STEVE W. FEIGLES and	:	IN THE COURT OF COMMON PLEAS OF
DAWN L. FEIGLES,	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
vs.	:	NO. 99-00,516
	:	
WANDA P. LITTLE and ALL UNKNOWN	:	
PERSONS CLAIMING ANY RIGHT,	:	CIVIL ACTION - LAW
LIEN, TITLE OR INTEREST IN THE	:	
WITHIN DESCRIBED REAL ESTATE,	:	DEFENDANT'S MOTION FOR
Defendants	:	RECONSIDERATION

Date: September 21, 2000

OPINION AND ORDER

Before the Court is the Motion of Defendant Wanda P. Little, filed on August 2, 2000, asking this Court to reconsider its Order of June 30, 2000, which was a non-jury trial adjudication awarding Plaintiffs title by adverse possession to a plot of ground adjacent to the parties' residences in Muncy Creek Township.[1] The Order described the land awarded to Plaintiffs by boundaries that were identified at a site view and through the testimony. The Court also established the division line between the residences of Plaintiffs and Defendant in accordance with the exhibits introduced at trial and a stipulation entered into by the parties.

[1] The entry of the Court's Adjudication and Order followed a non-jury trial held May 3 and 4, 2000 and the Court's site view of the property conducted on May 8, 2000. The Adjudication Order of June 30, 2000 was docketed on July 3, 2000. The Court file papers do not reflect a docketing file stamp for this Reconsideration Motion, however, it is clear it was filed on August 2, 2000 concurrently with a Notice of Appeal and a Petition for Leave to Proceed *In Forma Pauperis* on Appeal. Plaintiffs responded by filing a Motion to Dismiss the Defendant's Motion for Reconsideration on August 4, 2000. Plaintiffs' Motion to Dismiss was based upon the Court being without jurisdiction because the Notice to Appeal had been filed. At argument the Court determined and Plaintiffs conceded that the Court did have motion to entertain Defendant's Motion for Reconsideration, particularly in view of this Court's Order of August 14, 2000, which through a Rule to Show Cause directed that the notice of Appeal would be rendered inoperative until a final determination was made by the Court pursuant to Pa.R.A.P. 1701. Thereafter argument was held on August 21, 2000.

Overall, the Motion for Reconsideration asks this Court to reverse itself concerning the claim of adverse possession having been sufficiently established by the evidence. This the Court declines to do for the reasons set forth in the discussion portion of our June 30, 2000 Opinion on the factual issues which were resolved in favor of Plaintiff.

In addition, the Motion for Reconsideration also asserts that this Court's judgment granting Plaintiffs adverse possession of any land should be reversed because the parties stipulated the Defendant had paid real estate taxes on the entire property since 1960 and the Court found that Plaintiffs had not paid real estate taxes on the land awarded to them in adverse possession. *See*, Motion for Reconsideration, August 2, 2000, paragraphs 14-16. In support of this Motion Defendant argues that as a prerequisite to acquisition of title by adverse possession there "should be" a payment of taxes by the claimant. ***Id***., at paragraph 16. Defendant has cited ***Snook v. Oburn***, 15 D.&C.3d 364, (Snyder Co.C.P. 1979) in support of this argument. ***Snook***, however, to the contrary, makes it clear that this principle can only be asserted against Plaintiffs if they had been titled owners to the tract in question and had refused to meet their duty to pay taxes at the same time the adverse claimant paid taxes. Here, Plaintiffs Feigles were not titleholders. Defendant cannot point to any caselaw or statute which supports her assertion that solely by payment of taxes one aspect of ownership the title holder of land can defeat a claim of adverse possession. If this were so there would seldom ever be a successful claim of title through adverse possession.

Instead, title by adverse possession must be granted to a plaintiff who demonstrates that for the requisite number of years, twenty-one or greater, they have possessed the tract of land in question in a way that is visible, notorious, distinct, exclusive and hostile to the defendants. *See inter alia* ***Brennan v. Manchester Crossings, Inc.***, 708 A.2d 815 (Pa. Super. 1998). Certainly one demonstrable fact of hostility is the taking of possession of land someone else pays taxes upon.

The Motion for Reconsideration also raises three additional specific points of error. First, that this Court should also have given the Defendant a right-of-way across the tract of land awarded to Plaintiffs because the failure to do so landlocked a portion of Defendant's ground east of the property awarded to Plaintiffs. Second, that the Court's use of monuments existing on the land to describe the land awarded to Plaintiffs by adverse possession was inappropriate; rather than referring to visible monuments observed at site view and as described in the testimony, Defendant argues the Court should require Plaintiffs obtain and file of record a survey describing the tract of ground which the Court awarded to Plaintiffs. Thirdly, the Court's Opinion was based upon an inappropriate Court finding as expressed in its discussion portion of the Opinion that vehicles shown in the photograph, Plaintiffs' Exhibit No. 12, belonged to Plaintiffs when it, in fact, the un-contradicted testimony at trial was that the vehicles displayed in the photograph belonged to the tenants of Defendant who had permission to park them in the area in question from Defendant.

The Landlocked Remaining Grounds of Defendant.

Plaintiffs' Complaint had initially sought to establish an adverse possession claim to a tract of ground, which measured approximately sixty feet in depth along its eastern and western boundaries and had a width of approximately 160 feet on the north and 190 feet on the south. This Court's verdict gave Plaintiffs title to a rectangular tract consisting of approximately two-thirds of that area, lying to the western portion thereof. As a result Defendant retained title to a tract of ground lying along the southern and eastern sides of the land awarded to Plaintiffs. The Defendant retained land along the southern boundary of the land awarded to Plaintiffs consists mostly of a steep bank, not passable by vehicle. This bank connects the main large residential lot of Defendant on the west to the Defendant's retained vacant rectangular-shaped piece of ground (approximately 80 feet by 60 feet) on the east. Defendant's Motion for Reconsideration asserts that this Court was in error for not giving Defendant a right-of-way over the land awarded the Plaintiffs so Defendant could more easily travel from her residential lot on the west to the small piece of ground on the east of the land awarded to Plaintiffs.

This request of Defendant must also be denied. In the first instance, if the Defendant was to be entitled to such a right-of-way under the law it would have meant that she would have typically crossed or used a portion of the lands awarded to Plaintiffs in such manner as to be inconsistent with this Court's holding that Plaintiffs had established title to the tract through exclusive and hostile possession. Secondly, there is no precedent in law cited to this Court or which this Court has been able to ascertain on its own which would establish an implied easement to a tract of ground severed through adverse

possession as opposed to the severing of a tract by conveyance. Severance of tracts by conveyance may result in an implied easement being established over one tract to reach the other tract. *See* generally, LADNER ON CONVEYANCING IN PENNSYLVANIA, §11.02(d), 4th Ed. 1979. However, the doctrine of implied easements requires an obvious and continuous use of the easement area or the otherwise evident intent of the parties to create such easement. *See*, ***Mann-Hoff v. Boyer***, 604 A.2d 703 (Pa.Super. 1990). The lack of such use and Plaintiffs' hostile intent to defeat Defendant's interest in the tract bar the creation of any such easement in Defendant's favor. In addition, Defendant's claim that an easement by necessity exists cannot be upheld because such easements are also based upon an underlying conveyance. *See*, ***Borttnor v. Allegheny County***, 332 Pa. 156, 2 A.2d 715 (1938). To create such an easement under would also be entirely inconsistent with our award of title to the tract to Plaintiffs by virtue of their adverse possession.

Although this Court is certainly sympathetic to the principle that landlocked pieces of ground should not be established, the ground is not actually landlocked. Further, if Defendant's means of access is not sufficient, Defendant is not without a remedy as she can seek to have an appropriate easement opened through exercise of a private condemnation action. *See* 36 P.S. §§2131 et seq.

Finally, this Court is not absolutely convinced that the tract of ground Defendant asserts she owns and which is now landlocked, in fact, is owned by Defendant. This Court in its Finding of Fact No. 6 found the land in dispute was part of Tax Parcel No. 40-02-616 entirely assessed in the name of Defendant; also in Finding of Fact No. 20 that Defendant's deed and the deeds in her chain of title did not

include a metes and bounds description of any portion of the disputed land; and, further, that the deed description of Defendant's property was described by the naming of adjoining owners including on the east lands of Figles (*sic)*. *See* Findings of Fact 6, 7, 20, 21, Adjudication of June 30, 2000. Although the parties did stipulate that Defendant was the record title holder of the disputed land taking in the entire tax parcel (*see* Finding of Fact 22, *supra*) this Court has found little in the records made available to it through the course of the trial to suggest that in fact, that Defendant's deed is sufficient to establish her as the record title holder especially as would apply to other adjoining owners of the easternmost portion of the disputed land. In fact, this Court recalls that there was testimony in the case to the effect that Defendant had gone to the taxing authorities and asked to have the lands in question added to her property on the tax rolls in order to come up with a sufficient quantity of acreage so as to give her some advantages in seeking zoning permits based on total lot size. In any event, there is nothing in the law or the facts of this case, which would entitle Defendant to retain a right-of-way over the land awarded to Plaintiffs through adverse possession.

Description of Land by Use of Monuments

This Court described the land awarded to Plaintiffs based upon the evidence obtained through the testimony and site view. Once the Court determined exactly what land Plaintiffs were entitled to through adverse possession it became necessary to appropriately describe that land in the Order.[2] In

[2] The Order of June 30, 2000, in paragraph 1, at page 21, provided as follows:

> Plaintiffs Feigles are the owners in fee simple by adverse possession of all that certain tract of land in the Township of Muncy Creek, Lycoming County, Pennsylvania, bounded as follows: On the north – the Feigles Property, on the south – by a line running easterly from the cherry stump to the piece of concrete and continuing easterly along the bottom of the bank to a point where the division line between Feigles and Turner extended southerly would meet the bottom of the bank (this point is

doing so this Court used on the north, a combination of references including the adjoining owner; on the south, a line established between various monuments presently on the premises; on the east, the extension of a surveyed and recognized division line between two properties; on the west, and the use of a part of a survey description and set survey pins. Defendant's Motion for Reconsideration asserts in paragraphs 17 and 18 that the use of monuments to describe the southern line of the property was in error and further error for the Court to fail to direct Plaintiffs to provide a survey and a metes and bounds description with specific courses and distances based upon an appropriate survey; further, Defendant now asserts the Court should direct the Plaintiffs to pay all expenses in connection with providing such description and the filing of the survey. Defendant does not cite any case or statutory authority for this position. This Court is aware, as is counsel for each of the parties, that there are three common methods used to describe property, particularly property that is irregular in shape. LADNER states as follows: "there are three such methods, used: (1) by courses and distances, (2) by monuments, and (3) by adjoiners. Usually all three methods are combined so that one serves as a check on others." LADNER, *supra*, §904(e) at p. 13. LADNER further observes that it is true that the use of the three methods combined sometimes results in conflicts and then states the well-recognized Pennsylvania principal concerning how such conflicts are to be resolved as follows:

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approximately 2 feet north of a small 4-foot tall pine tree); on the east – by the division line of the Feigles and Turner properties extended southerly to the bottom of the bank; on the west – by the western line of the disputed land, being a line starting at the northwest corner of the northern alley, then proceeding along the western end line of the northern alley, south 14°39'50" east, a distance of 20.00 feet to the southwest corner of the northern alley and then proceeding southerly in a line to the northwest corner of the southern alley (each corner being marked by a #4 rebar on the English survey, Defendant's Exhibit #1); all as depicted on the survey of Malcolm R. English, L. S., dated January 22, 1998.

> In general, permanent monuments, such as a run, a creek or a township road will prevail over courses and distances when there is a conflict. This rule is very ancient. Monuments likewise prevail over calls for adjoiners, which, however, prevail over inconsistent courses and distances. . . . The monuments must be certain as to existence and location in order to control. If there are doubtful, resort will be had to courses and distances although parole evidence is admissible to show the existence of the monuments.

Id., at p. 14.

Accordingly, this Court using the evidence available to it established a sufficient legally effective description of the property awarded to Plaintiffs utilizing a combination of the recognized ways of establishing a description and did so being as specific as the evidence and available information would allow. Certainly, if the parties had reached a settlement of their differences, it may have been very preferable for them to have agreed upon having a survey performed, pins appropriately set, more permanent monuments erected at the site of the pins and the survey recorded. Unfortunately, the parties did not so agree. It may be that this Court in the exercise of its equitable powers has the authority to direct that such be done, especially if this Court could not otherwise appropriately ascertain a manner of describing the property sufficient for the Court to enter an adjudication and order. Where, however, this Court is able to effectively enter an adjudication in this type of case it should refrain from unnecessary mandates, which would require the litigants, especially the verdict winner, to incur a significant added expense. The Court would merely observe at this point that there is nothing which prevents either of the parties, acting individually or jointly, from preparing and filing of record an appropriate survey of their respective properties as Defendant suggests.

Photograph – Plaintiffs' Exhibit No. 12.

As Defendant sets forth in its Motion for Reconsideration the Court in discussing the photograph identified as Plaintiffs' Exhibit 12, in its Adjudication of June 30, 2000 stated as follows:

> Plaintiff's Exhibit #12, although taken at a poor angle, supports this Court's finding that Feigles parked cars in an area that would generally be east of the line running from the garage to the mobile home on the Little property (see Defendant's Exhibit #1), but that this area corresponded to a piece of ground that would have been west of the west end of the unopened northern alley.

Id., at page 3. At argument on the Motion for Reconsideration this Court expressed to counsel, and both counsel agreed that this Court made an error in stating that Feigles had parked cars in the area. There is no doubt the testimony clearly showed that it was the Defendant's tenants who had parked the cars in that area and that it was the Defendant's tenant's cars, which appeared in the photograph, Plaintiffs' Exhibit No. 12. In preparation of its opinion this Court mistakenly wrote "Feigles" instead of "Defendants tenants." This misstatement and point of discussion did not impact the Court's determination. The point made in the discussion of photograph Exhibit 12 was that although cars were parked in a specific area, the area in which the cars were parked as shown in the exhibit was west of the land which was awarded to Plaintiffs through adverse possession. Hence, the Defendant's contention they parked cars in the area claimed by Plaintiffs could not be substantiated by the evidence of using the specific location shown in the photograph for parking purposes.

Accordingly, the following Order is entered.

O R D E R

The Motion for Reconsideration filed by Defendant is DENIED. This Court's Adjudication and Order of July 3, 2000, is hereby reinstated, except, however, the reference on page 15 of the Adjudication to "Feigles parked cars" in line 3 of that page is hereby amended to read "Defendant's Tenants' parked cars."

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator
Carl E. Barlett, Esquire
J. Howard Langdon, Esquire
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)