

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,	:	
Defendants	:	ACTION TO QUIET TITLE

**ADJUDICATION and ORDER**

**Background and Procedural History**

The filing of a Complaint commenced this Action to Quiet Title on April 5, 1999. Plaintiffs effected service on Defendant Wanda P. Little through personal service on April 13, 1999. Defendant Little filed an Answer, New Matter and Counterclaim on May 21, 1999. Plaintiffs, in addition to naming Wanda P. Little as a known Defendant, asserted a claim against all unknown persons claiming any right, lien, title or interest in the real estate described in the Complaint. However, it does not appear that Plaintiffs effected service upon these persons by publication or any other means. Accordingly, this Adjudication and Order will determine the matter with regard to Plaintiffs and Defendant Little only; together they are sometimes referred to as the “parties.”

The Complaint seeks to quiet title to a piece of property described in Exhibit A of the Complaint as situate in Muncy Creek Township, Lycoming County, Pennsylvania and generally

as being a parcel approximately 106 feet wide and approximately 60 feet deep, located adjacent to the southern boundary of Plaintiffs' property, which property is designated as Tax Parcels 40-02-614 and 40-01-615. See Complaint, paragraphs 4 and 7; also, Complaint Exhibit "A." Plaintiffs assert title to this tract of land through adverse possession.

Defendant Little is the only Defendant who has filed an appearance in this case and is the only defendant to appear to contest the Plaintiffs' claim. Defendant Little asserts in the pleadings that she owned the land claimed adversely by Plaintiffs based upon the deeds in her chain of title. Defendant Little denies that Plaintiffs had exercised adverse possession, to the exclusion of Defendant Little, to the property claimed by Plaintiffs; instead Defendant Little claims that the length of adverse possession was not sufficiently long nor adverse nor hostile to Defendant Little. See Answer, paragraph 9. Moreover, Defendant Little avers that it is she, not Plaintiffs, who has been in continuous, open, notorious, hostile and adverse possession of the disputed area since March 21, 1960. *Ibid.*; see also paragraphs 16, 21.

The case proceeded to a non-jury trial that was held on May 3-4, 2000. At the request of the parties, upon completion of testimony the Court made a site view of the property, which was conducted on May 8, 2000 in the presence of counsel of Plaintiffs and Defendant Little. In consideration of the testimony received by the Court and the Court's site view, the Court enters the following adjudication.

**Findings of Fact**

1. The Plaintiffs, Steve W. Feigles and Dawn L. Feigles, his wife, (“Feigles”) are adult individuals who reside at 1832 Egli Road, Muncy, Lycoming County, Pennsylvania 17756.

2. The Defendant, Wanda P. Little, (“Little”) is an adult individual who resides at 206 Carpenter Street, Muncy, Lycoming County, Pennsylvania 17756.

3. Feigles are the fee simple owners to all those two certain pieces, parcels and lots of land situate in Muncy Creek Township, Lycoming County, Pennsylvania as described in Lycoming County Deed Book 655, Page 20 and as described in Lycoming County Deed Book 687, Page 221 (“Feigles Property”).

4. Feigles Property is known for tax purposes, as Lycoming County Tax Parcel Numbers 40-2-614 and 40-2-615. See Defendant’s Exhibit 2. The chains of title to Feigles’ Property are set forth in Defendant’s Exhibits 4 and 5. Parcel #614 has a single-family residence erected on it. Parcel #615 has a building formerly used as a milk plant erected near the southwest corner sometimes referred to as the Feigles Dairy.

5. Feigles do not now reside on their property but rent the same to residential tenants.

6. Little is the owner of property also situate on the south side of Carpenter Street, Muncy Creek Township, Lycoming County, Pennsylvania and which adjoins the western boundary of Feigles Property, as described in Lycoming County Deed Book 1232 at Page 158, the chain of title of which is set forth in Defendant’s Exhibit 3 (“Little Property”). The Little Property

for tax purposes is part of the parcel known as Tax Parcel Number 40-02-616 in the Office of the Lycoming County Tax Assessor. See Defendant's Exhibit 2. That entire tax parcel is assessed in the name of Little.

7. The Little Property has erected on it a 2-story frame home, Little's residence, a commercial auto repair garage and a mobile home used for residential purposes. Little's sister and brother-in-law presently occupy the mobile home.

8. The land in dispute ("disputed land") is a rectangular shaped parcel of vacant land bounded on the north by the Feigles Property and on the west by a portion of Little's Property.

9. The disputed land is identified on the survey of Malcolm R. English, L.S., dated January 22, 1998, Defendant's Exhibit #1, (sometimes "English survey"). The disputed land includes on the north a 20 foot wide public alley (the "northern alley") and a 20 foot wide public alley on the south (the "southern alley"). The disputed land area between these alleys (marked at trial with an orange hatch mark), has a width of 49.39 feet exclusive of the alley and measures 176.52 along the northern alley and 187.79 feet along the southern alley.

10. The northern alley adjoins the southern line of the Feigles Property.

11. Defendant's Exhibit 2 is a copy of the Lycoming County Tax Parcel Map, showing the parcels adjoining or near to the disputed land. It has remained the same since at least 1960. The map correctly identifies the parcels as they are now assessed and have been assessed.

12. The lot known as Tax Parcel 40-2-613, adjoining Feigles on the east, also fronting on Carpenter Street, is a residential lot owned by Roberta Turner is referred to as the “Turner Property.”

13. The Turner property in turn is bounded on the east by lands possessed by Lyons Auto Body (“Lyons Property”) which extend southerly across the northern alley to at least the north line of the southern alley. The Lyons Property includes Tax Parcels 612, 611 and 610 and also parts of 604. See Defendant’s Exhibit 2. The division line between Turner and Lyons extending southerly to the southern alley denotes the eastern boundary of the disputed land. The parties make no claim to the Lyons property.

14. The deeds of Feigles and Turner and the deeds for lots fronting on Fairground Street lying to the south of the disputed land, tax parcels 40-2-600, 40-2-601 and 40-2-602, all indicate that these properties are in part bounded by unopened public alleys. See Defendant’s Exhibits 12a, 12b, 12c and 12d.

15. The lands to the south of the disputed land (lying south of the southern alley) are also residential lots, which front on Fairground Street, the owners now or formerly being as follows: Tax Parcel 600 – Kathy Pentz (“Pentz Property”); Tax Parcel 601 – Hannah Long (“Long Property”); Tax Parcel 602 – Jeffrey Taylor (“Taylor Property”); Tax Parcel 604 – Scott and Carla Myers (“Myers Property”).

16. The English survey depicts a 20-foot wide public alley extending northerly from Fairground Street to the southern alley between the Little Property on the west and the Pentz property on the east (the “western alley”).

17. The parties have stipulated the unopened alleys as indicated on the English survey, Defendant’s Exhibit 1, are to be 20 feet in width and also are to be considered as having been vacated by the Township of Muncy Creek.

18. The northern alley area lying to the south of Feigles Property and the entire western alley have not been used by the public.

19. Little asserts no claim to the land north of the centerline of the northern alley.

20. Neither Feigles’ deeds nor Little’s deed and the deeds in their chains of title include a metes and bounds description of any portion of the disputed land.

21. The deed description of Little’s Property is described by naming adjoining owners, including “on the east by lands now or formerly of Figles (*sic*).”

22. The parties have stipulated Little is the record titleholder of the disputed land between the northern alley and southern alley on the English survey by virtue of her deed and chain of title, Defendant’s Exhibit 3.

23. The parties also agree that legal descriptions of the properties of Feigles and Little overlap along the west line of Feigles Property, as indicated on the English survey,

Defendant's Exhibit 1. Feigles, by stipulation entered at the commencement of the trial, has conceded ownership of the overlap area to Little.

24. In accordance with the written stipulation of the parties, the boundary line between the parties in the area of the overlap has been established so that the western line of land of Feigles shall be as indicated on the English survey, Defendant's Exhibit #1, commencing at an existing iron pin in the southern line of Carpenter Street and extending South 8°22'00" East along the center of an existing ledge, 177.17 feet to a #4 rebar. (The written stipulation originally submitted erroneously referred to this line as being the "eastern line of land of plaintiff.")

25. The western line of the disputed land is hereby found to be and established as 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). This line will be referred to as the western line of the disputed land. All lands to the west thereof are found to be the property of Little. This western line of the disputed land is a very close approximation of a southerly extension of the agreed upon eastern line of Little as established by the stipulation of the parties and except for the 20 foot portion that is the western end of the northern alley is virtually parallel to the agreed upon Little line. This western line also closely coincides with being a northerly extension of the western line of the western alley. The western line hereby established also provides a virtually straight line as the eastern boundary line of the

entire Little tract, with the notable exception being the 20 feet section of that line which traverses along the western end of the northern alley.

26. Little constructed the garage as indicated on the English survey in 1972. The eastern wall of the garage extends into the area of the overlap conceded to Little and is basically parallel with, and 2 feet west of, the western line of Feigles established by the stipulation. To the south of this garage there is an open flat area in which Little also constructed a mobile home pad in 1972. This construction was taking place in June of 1972 when a flood occurred. See Defendant's Exhibits 11a-d; Plaintiff's Exhibits 15 and 16. The original mobile home placed there in 1972 was removed in 1981. The present mobile home was placed there in 1991 somewhat south and east of the original mobile home. The distance between the garage and the mobile home is approximately 50 feet and consists of a grassy area used as a yard and for parking.

27. Little's use of the land area south of the garage has been consistent with assuming a right to use the land lying to the west of a line that would, by natural sight and observation by a person on the land appear to constitute a straight line proceeding southerly from Carpenter Street to the steep bank in the area of the intersection of the southern and westerly alleys and beyond that point southerly proceeding up that bank as far as can easily be observed. This observable straight line coincides with the western line of the disputed land established by these findings. Little's use of this area has all occurred west of the western line of the disputed area.

28. The western line of the disputed land is also a line that is consistent with existing physical features as being a natural dividing line. This line also closely approximates a

now-removed brush line or small tree line that appears to have existed before the 1972 construction by Little as depicted in Defendant's Exhibits 11-a-d, Plaintiff's Exhibits 15, 16.

29. A stump of a large cherry tree which fell in 1997 as a result of a storm exists on the Little Property, the east side of the cherry stump being approximately one foot west of the western line of the disputed land. (See, Defendant's Exhibit #6-d and Plaintiffs' Exhibit 8.)

30. Little has possessed the land west of the western line of the disputed land, from opposite the northern alley to the cherry stump mowing it and utilizing it for parking since at least 1973.

31. Little did not mow or use for parking any area east of the western line of the disputed land.

32. At trial, the cherry stump location was approximated by a red circle on Defendant's Exhibit #1 and is approximately 25 feet south of the southwest corner of the northern alley as measured along the western line of the disputed land. It is also approximately one-half way up the bank, proceeding southerly across the disputed land toward the Pentz Property.

33. Feigles possessed, cleared, mowed and exercised dominion over the area of the disputed land in its western portion extending from the south line of the Feigles Dairy parcel southerly towards the Pentz Property to a point one-half way up the bank, which corresponds to a point marked by the cherry stump. This possession by Feigles commenced at least in 1974 and continued through at least 1998.

34. The disputed land from the western line thereof proceeding to a point in line with a northerly extension of the east line of the western alley for a width including the northern alley and extending southerly to a point opposite the cherry stump, has been mowed and used by Feigles, adversely to all others including Little, for a period of in excess of 21 years commencing no later than 1974 and continuing through at least 1998.

35. The northern part of the disputed land is comparably flat and is basically level with the Feigles Property and mobile home area of the Little Property. The southern portion of the disputed land is a steep bank sloping upwards toward the rear of the lots that front on Fairground Street. (See Defendant's Exhibit #6-c, 6-1, 6-o, 6-r.)

36. A large piece of concrete is at the bottom of the steep bank approximately in line with the division line between the two Feigles' lots (the residence and dairy) if that line would be extended southerly to the bottom of the bank. This piece of concrete has a hole in it as if it encased a telephone pole; the concrete has bricks in it. The concrete is depicted in Defendant's Exhibit #6r and several other exhibits.

37. The surface terrain of the disputed land to the east of the northerly extension of the east line of the western alley is varied; part cannot be mowed with a lawn mower or garden tractor, and the brush and weeds must be cut by hand-held devices; other parts can be mowed in usual fashion.

38. The north line of the southern alley runs along the top of the steep bank from east to west but near the west end, to the rear of the Pentz Property, the steep bank curves southerly

into the southern alley. The #4 rebar on the English survey that marks the northwest corner of the southern alley is approximately 15' north of the top of the bank and about  $\frac{3}{4}$  of the way up the steep bank. (See Defendant's Exhibit #6-e.)

39. At the east end of the disputed land the distance between the south line of the northern alley and the bottom of the steep bank is approximately 25-30 feet. (See Plaintiff's Exhibit 10a and 13 and Defendant's Exhibits #6-l, 6-r and 6-u.) This area widens as the bottom of the bank gradually angles southerly as it progresses toward the western line of the disputed area.

40. Parts of the disputed land have been littered with broken glass, ashes, bottles and tires and other debris, commencing as early as the 1920's and continuing thereafter until the 1960's or perhaps even to 1973. Except for two partially buried tires (see Defendant's Exhibit 6-m) and a piece of round concrete (see Defendant's Exhibit 6-r) debris is not now readily apparent. The tires and piece of concrete are in the southern portion of the disputed land near the bottom of the steep bank, which form the south part of the disputed land.

41. A pine tree approximately four feet high is growing at a point located two feet north of the bottom of the bank and in line with the division line between Feigles and Turner, if that line would be extended southerly to the bottom of the bank. (See Plaintiff's Exhibit 13, Defendant's Exhibit #6-l, 6-r and 6-u). That area can be mowed conventionally.

42. The area south of Feigles Property to the bottom of the bank between the division line with Turner extended southerly and the point marked by the piece of concrete has been used adversely by Feigles to all persons, since at least 1974 through 1998.

43. Proceeding westerly from the piece of concrete along the bottom of the bank the terrain of the disputed land becomes slightly humped and uneven but much of it can be mowed by a conventional mower, at least to a point 10 to 15 feet south of the northern alley. A small area immediately west of the concrete stump extending approximately 10 to 15 feet north from the bottom of the bank appears cleared, but the terrain would make conventional mowing difficult. See Defendant's Exhibit #6-n.

44. A line extended westerly from the piece of concrete to the cherry stump marks the southern extent of the part of the disputed land that appears from both inspection and the testimony to have been cleared and regularly used by Feigles. (See Defendant's Exhibits 6-n, 6-s and 10-b.)

45. Following a line from the piece of concrete which is at the bottom of the steep bank, westerly to the cherry stump, the bottom of the steep bank gradually progresses north of said line; the point on this line where the bottom of the steep bank intersects it is approximately in line with the eastern line of the western alley extending northerly. The cherry stump (as found previously) is approximately one-half way up the steep bank.

46. From a point in line with the eastern line of Pentz extended northerly, see Defendant's Exhibit #1, to the western line of the disputed land the terrain is level enough to be mowed conventionally, at least to the bottom of the bank. Westerly from a point in line with the eastern line of the western alley, extended northerly, the disputed land can be mowed conventionally up the bank to the Pentz Property. See Defendant's Exhibit #6-d.

47. Feigles has exercised adverse possession to the area of the disputed land south of the Feigles property 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 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 extend southerly to the bottom of the bank; **on the west** – by the western line of the disputed land, heretofore described in finding number 25 (found to be a line running south from the northwest corner of the northern alley to the southwest corner thereof and continuing southerly to the northwest corner of the southern alley). This area of the disputed land is hereafter referred to as the “Feigles claim area.”.

48. Feigles purchased the house and lot that is the eastern part of their property in 1973 and occupied the same as their place of residence until 1999. They acquired the Feigles Dairy lot, the western portion of their property, in 1974 and thereafter used both lots as one residential parcel.

49. From a period beginning not later than 1974 and continuing through at least 1998, Plaintiffs made use of Feigles’ claim area portion of the disputed land and/or conducted the following activities thereon:

- a. Cleared and removed junk and debris.
- b. Cleared brush and weeds.

- c. Filled in low areas and planted grass.
- d. Mowed grass.
- e. Raked leaves.
- f. Planted row of pine trees.
- g. Stored truck cap, wood and remodeling debris.
- h. Burned debris from remodeling house.
- i. Maintained two dog pens.
- j. Maintained picnic table in area.
- k. Had family picnics in area.
- l. Planted raspberry plants.
- m. Maintained fire/burning ring.
- n. Children played in the area.

50. Plaintiffs for a period in excess of twenty-one (21) years, maintained the Feigles claim area portion of the disputed land beyond their property boundary, principally as an extension of their lawn or yard back to the bottom of the bank.

51. Plaintiffs have been in continuous, open, notorious, exclusive, hostile and adverse possession of the Feigles claim area portion of the disputed land for a period of time in excess of twenty-one (21) consecutive years, during which time the Plaintiffs have claimed the disputed land as and for their own property.

52. Plaintiffs' use of the Feigles claim area portion of disputed land was by actual use and possession, was visible, notorious and hostile.

53. Defendant did not give Plaintiffs, as adverse possessors, permission to use any portion of the disputed land.

54. Little has paid the real estate taxes on Lycoming County Parcel Number 40-2-616 since March 21, 1960. This parcel includes all the disputed land.

55. Feigles have not paid real estate taxes on the land now awarded to them by adverse possession.

### **Discussion**

This Court's findings of fact are based upon the testimony found credible by the Court and also this Court's visual inspection of the property at the time the site view was conducted at the end of the trial. The site view made it readily apparent that the western portion of the disputed land specifically behind the Feigles milk plant property and extending up the hill towards Pentz property has been maintained for a long time as a yard area and is readily mowed and maintained in that way. The Court accepts that Feigles moved into and exercised dominion over this property commencing with their acquisition of the property in 1973, and progressively expanded that possession and use thereafter. The first that Little made any interference with Plaintiff's use of the property would have occurred after trees were blown down. In 1997, a cherry tree on the Little property blew down. For a while, the resulting logs from the tree laid on the Feigles cleared area and eventually were removed by Little. By that time, Feigles' adverse

possession had already been acquired. Plaintiff's Exhibits #6 and #10, showing the area behind the milk plant property (that is, to its south), fairly substantiate the testimony of Feigles that the area had been cleared of brush and trees. 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. This parking area did not encroach upon the northern alley. This area was also verifiable upon the Court's site view. The site view permitted this Court to visualize the existing iron pin and set number 4 rebar, depicted on Defendant's Exhibit #1, marking the northwest corner of the northern alley, as well as the set number for rebar at the southwest corner of the northern alley. Those pins are also visible in Defendant's Exhibits #6-c, 6-b, 6-a. They are particularly noticeable in Defendant's Exhibit #6-d. The Court also finds that the terrain is such that the area where the truck is parked on photograph 6-d appears to have been excavated out in relatively recent times and corresponds with the excavation work done to place the mobile home pad in 1972 or in 1991. That excavation work would all be west of the line running from the southwest end of the northern alley (the orange-marked stake by the bush in Defendant's Exhibit #6-d) to the cherry stump which is shown in Plaintiff's Exhibit #8 and which stump is also ascertainable in Exhibit #6-d above and to the rear of the parked vehicle.

It is noted in the findings of fact that this cherry stump is on Little's property and is approximately one foot west of the western line of the disputed land. That western line of the

disputed land is ascertained as being consistent with a line running from the southwest corner of the northern alley to the northwest corner of the southern alley. That northwest corner of the southern alley, while not visible in Defendant's Exhibit #6-d, is at a point on photograph 6-d marked along the right-hand (westerly) edge of the grassy mowed area going up the bank, being the second such tree clearly visible and directly above the back end of the vehicle shown on Defendant's Exhibit #6-d. That northwest corner of the southern alley is also marked by a rebar set underneath a stake, which stake is shown on Defendant's Exhibit #6-e. See also Plaintiff's Exhibits 6, 7 and 8 and Defendant's Exhibit 10-a. These photos also substantiate Little did not park cars east of the western end of the north alley, which is further substantiated by the photograph marked as Plaintiffs' Exhibit 12. The testimony and the photographs taken in about 1972 (Plaintiffs' Exhibits 15 and 16, Defendant's Exhibits 11-a-d) and the Court's inspection of the property indicate a noticeable line of small trees, rock and debris in a line from the west end of the northern alley southerly to the cherry tree. Remnants of this line can be seen in bushes shown east of Little's cars in Defendant's Exhibit 10-a. These locations were consistent with the court's view of the alley corners and line marked by the #4 rebars set by the surveyor, Malcolm English, see Defendant's Exhibit 6-d. Testimony in this case varied as to exactly when Feigles started to exercise dominion over this area. However, the Court finds convincing and persuasive testimony of Feigles' father, Don Feigles, that the work started the year that Feigles moved into the property - 1973. This is also consistent with Defendant Little's testimony on cross-examination that "they" told Feigles to stop putting things on the disputed land shortly after Feigles bought the property. Clearly, Feigles did

not stop doing so. There is nothing inconsistent in the testimony of Pentz that work was being done in that area and that mowing commenced in 1977; Pentz acknowledged they did not have knowledge as to what happened prior to their moving into the property in 1977. The Court finds credible the testimony of Feigles' witnesses that established acts of dominion in addition to mowing occurred throughout the Feigles claim area prior to 1977. These acts included debris removal, tree and brush cutting and the other type of activities consistent with residential lot use. Even if Feigles' dominion would not have started until 1977, it is clear it continued for at least 21 years.

The cherry tree on Little's property fell as a result of a storm onto the Feigles claim area. The natural falling of the tree does not constitute an act by Little which was intended to end Feigles' possession of the area where the tree fell nor any other area. The fact that Feigles did not object to Little's removal of the cherry tree logs and branches does not constitute any interruption of adverse use. The fact that Little promptly had the logs and branches removed can even be viewed in Feigles favor since Little did not assert any right to allow the tree parts to remain on the land area previously mowed by Feigles. The logs lying on the ground did not exclude Feigles from that area so as to deprive him of adverse possession. In fact, Feigles continued to store lumber in that area at that time. Charles Little, Defendant's brother, testified Feigles did not stop storing lumber on the disputed land until after the third visit of the State Police in 1998. See Plaintiffs' Exhibit 7.

The testimony of Defendant Little on cross-examination and her other witnesses brought out that she was complaining to Feigles that he should stop mowing in the area, yet he did not do so and eventually she called the police to try to enforce what she thought was her property right. This clearly showed that Feigles was acting adversely to control the property to the detriment of Defendant Little.

Feigles refused to stop storing things upon and refused to stop mowing the area behind the Feigles' Dairy building even though Little demanded him to stop in 1997 and 1998. Little testified Feigles defied orders to stop using and mowing the area. Little's sister-in-law, Joyce, accused Feigles of throwing stones at the mobile home while mowing. Joyce Little testified Feigles did not stop and became belligerent in his response to such requests even to the point of swearing at her. Given the making of these accusations, Little cannot say Feigles did not use the area at that time (adjacent to the Little mobile home at the rear of the dairy property). Little's testimony that Plaintiff Steve Feigles broke down and cried in a willful acknowledgment that Little owned the land in dispute is found to be incredulous when compared to other defense testimony of this defiant possession of the property. This testimony of Little and on her behalf is inconsistent and impacts adversely on the credibility of Little and her witnesses.

The other trees that blew down on the disputed land in 1998 again did not keep Feigles from controlling and exercising the property at least to the bottom of the bank. Those trees that fell in 1998 were in the area close to the piece of concrete and were close to the bottom of the

bank and more to the south of Turner than to the south of Feigles. Also, Defendant's Exhibit #4 a document prepared on Little's behalf at about that time refers to the fact that Feigles kept cutting up trees in the disputed land area. In fact, the one large ash tree that fell may have been slightly south of the piece of concrete. In any event, Littles' testimony clearly established that they continually complained to Feigles that he should quit using the disputed land. These complaints support our finding that Feigles established that he did continue use and exercise dominion over the disputed land into at least 1998.

Although Defendant Little offered testimony that the area of the disputed land could not be mowed, it was clear from the testimony that Feigles was mowing it, it was also clear from the many photos introduced into evidence that the area south of Feigles property, while if not mowed, was at least being cleared of brush in some way. This is particularly apparent in the various photos that were taken of the Feigles family over the years, which clearly show in the far background that comprise the disputed land area that brush and undergrowth had been removed (although not necessarily mowed). The testimony of Plaintiff Steve W. Feigles clearly established that for a 25-year period from 1974 to 1998, Feigles exercised dominion over the disputed land. Several aspects of his testimony were not disputed. For example, Charles Little acknowledged in his testimony that Feigles mowed up to the stakes showing in Defendant's Exhibit #6-d.

Little's testimony did establish that they exercised dominion over lands lying to the west of the northern and western alley. This would necessarily have taken in part of the overlap area that was established in the Feigles' deed. Feigles have acknowledged such use and conceded

that line to Little. This Court cannot find credible any evidence that Little exercised control over any land easterly of the line conceded by Feigles, nor easterly of the west end of the unopened alley, nor easterly of the western line of the disputed land as established in the Court's Findings of Fact. For instance, the testimony that Little and her husband had removed brush and trees in 1972 is consistent with removal of the tree and brush line south of and parallel to the garage that was being constructed at that time. This line is essentially the location of the western line of the disputed land. Similarly there is no evidence that the storage shed allegedly used until 1975 was located east of that brush and tree line, other than Little's hazy recollection of where it was located. See Plaintiffs Exhibits 15, 16 and 17 and Defendant's Exhibits 11-a-d.

The testimony offered on behalf of the Plaintiffs does not seem to be contrived to show dominion over any part of the disputed land. Although this Court cannot definitely say that the testimony proffered by Little was contrived, it seems very unusual and convenient that many aspects of the defense testimony included reference to dates that would indicate use of the disputed land by Little on dates that if accepted would have established Feigles' maintaining control was for a time of 19 or 20 years instead of 21 years.

As a final observation this Court believes that Little's real opposition to Feigles use of the land did not arise until 1995 or 1996 when Feigles maintained a horse on their property. Little and her relatives found this objectionable, perhaps due to the odor as created therewith. While that objection may have been justified Little did not thereafter prevent Feigles from using the disputed land and is not justified in raising a protest to Feigles adverse ownership.

### *Conclusions of Law*

1. Feigles have sustained their burden of proof in establishing adverse possession to the Feigles claim area portion of the disputed land.

2. Feigles have proved by a preponderance of the evidence that: (1) they maintained and utilized the Feigles claim area portion of the disputed land as an extension of their lawn and yard beyond their property boundary by adverse possession; (2) they have had actual possession of the Feigles claim area portion of the disputed land for more than twenty-one (21) consecutive years; (3) their possession was visible and notorious; (4) the possession was the type that would characterize an owner's use, so as to constitute distinct and exclusive possession; (5) the possession was hostile to Defendant Little; neither Defendant Little nor others gave the Plaintiffs permission to use the disputed land.

3. Feigles are entitled to legal ownership of the Feigles claim area portion of the disputed land identified in the Findings of Fact by adverse possession.

4. Since Little is currently in possession of the area of the overlap of property descriptions as indicated on Defendant's Exhibit 1, and the possession has been actual, continuous, visible, distinct, exclusive, notorious, hostile and adverse, and Plaintiff by stipulation has relinquished claim to title of the land in the overlap area is held by Defendant. Therefore, the western line of land of Plaintiffs shall be as indicated on the English survey plan, Defendant's Exhibit #1, commencing at an existing iron pin in the southern boundary of Carpenter Street and extending south 8°22'00" east along the center of an existing ledge, 177.17 feet to a #4 rebar.

## **ORDER**

The Court finds in favor of the Plaintiffs Steve W. Feigles and Dawn L. Feigles, his wife, and hereby ***ORDERS AND DECREES*** that:

1. 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 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.

2. Defendant Little is completely ejected from the land hereby declared to be owned by Feigles.

3. The division line between lands of Little and Feigles, described in Lycoming County Deed Book 1232 at page 158 and Deed Book 687, page 221, extending southerly from

Carpenter Street to the land awarded to Feigles described in paragraph #1 of this Order, shall be as indicated on the English survey, Defendant's Exhibit #1, commencing at an existing iron pin in the southern line of Carpenter Street and extending South 8°22'00" East along the center of an existing ledge, 177.17 feet to a #4 rebar.

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)  
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