - (a) Bi-monthly enter upon the property and into the marital home in the company of his attorney or another adult individual agreed upon in writing by counsel for the parties at a date and time also agreed upon by counsel for the parties for the sole purpose of inspecting the maintenance and upkeep of the home.
 - (b) Enter upon the said premises at a date and time agreed upon in writing by counsel for the sole purpose of receiving possession of personal property agreed upon in writing by the parties and their counsel.
4. The defendant, Robert E. Ommert, shall without delay via his counsel submit to counsel for plaintiff, Bonnie L. Ommert, a list of all personal property in the marital home which he contends belongs to him individually.

FIRST NATIONAL BANK AND TRUST CO.



13 West Main Street PO Box 391
Waynesboro, Pennsylvania 17268

(717) 762-8161

TRUST SERVICES
COMPETENT AND COMPLETE



Member F. D. I. C.



Citizens

NATIONAL BANK OF SOUTHERN PENNSYLVANIA

(717) 597-2191

(717) 762-3121

(717) 263-8788

Located in
Greencastle - Waynesboro - State Line - Chambersburg
Member FDIC

5. The plaintiff, Bonnie L. Ommert, shall submit to the master evidence of the costs of replacement of locks, dead bolts and a door knob if she seeks reimbursement for the same.

Costs and expenses of this proceeding to await the award of the master.

STIVER, ET AL. V. LEFEVRE, ET AL. (No. 2), C.P. Franklin County Branch, No. AD. 1988 — 193

Summary Judgment - Negligent Entrustment - Negligence per se

1. Where defendant left her car with the keys in the ignition and two friends in the car, the fact that one friend took the car without permission does not give rise to negligent entrustment.
2. Where defendant leaves a car with keys in the ignition she does not violate 75 Pa. CSA Section 3701 where two other people remain in the car and is not guilty of negligence per se.

Patrick J. Redding, Esquire, local counsel for plaintiff
Alan L. Carb, Esquire and Eric F. Solomon, Esquire, co-counsel for plaintiffs
Edward E. Knauss IV, Esquire, counsel for defendant Mallery
Karen Durkin, Esquire, counsel for defendants Mears
Steven V. Manbeck, Esquire, counsel for defendants Mears
Steven V. Manbeck, Esquire, and Andrew L. Winder, Esquire, co-counsel in Juniata County criminal action for defendant LeFevre

OPINION AND ORDER

WALKER, J, December 14, 1989:

STATEMENT OF FACTS

On June 16, 1986 at approximately 7:00 p.m., defendant, Jeffrey E. LeFevre, struck two girls who were riding their bicycles while he was driving a car owned by Lisa S. Mallery. Mr. LeFevre had been riding around and drinking with Lisa Mallery and two other friends the night before the accident.

Statements taken in deposition indicate that on June 15, 1986,

Lisa Mallery stopped her car and parked in a parking lot so that she could go across the street to talk to some friends. She claims that she left the key in the ignition so that her best friend, Sherry Radle, could listen to the radio if she wanted to. Ms. Radle and Mr. LeFevre remained in the car. Ms. Mallery also left her purse in the car.

A short time later, Ms. Radle asked Mr. LeFevre to drive her to a restaurant so that she could use the bathroom. He drove her to the restaurant, without the permission of Lisa Mallery, and left with the car after Sherry Radle got out. Mr. LeFevre kept the car that night, the next day, and was still in possession of the car the next night, when the accident in question occurred.

The plaintiffs filed suit against Lisa Mallery on a claim of negligent entrustment. Ms. Mallery filed a motion for summary judgment. This issue was briefed and argued and is now ripe for determination.

DISCUSSION

Summary judgment may be granted pursuant to Pennsylvania Rule of Civil Procedure 1035(b) if the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, indicate that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Greenspan v. Edrondale, Inc.*, 47 D.&C.3d 453 (Delaware County 1986).

When ruling on a motion for summary judgment, the court must view the record in the light most favorable to the nonmoving party, in this case, the plaintiffs. *Hower v. Whitmak Associates*, 371 Pa. Super. 443, 538 A.2d 524 (1988), alloc. denied 559 A.2d 527. The moving party bears the burden of proving that there is no genuine issue of material fact. *Hower, supra*.

The pertinent facts in the case before the court indicate that Lisa Mallery was driving around with Mr. LeFevre and Ms. Radle the night before the accident. Ms. Mallery parked her car to cross the street and talk to some friends. She left her purse in the car, and left the car keys in the ignition although the motor was off. Mr. LeFevre and Ms. Radle were still in the car. Ms. Mallery was aware that Mr. LeFevre had been drinking, as had she, but according to the