

Northampton County Reporter

(USPS 395-280)

VOL. LVI

EASTON, PA January 13, 2011

NO. 54

**Shirley Gilliams, Individually and as Parent and Natural Guardian of
Isiah Gaddy, Plaintiff v. Mark Holmes, Defendant**

Commonwealth of Pennsylvania v. Brian B. Sommers, Defendant

Northampton County Reporter Digest—2011-1

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Cream: 2011 Court Calendar

NOTICE TO THE BAR....

Kindly be advised that we are adding the following Status Conference dates to the 2011 Court Calendar:

February 24, 2011

April 28, 2011

If you have any questions concerning this change, please call the Court Administrator's Office at (610) 559-6700.

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Northampton County Reporter

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The Northampton County Reporter will be published every Thursday by the Northampton County Bar Association, 155 South Ninth St., Easton, PA 18042-4399. All legal notices relating to the business of the county, are required by rule of Court, to be published in this Journal. All legal notices must be submitted in typewritten form and are published exactly as submitted by the advertiser. Neither the Law Reporter nor the printer will assume any responsibility to edit, make spelling corrections, eliminate errors in grammar or make any changes to content.

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Editor

NOTICE TO NCBA MEMBERS – BAR NEWS

2011 Committee Preference Forms

Please return your forms as soon as possible. Committee Chairs are scheduling meetings and we want to invite you!

2011 NCBA and PBA Dues Notices

Dues notices were mailed out in December. If you have not yet received your notice please contact the NCBA Office.

Mark Your Calendars

Annual Association Meeting—Thursday, January 20, 2011

Registration form inside.

Reception for the Court—Friday, March 25, 2011

Philadelphia Flyers v. New Jersey Devils—Saturday, January 22, 2011

For all you NHL fans, join us on a bus trip to Philly for a fun filled day. The seats are all lower level this year.

Registration form inside. **ONLY 5 TICKETS AVAILABLE**

Forty is the old age of youth; fifty is the youth of old age. ~ French Proverb

ESTATE NOTICES

Notice is hereby given that in the estate of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**BRONICO, SAMUEL A.,** dec'd.

Late of the Township of Palmer, Northampton County, PA
 Executrix: Janice "Mickey" Cooper, 2150 Gateway Terrace, Easton, PA 18045
 Attorney: Samuel P. Murray, Esquire, 720 Washington Street, Easton, PA 18042

COHEN, CLAIRE, dec'd.

Late of the Borough of Wilson, Northampton County, PA
 Executrix: Dr. Nicki Cohen c/o Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020
 Attorneys: Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020

DECKER, HARRY T., JR., dec'd.

Late of Wilson Borough, Northampton County, PA
 Co-Executors: Cathleen J. Walp, 2132 Freemansburg Ave., 1st Floor, Easton, PA 18042 and Thomas S. Decker, 2223 Kemmerer Street, Bethlehem, PA 18017-4835
 Attorneys: Christopher M. McLean, Esquire, Zator Law Of-

fices, LLC, 4400 Walbert Avenue, Allentown, PA 18104

DECKER, PAUL K., dec'd.

Late of Lower Saucon Township, Northampton County, PA
 Administratrix: Shirley W. Chiles c/o Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042-4386

Attorneys: Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042-4386

DeNARDO, LOUIS A., dec'd.

Late of the Borough of Bangor, Northampton County, PA
 Executrices: Angella Louise DeNardo Angelini and Jeannine Antoinette DeNardo c/o David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

Attorney: David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

DIEROLF, FORREST B., dec'd.

Late of 6149 Snyders Church Road, Lot #18, Bath, East Allen Township, Northampton County, PA

Executrix: Debra M. Mease c/o Jessica R. Grater, Esquire, E. Kenneth Nyce Law Office, LLC, 105 East Philadelphia Avenue, Boyertown, PA 19512

Attorneys: Jessica R. Grater, Esquire, E. Kenneth Nyce Law Office, LLC, 105 East Philadelphia Avenue, Boyertown, PA 19512

FERRARO, JOHN A., dec'd.

Late of the City of Bethlehem, Northampton County, PA
 Executor: John F. Lisicky c/o Judith A. Harris, Esquire, Tall-

man, Hudders & Sorrentino, PA Office of Norris, McLaughlin & Marcus, P.A., 1611 Pond Road, Suite 300, Allentown, PA 18104
Attorneys: Judith A. Harris, Esquire, Tallman, Hudders & Sorrentino, PA Office of Norris, McLaughlin & Marcus, P.A., 1611 Pond Road, Suite 300, Allentown, PA 18104

HERBST, DELORES F., dec'd.

Late of Upper Nazareth Township, Northampton County, PA
Executor: William C. Herbst, Jr. c/o Constantine M. Vasiliadis, Esquire, Kolb, Vasiliadis and Florenz, 74 W. Broad Street, Suite 170, Bethlehem, PA 18018-5738

Attorneys: Constantine M. Vasiliadis, Esquire, Kolb, Vasiliadis and Florenz, 74 W. Broad Street, Suite 170, Bethlehem, PA 18018-5738

HOFFMAN, MARTHA a/k/a MARTHA E. HOFFMAN, dec'd.

Late of the Borough of Wilson, Northampton County, PA
Executor: Walter J. Hoffman c/o Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

Attorney: Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

KIRLICK, GEORGE, dec'd.

Late of the Borough of Nazareth, Northampton County, PA
Executor: Andrew M. Kirlick, 304 Nazareth Pike, Bethlehem, PA 18020

Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064

KNAUSS, GARY L., dec'd.

Late of the Borough of Wilson, Northampton County, PA
Executrix: Rachel A. Knauss c/o Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042-4386

Attorneys: Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042-4386

MARCH, JACK F. SR., dec'd.

Late of the Township of Lehigh, Northampton County, PA
Executrix: Joanne L. March c/o Kevin F. Danyi, Esquire, JD, LLM, Danyi Law Offices, P.C., 133 East Broad Street, Bethlehem, PA 18018

Attorneys: Kevin F. Danyi, Esquire, JD, LLM, Danyi Law Offices, P.C., 133 East Broad Street, Bethlehem, PA 18018

MICKLEY, ELIZABETH L., dec'd.

Late of the City of Bethlehem, Northampton County, PA
Co-Executors: Harold P. Mickley and Dale Mickley c/o Judith A. Harris, Esquire, Tallman, Hudders & Sorrentino, PA Office of Norris, McLaughlin & Marcus, P.A., 1611 Pond Road, Suite 300, Allentown, PA 18104

Attorneys: Judith A. Harris, Esquire, Tallman, Hudders & Sorrentino, PA Office of Norris, McLaughlin & Marcus, P.A., 1611 Pond Road, Suite 300, Allentown, PA 18104

MONDSCHN, EDWARD R., dec'd.

Late of the Borough of Nazareth, Northampton County, PA
Executrix: Patricia Mondschein c/o John J. Bartos, Esquire, 100

Brodhead Road, Suite 130, Bethlehem, PA 18017

Attorney: John J. Bartos, Esquire, 100 Brodhead Road, Suite 130, Bethlehem, PA 18017

PLETCHAN, MARY, dec'd.

Late of Palmer Township, Northampton County, PA

Executor: Daria A. Zellner c/o William W. Matz, Jr., Esquire, 211 W. Broad Street, Bethlehem, PA 18018-5517

Attorney: William W. Matz, Jr., Esquire, 211 W. Broad Street, Bethlehem, PA 18018-5517

POTTER, JOHN, dec'd.

Late of the Borough of Hellertown, Northampton County, PA
Executor: James Martin Connell, Esquire, 251 E. Broad Street, Bethlehem, PA 18018

Attorney: James Martin Connell, Esquire, 251 E. Broad Street, Bethlehem, PA 18018

YAWORSKI, JOHN H. a/k/a JOHN YAWORSKI, dec'd.

Late of Bethlehem, Northampton County, PA

Co-Administrators: Carol A. Yaworski and Harry Yaworski c/o Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

Attorney: Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

ZIEGENFUSS, LUCILLE J. a/k/a LUCILLE ZIEGENFUSS, dec'd.

Late of the Township of Hanover, Northampton County, PA

Executor: Randy M. Ziegenfuss c/o Michael E. Riskin, Esquire, Riskin and Riskin, 18 E. Market St., P.O. Box 1446, Bethlehem, PA 18016-1446

Attorneys: Michael E. Riskin, Esquire, Riskin and Riskin, 18 E. Market St., P.O. Box 1446, Bethlehem, PA 18016-1446

SECOND PUBLICATION

BAUER, GERALD H., dec'd.

Late of Bath, Northampton County, PA

Co-Executrices: Claire Burns and Michelle Carlisle c/o Jeffrey F. Hussar, Esquire, 946 Third Street, Whitehall, PA 18052

Attorney: Jeffrey F. Hussar, Esquire, 946 Third Street, Whitehall, PA 18052

BEALER, HAROLD J. a/k/a HAROLD BEALER, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Susan Schlough c/o Robert C. Brown, Jr., Esquire, Fox, Oldt & Brown, 940 West Lafayette Street, Suite 100, Easton, PA 18042-1412

Attorneys: Robert C. Brown, Jr., Esquire, Fox, Oldt & Brown, 940 West Lafayette Street, Suite 100, Easton, PA 18042-1412

BESCHEN, ELAINE M., dec'd.

Late of East Allen Township, Northampton County, PA

Executor: Richard S. Beschen c/o John W. Rybak, Esquire, 408 Adams Street, Bethlehem, PA 18105

Attorney: John W. Rybak, Esquire, 408 Adams Street, Bethlehem, PA 18105

COLVER, DONALD J., dec'd.

Late of the Borough of Pen Argyl, Northampton County, PA

Executor: Alfred S. Pierce, 124 Belvidere Street, Nazareth, PA 18064

Attorneys: Scott R. Steirer, Esquire, Pierce & Dally, LLP, 124

Belvidere Street, Nazareth, PA 18064

FIGLIOLI, ANNA, dec'd.

Late of the Township of Washington, Northampton County, PA
 Executrix: Lucy Ann Gold, c/o David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

Attorney: David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

FORD, MARK D., dec'd.

Late of Bethlehem, Northampton County, PA

Administratrix: Mrs. Josephine T. Ford c/o John D. Lychak, Esquire, Law Offices of John D. Lychak, P.C., 35 East Elizabeth Avenue, Suite 21, Bethlehem, PA 18018

Attorneys: John D. Lychak, Esquire, Law Offices of John D. Lychak, P.C., 35 East Elizabeth Avenue, Suite 21, Bethlehem, PA 18018

HESTER, ROBERT L., SR., dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Executor: Robert L. Hester, Jr. c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

KELS, BETTY J. a/k/a BETTY JANE KELS, dec'd.

Late of the Township of Palmer, Northampton County, PA

Executrix: Betsy J. Kels a/k/a Betsy J. Rodriguez c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

LAMBERT, EDWARD J., dec'd.

Late of Township of Forks, Northampton County, PA

Executrix: Beverly L. Lambert c/o Thomas L. Walters, Esquire, Lewis and Walters, 46 S. 4th Street, P.O. Box A, Easton, PA 18044-2099

Attorneys: Thomas L. Walters, Esquire, Lewis and Walters, 46 South 4th Street, P.O. Box A, Easton, PA 18044-2099

MELICK, MICHELE I., dec'd.

Late of 66 Wildbriar Court North, Bath, Northampton County, PA
 Executrix: Linda L. Miller, 1409 South Main Street, Phillipsburg, NJ 08865

Attorneys: Lee A. Conrad, Esquire, Thomas, Conrad & Conrad, 3 North Main Street, Topton, PA 19562

PLUCHINSKY, DANIEL R., dec'd.

Late of Northampton, Northampton County, PA

Executor: John Fedor c/o Jeffrey F. Hussar, Esquire, 946 Third Street, Whitehall, PA 18052

Attorney: Jeffrey F. Hussar, Esquire, 946 Third Street, Whitehall, PA 18052

ROSCIOLI, ANNE a/k/a ANNA ROSCIOLI, dec'd.

Late of the Township of Hellertown, Northampton County, PA
 Executrix: Paula A. Roscioli, 1310 Santee Mill Road, Bethlehem, PA 18017

Attorney: Gene F. Roscioli, Esquire, 830 Lehigh Street, Easton, PA 18042

STEIDINGER, KATHERINE, dec'd.

Late of the Borough of Northampton County, Northampton County, PA

Executor: Thea Marie Scioscia, 51 Mustang Court, Danville, CA 94526-5109

Attorney: Holly V. Calantoni, Esquire, 801 Lehigh Street, Easton, PA 18042-4327

TALABER, EDWARD R., dec'd.

Late of Lower Saucon Township, Northampton County, PA

Administratrix: Helen M. Talaber
Attorneys: Thomas J. Maloney, Esquire, Maloney, Danyi, O'Donnell & Tranter, 901 West Lehigh Street, P.O. Box 1279, Bethlehem, PA 18016-1279

ZECCHINE, LOUIS F. a/k/a

LOUIS ZECCHINE, dec'd.

Late of the Township of Lehigh, Northampton County, PA

Executrix: Rose May, 49 Patchough Drive, Ruby Point, NY 11778

Attorneys: Neil D. Ettinger, Esquire, Ettinger & Associates, LLC, Peachtree Office Plaza, 1815 Schadt Avenue, Whitehall, PA 18052

THIRD PUBLICATION**BITTNER, DOROTHY L.**, dec'd.

Late of the Borough of Northampton, Northampton County, PA

Executor: William Schirmacher, Sr. c/o Frank M. Skrapits, Esquire, Steckel and Stopp, 2152 Main Street, Northampton, PA 18067-1211

CORALLO, JOSEPHINE B., dec'd.

Late of the Township of Bushkill, Northampton County, PA

Executor: Barry Shively, 3445 Harvard Place, Bethlehem, PA 18020-2027

Attorney: Louis S. Minotti, Jr., Esquire, 44 North Second Street, P.O. Box 468, Easton, PA 18042

MERLO, GARY, dec'd.

Late of the Borough of Bangor, Northampton County, PA

Administratrix: Cynthia Ann Merlo c/o P. Christopher Cotturo, Esquire, Attorney-at-Law, 75 Bangor Junction Road, Bangor, PA 18013

Attorney: P. Christopher Cotturo, Esquire, Attorney-at-Law, 75 Bangor Junction Road, Bangor, PA 18013

SAKOVICS, IRENE, dec'd.

Late of the Township of Lower Nazareth, Northampton County, PA

Executor: William L. Sakovics c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

SENAVITIS, ALBERT M. a/k/a

ALBERT SENAVITIS, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Gloria M. Senavitis, 334 Carver Drive, Bethlehem, PA 18017

Attorney: James J. Holzinger, Esquire, 1216 Linden Street, P.O. Box 1409, Bethlehem, PA 18016

SZEMPRUCH, WILLIAM, dec'd.

Late of the Township of Upper Mount Bethel, Northampton County, PA

Executrix: Jeannette Majka c/o Dionysios C. Pappas, Esquire,

Vasiliadis & Associates, 2551 Baglyos Circle, Suite A-14, Bethlehem, PA 18020
 Attorneys: Dionysios C. Pappas, Esquire, Vasiliadis & Associates, 2551 Baglyos Circle, Suite A-14, Bethlehem, PA 18020

legal education required by the Continuing Legal Education Board. The Order became effective January 9, 2011 for Compliance Group 1.

Suzanne E. Price
 Attorney Registrar
 The Disciplinary Board
 of the Supreme Court
 of Pennsylvania
 Jan. 13

TRUST NOTICE

NOTICE IS HEREBY GIVEN of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said trusts are requested to make known the same, and all persons indebted to said trusts are requested to make payment, without delay, to the trustees or to their attorneys named below.

SPORTELLI, PATRICIA M., dec'd.

Late of Easton, Northampton County, PA

Trustees of the Patricia M. Sportelli Revocable Trust: Salvatore Sportelli and David M. LaValva c/o Fitzpatrick Lentz & Bubba, P.C., 4001 Schoolhouse Lane, P.O. Box 219, Center Valley, PA 18034-0219

Attorneys: Fitzpatrick Lentz & Bubba, P.C., 4001 Schoolhouse Lane, P.O. Box 219, Center Valley, PA 18034-0219

Dec. 30; Jan. 6, 13

NOTICE OF ADMINISTRATIVE SUSPENSION

NOTICE IS HEREBY GIVEN that Amy Michelle Fernandez of Northampton County has been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated December 10, 2010, pursuant to Rule 111(b), Pa. R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing

NOTICES OF INCORPORATION

NOTICE IS HEREBY GIVEN that a Articles of Incorporation have been filed on December 13, 2010 with the Pennsylvania Department of State for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of Pennsylvania, Act of December 21, 1988 (P.L. 1444, No. 177), by the following corporation:

AGM INNOVATIONS INC

432 Nolf Road, Nazareth, PA 18064.
 Jan. 13

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988 (P.L. 1444, No. 177), as amended.

The name of the corporation is:

HYGRADE ACQUISITION CORP.

The Articles of Incorporation were filed on September 22, 2010.

JAMES L. BROUGHAL, ESQUIRE
 BROUGHAL & DeVITO, L.L.P.
 38 West Market Street
 Bethlehem, PA 18018

Jan. 13

CORPORATE FICTITIOUS NAME REGISTRATION NOTICES

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Act 295 of 1982 (54 Pa. C.S.A. 301 et seq.), filed in the office of the Secretary of the

Commonwealth, at Harrisburg, Pennsylvania, a Certificate for the conduct of a business in Northampton County, Pennsylvania, under the assumed or fictitious name, style, or designation of:

FAMOUS FURNITURE GALLERY OF THE GREATER LEHIGH VALLEY

with its principal place of business at: 4060 Easton Nazareth Highway, Nazareth, PA 18064. The name and address of the entity owning or interested in said business is: Orwig Properties, Inc., 4060 Easton Nazareth Highway, Nazareth, PA 18064.

The Certificate was filed on December 13, 2010.

LITTNER, DESCHLER & LITTNER
512 North New Street
Bethlehem, PA 18018

Jan. 13

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Act 295 of 1982, as amended, of intention to file, or the filing of, in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, a certificate for the conduct of a business in Pennsylvania, under the assumed or fictitious name, style or designation of:

NORTHSTAR TEAM DEVELOPMENT

with its principal place of business at: 4733 Hanoverville Road, Bethlehem, PA 18020.

The name and address of the entity owning or interested in said business is: Recreational Concepts Development Corporation.

TALLMAN, HUDDERS & SORRENTINO

The Paragon Centre
1611 Pond Road
Suite 300
Allentown, PA 18104-2221

Jan. 13

LIMITED LIABILITY COMPANY NOTICES

NOTICE IS HEREBY GIVEN that a Certificate of Organization for a Domestic Liability Company has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about December 29, 2010 for the purpose of creating a Limited Liability Company under the Limited Liability Company Law of 1994, P.L. 703, No. 106.

The name of the Limited Liability Company is:

BARB Di, LLC

David B. Shulman, Esquire
Shulman & Shabbick
1935 Center Street
Northampton, PA 18067

Jan. 13

NOTICE IS HEREBY GIVEN that a Certificate of Organization—Domestic Limited Liability Company has been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purpose of creating a limited liability company in accordance with the provisions of Title 15, Corporations and Unincorporated Associations, 15 Pa. C.S.A. 8901 et seq., approved December 7, 1994, P.L. 703 No. 106(4).

The name of the Domestic Limited Liability Company:

JEAN A. KREEGER INSURANCE & FINANCIAL SERVICES, LLC

Todd H. Lahr, Esquire
Lahr & Lahr Law Offices
3570 Hamilton Blvd.
Suite 303
Allentown, PA 18103-4513
(610) 398-2440

Jan. 13

NOTICE OF NAME CHANGE

NOTICE IS HEREBY GIVEN that on January 5, 2011, the Petition of Jeffrey Scott Richter was filed in the

Court of Common Pleas of Northampton County, Commonwealth of Pennsylvania, praying for a Decree to change the name of Jeffrey Scott Richter to Jayme Lynn Richter.

The Court has fixed March 4, 2011, at 9:00 a.m., in Courtroom No. 4, Northampton County Courthouse, 669 Washington Street, Easton, Northampton County, Pennsylvania, as the place and time for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the said Petition should not be granted.

JESSICA F. MOYER, ESQUIRE
KING, SPRY, HERMAN,
FREUND & FAUL, LLC
Attorneys for Petitioner

One West Broad St.
Suite 700
Bethlehem, PA 18018
(610) 332-0390

Jan. 13

NOTICE

NOTICE IS HEREBY GIVEN that the NAZARETH AREA SCHOOL DISTRICT will present a Petition to approve the private sale of a 2,390 square foot property located at 2 North Main Street, Nazareth, Northampton County, Pennsylvania 18064, for the proposed consider-

ation of One Hundred Sixty-Seven Thousand and Five Hundred (\$167,500) Dollars pursuant to Section 707(3) of the School Code on January 28, 2011, in the Northampton County Court of Common Pleas, in Courtroom No. 1, at 9:00 a.m.

GARY A. BRIENZA, ESQUIRE
Solicitor for Nazareth
Area School District
Jan. 13, 20, 27

**IN THE NORTHAMPTON COUNTY
COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION**

The following Executors, Administrators, Guardians & Trustees have filed Accounts in the Office of the Orphans' Court:

ESTATE; Accountant
GEORGE H. HANSELL, SR.; Lucille M. Parknavy, Executrix
SUSAN L. MAZUR; Arthur Verba, Executor

HAROLD P. ROTH, JR. & HAROLD P. ROTH, JR., LIVING TRUST; David R. Smith, Executor

AUDIT NOTICE

All Parties interested are notified that an audit list will be made up of all Accounts and the said list will be called for audit at the Northampton County Government Center, Easton, PA on: FRIDAY, JANUARY 28, 2011 AT 9:00 A.M. IN COURTROOM #1.

Dorothy L. Cole
Clerk of Orphans' Court
Jan. 13, 20

**PART-TIME LEGAL SECRETARY/PARALEGAL
POSITION AVAILABLE**

Part-time position available in Allentown, Hanover Township general practice law firm for motivated, detail oriented legal secretary/paralegal. Salary commensurate with experience. Opportunity for growth. Bankruptcy experience a plus. Please send **resume and letter of interest with salary requirements** to Jill at Fox Tobey, P.C., 1834 Pennsylvania Avenue, Allentown, Pennsylvania, 18109, via email at jmmanos@foxtobey.com, or via facsimile at (610) 861-5989.

Jan. 13, 20

**SHIRLEY GILLIAMS, Individually and as Parent and Natural
Guardian of ISIAH GADDY, Plaintiff v. MARK HOLMES, Defendant**

*Preliminary Objections—Capacity to Sue—Pro Se—Liberal Construction
of the Pleadings.*

Pro se Defendant raised a single preliminary objection to Plaintiffs' Complaint, asserting Plaintiff's lack of capacity to sue. Examining the *pro se* filing liberally, the Court found that Defendant had misapprehended the nature of the asserted preliminary objection, and failed to state a cognizable objection of any kind. For that reason, the preliminary objection was overruled.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Division—No. C-0048-CV-2008-7427.

EDWARD P. SHAGNESSY, ESQUIRE, for Plaintiff.

Mark Holmes, Pro Se.

Order of the Court entered on September 27, 2010 by DALLY, J.

ORDER

AND NOW, this 27th day of September 2010, Defendant's Preliminary Objections to Plaintiff's Amended Complaint are hereby DENIED, as set forth more fully in the Statement of Reasons below.

STATEMENT OF REASONS

Presently before the Court are Defendant Mark Holmes' Preliminary Objections to Plaintiff's Amended Complaint. This matter commenced by Writ of Summons on July 28, 2008. The initial Complaint was filed May 5, 2010, Preliminary Objections were filed thereto, and an Amended Complaint was filed June 1, 2010. By the Amended Complaint, Plaintiff alleges a claim of negligence against Defendant in connection with an accident involving her son, minor Plaintiff Isiah Gaddy. Plaintiff avers that Defendant is the lessee of a property located at 215 Scott Street in the city of Easton. She further avers that on or about August 5, 2006, the minor Plaintiff was an invitee upon the property, where he sustained injuries while playing on a balloon jump. On June 22, 2010, Defendant filed Preliminary Objections to the Amended Complaint, which came before the undersigned via the Argument Court List of September 7, 2010. Briefs having been received, the matter is now ready for disposition.

Defendant, acting *pro se*,¹ raises a single objection to the underlying Amended Complaint, asserting Plaintiff's lack of capacity to sue pursuant

¹ While the courts shall liberally construe pleadings filed by *pro se* litigants, the person who opts to represent himself is entitled to no special dispensation to compensate for a lack of legal training. *In re Ullman*, 995 A.2d 1207, 1211-1212 (Pa. Super. 2010). Rather, the *pro se* litigant assumes the risk of self-representation. *Id.*

to Pa.R.C.P. 1028(a)(5). In support of the same, Defendant claims, as an initial matter, that while he resides at the 215 Scott Street residence, he does not lease it, and he does not control it. Rather, he asserts that the property is owned by the Mother of Defendant's children. Defendant further asserts that he did not invite the minor child to the subject premises on the said date, and that the balloon jump concession was not situated thereupon at that time. In light of Plaintiff's failure to append any documentation to her Amended Complaint proving otherwise, Defendant contends that the pleading fails to state a *prima facie* case of negligence, and requests that the same should be stricken.

STANDARD OF LAW

In ruling on preliminary objections, the Court shall accept as true all well-pleaded facts set forth in the complaint, and all reasonable inferences deducible therefrom. *Richardson v. Beard*, 942 A.2d 911 (Pa. Commw. 2008) *order aff'd*. 600 Pa. 102, 963 A.2d 904 (2008). Where preliminary objections raise a demurrer, a court may sustain the objections and dismiss a claim only when it is clear and free from doubt that a plaintiff stands no possibility of recovery on the facts as pled. *Swisher v. Pitz*, 868 A.2d 1228 (Pa. Super. 2005). Where there is any doubt as to a demurrer, such doubt should be resolved in favor of overruling the demurrer. *Gekas v. Shapp*, 469 Pa. 1, 6, 364 A.2d 691, 692 (1976). Finally, we note that a preliminary objection asserting a plaintiff's lack of capacity to sue cannot be determined on the record alone, and therefore shall be endorsed with a notice to plead, and answered by the plaintiff. Pa.R.C.P. 1028.

DISCUSSION

As an initial matter, the Court notes that an assertion of a plaintiff's lack of capacity to sue refers to the status of the suing litigant. *Lewis v. Scherr*, 21 D.&C. 2d 500, 502 (Philadelphia Cty. 1960). The possibility of that litigant's success on the merits has no bearing on such an objection. *Id.* Further, the purpose of preliminary objections in the form of a demurrer is to ascertain the legal sufficiency, and not the substantive validity or veracity of a complaint. *Reed v. Dupuis*, 920 A.2d 861 (Pa. Super. 2007). As set forth *supra*, the Court, in reviewing the same, must accept as true all well-pled averments set forth in the complaint, and all reasonable inferences deducible therefrom. *Richardson v. Beard*, 942 A.2d 911 (Pa. Commw. 2008) *order aff'd*. 963 A.2d 904 (Pa. 2008).

Upon review of Defendant's preliminary objections, the Court observes that he makes no averment that Plaintiff suffers any impediment suggesting a lack of capacity to sue. Thus, while he characterizes his objection as an assertion of Plaintiff's lack of capacity to sue, in substance, he simply contends that the averments of the complaint are false, and demurs on the basis of Plaintiff's failure to prove otherwise. In so doing, Defendant

misapprehends both the nature of his preliminary objection, and the burden on Plaintiff at this stage in the case.

While Defendant may deny Plaintiff's averments and demand strict proof as to the same, Plaintiff has no burden of proof in response to these preliminary objections. *International Union of Operating Engineers v. Linesville Construction Co.*, 457 Pa. 220, 223, 322 A.2d 353, 356 (1974). The burden of proving the elements of a case typically does not arise until trial. *Id.* In light of the foregoing, the Court finds that Defendant has no basis for his Preliminary Objections in response to Plaintiff's Amended Complaint. Accordingly, the same are hereby DENIED.

**COMMONWEALTH OF PENNSYLVANIA v. BRIAN B.
SOMMERS, Defendant**

Writ of Habeas Corpus—Motion to Dismiss—Retail Theft—Criminal Attempt—Criminal Mischief

Defendant filed a writ of *habeas corpus*, seeking to quash charges of retail theft, criminal attempt to commit retail theft, and criminal mischief. Defendant's motion was denied.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Criminal Division—No. CR-1366—2010.

MICHAEL A. FILINGO, ESQUIRE, for the Commonwealth.

MATTHEW J. GOODRICH, ESQUIRE, for Defendant.

Order of the Court entered on September 23, 2010 by KOURY, J., Jr.

OPINION

By and through a July 21, 2010 Omnibus Pre-trial Motion, Defendant Brian B. Sommers ("Defendant") has presented this Court with the instant matter, a Petition for Habeas Corpus/Motion to Dismiss.¹ This was assigned from the September 3, 2010 Miscellaneous Hearing List to the Honorable Michael J. Koury, Jr.

The parties submitted briefs and Defendant submitted a transcript of the April 19, 2010 preliminary hearing before the Honorable Adrienne L. Masut, Magisterial District Judge. The matter is now ready for disposition.

On February 8, 2010, Brian Smith worked as a sales associate for Kmart in Wind Gap, Pennsylvania. N.T. Preliminary Hearing, April 19, 2010, at 7. On that date, while surveying his sections of the store, a particular customer caught his attention. *Id.* at 7, 12. From between five and twenty feet away, Smith observed a man walking around the store's jewelry counter. *Id.* at 17, 18. He saw his face several times and noted that the man wore sunglasses, a black wool cap, and a black sweatshirt with gray lettering. *Id.* at 12, 14-15, 18-19, 27. Smith also observed that the man had pale skin, light brown, stubbly facial hair and long, black hair on his head that "didn't seem to match." *Id.* at 12, 15, 17-19. To Smith, the man seemed suspicious and "out of place." *Id.* at 12-13.

As Smith watched, this man reached out and grabbed a jewelry display case known as a spinner. *Id.* at 8-9, 11. Spinners are not available for sale, but instead contain jewelry that sales associates may remove upon cus-

¹ Defendant filed an omnibus pretrial motion that included a Motion to Compel Discovery and a Motion to Compel Compliance with Defendant's Bill of Particulars, a Motion to Suppress, and a Motion to Dismiss/Petition for Writ of Habeas Corpus. However, at a September 10, 2010 conference before the undersigned, Defendant withdrew all motions except for the instant Motion to Dismiss/Petition for Writ of Habeas Corpus.

tomer request. *Id.* at 10, 43. This spinner contained gold jewelry valued at just under \$20,000. *Id.* at 52. The spinner was traditionally anchored to the counter by a metal cord. *Id.* at 10.

Unbeknownst to Smith, the man had earlier reached over the counter and severed the spinner's metal anchor. *Id.* at 58-59. He was thus able to wrap his arms around the spinner and place it in a nearby shopping cart, which also contained towels and a throw blanket. *Id.* at 8, 11, 26-27. As Smith watched, the man started to push the shopping cart out of the jewelry section. *Id.* at 11-12.

Smith approached the man from behind and asked him if he needed assistance. *Id.* The man continued to walk forward without turning or otherwise acknowledging Smith. *Id.* Smith raised his voice and asked the man, again, if he needed help. *Id.* at 12. The man then abandoned the cart and started moving toward the front of the store. *Id.* As Smith and the store manager followed him outside and continued to call after him, the man moved quickly through the parking lot. *Id.* at 14, 30, 36. He entered a black Volkswagen in the parking lot and drove away. *Id.* at 15, 16.

At the April 19, 2010 preliminary hearing, three witnesses offered identification testimony. First, Smith testified to the facts above and identified the man in the store as Sommers. *Id.* at 9, 23. Second, Anthony Gazzana testified that he was in the parking lot that day and saw a man in a "funny looking" long, black wig, sunglasses, and a black sweatshirt exit and move quickly away from the Kmart while being followed by two Kmart employees. *Id.* at 30-31. He testified that when the man entered a black Volkswagen, he noted that the Volkswagen's driver-side front door was missing its interior door panel. *Id.* at 30. Furthermore, Mark Fogel, the Kmart loss prevention manager, testified that he reviewed security footage from February 8, 2010, and pictures of the Defendant. *Id.* at 41-42. Based on the security footage, Fogel identified Sommers as the man who cut the spinner's metal anchor and lifted the spinner into a shopping cart. *Id.* at 41-42, 58.

Finally, Fogel testified that the spinner and other items in Sommers' shopping cart were recovered. *Id.* at 59. He stated that those items never left the store. *Id.* Wind Gap Chief of Police Craig Armitage testified that the spinner was processed for latent fingerprints. *Id.* at 64. Brian Sommers' left palm and right palm prints were found on the spinner. *Id.*

The Defendant was charged with Retail Theft,² Criminal Attempt to Commit Retail Theft,³ and Criminal Mischief.⁴ Defendant filed for Habeas Corpus, moving to quash the information on the basis that the evidence presented at the preliminary hearing did not establish a *prima facie* case of any of the charges against him. Defendant also argued that the Common-

² 18 Pa C.S. §3929(a)(1).

³ 18 Pa C.S. §901(a); 18 Pa C.S. §3929(a).

⁴ 18 Pa C.S. §3304(a)(5).

wealth's eyewitness identifications were not reliable, and that the Commonwealth's witness testimony was both scandalous and/or impertinent.

Initially, we note that:

[t]he method for testing a finding of a *prima facie* case prior to trial, in this Commonwealth, is by a writ of habeas corpus. ... Proof of guilt beyond a reasonable doubt is not required at this stage. ... Rather, the Commonwealth must show ... that the defendant committed the offense, and the evidence [would] be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to [trial].

Commonwealth v. Kowalek, 436 Pa. Super. 361, 364, 647 A.2d 948, 949 (1994) (citations omitted); *see also*, *Commonwealth v. Packard*, 767 A.2d 1068 (Pa. Super. 2001) (establishing that *prima facie* case requires Commonwealth to demonstrate that crime has been committed and accused probably committed that crime). For purposes of this motion, we accept as true all the evidence produced by the Commonwealth, along with all inferences reasonably drawn from the evidence of record that would support a verdict of guilty. *Packard*, *supra*, 767 A.2d at 1070-1071. We do not, however, accept "suspicion" or "conjecture" as neither constitutes evidence and would be unacceptable as such. *Id.*

To meet its burden in a habeas corpus proceeding, the Commonwealth may rely simply on the evidence presented at the preliminary hearing or it may submit additional evidence. *Commonwealth v. Fowlin*, 450 Pa. Super. 489, 505, 676 A.2d 665, 673 (1996). In this matter, the Commonwealth has chosen to rely on the transcript of the April 19, 2010 preliminary hearing. Thus, we must review the charges against Defendant, determine the elements of each charge, and, based on the facts presented at the preliminary hearing, determine whether the Commonwealth established a *prima facie* case of each charge against Defendant.

1. Retail Theft

A person is guilty of Retail Theft if he takes possession or carries away merchandise that a store displays or offers for sale, with the intention of depriving the store of its possession without paying the full retail value thereof. 18 Pa. C.S. §3929(a)(1). Importantly, the Retail Theft statute provides definition for its key terms. "Merchandise" includes all goods and chattels of any type or description. 18 Pa. C.S. §3929(f). "Full retail value" is the merchant's stated or advertised price. *Id.*

While the statute does not define "possession," common definitions hold that a person has possession of something if he holds it in his power or otherwise exercises dominion and control over it. *See Commonwealth v. Smith*, 345 Pa. Super. 196, 198, 497 A.2d 1371, 1372 (1985) (noting that, in context of possession of controlled substances, possession requires both power to control and intent to exercise control); *Black's Law Dictionary*

(8th ed. 2004). If a defendant possesses and conceals merchandise—if he hides it so that it is not visible through ordinary observation—his actions give rise to a presumption that he intended to deprive the merchant of that merchandise without providing full retail value. *See* 18 Pa. C. S. §3929(c), (f); *see also*, *Commonwealth v. McSween*, 265 Pa. Super. 458, 460, 402 A.2d 528, 529-30 (1979).

In the instant matter, the Court concludes that the Commonwealth proved a *prima facie* case of Retail Theft. The Court’s conclusion rests on determinations that the spinner and jewelry were merchandise, that Sommers possessed that merchandise, and that he intended to deprive Kmart of possession without paying its full retail value.

First, the Court has determined that the gold earrings inside the spinner were merchandise as defined by §3929(f). Smith and Fogel both testified that Kmart kept the gold earrings in the jewelry spinner so that Kmart could display the earrings to its customers. N.T. at 10. Further, although the store kept the earrings locked in the spinner, Smith and Fogel both testified that the earrings were held for sale. *Id.* at 10, 43.

Second, Sommers possessed the merchandise. In *Commonwealth v. Gaithers*, a young woman was convicted of retail theft after taking possession of store merchandise. 13 D.&C.3d 668, 669 (C.P. Montgomery 1978). The Defendant walked into a clothing store with a friend and a large, empty canvas bag. *Id.* at 670. As they moved through the store, they picked up various clothing items and packed them into the defendant’s bag. *Id.* Their actions were noticed by other customers who alerted the store manager. *Id.* at 670-671. The store manager, in turn, alerted the police and locked the front door. *Id.* When the defendant arrived at the cash register, she had only one item in her bag, which she purchased. *Id.* at 671. Nonetheless, she was arrested and charged with retail theft. *Id.*

The trial court determined that the defendant took possession of store merchandise. It noted that the defendant had picked up various pieces of clothing, put them in her canvas bag, and, after the police arrived, dropped most of that clothing in odd places around the store. *Id.* at 670-671. Further, after the defendant was arrested, the store manager found missing merchandise on the windowsill, on the floor, and underneath some of the clothing racks. *Id.* at 671. The court thus concluded that the defendant took possession of the store’s merchandise by transferring “merchandise offered for sale by [the] store ... to [a] container with intent to deprive the owner of all or some part of the value thereof.” *See id.* at 672.

In the case *sub judice*, Sommers similarly took possession of the Kmart jewelry spinner and the merchandise contained therein. He took possession of Kmart’s jewelry display and the gold earrings contained therein by reaching over the counter and cutting the metal cord that anchored the spinner to the jewelry counter. N.T. at 58-59. He then wrapped his arms

around the spinner and placed it into a nearby shopping cart. N.T. at 8, 11, 26-27.

Sommers' intent to deprive Kmart of all or some part of the full retail value of the gold earrings must be inferred from his actions. *See Packard*, supra, 767 A.2d at 1070-1071 (directing Court to make all inferences from testimony that would support verdict of guilty). When Sommers cut the cord to the jewelry spinner, he demonstrated his understanding that the spinner was not for sale and should not have been removed from the jewelry section. *See* N.T. at 58-59. Further, by abandoning the cart and rushing to his car after being questioned by Kmart employees, Sommers demonstrated that he had been "caught in the act."⁵ *See* N.T. at 14, 30-31, 46.

Thus, based on the foregoing and accepting as true all testimony produced by the Commonwealth and the inferences reasonably drawn from it that would support a verdict of guilty, *see Packard*, supra, 767 A.2d at 1070-1071, this Court concludes that the Commonwealth established a *prima facie* case of Retail Theft.⁶

2. Criminal Attempt to Commit Retail Theft

Under the Pennsylvania crimes code, "[a] person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime." 18 Pa. C.S. §901. The emphasis on "a substantial step" directs the Court to focus on acts that the Defendant committed rather than acts remaining to be done before commission of a crime. *See Commonwealth v. Gilliam*, 273 Pa. Super. 586, 589-590, 417 A.2d 1203, 1205 (1980).

Accepting as true all testimony produced by the Commonwealth and the inferences reasonably drawn from it that would support a verdict of guilty, *see Packard*, supra, 767 A.2d at 1070-1071, we conclude that the Commonwealth established the elements of the charge of Criminal Attempt. Fogel testified that he saw Sommers cut the metal cord that anchored the jewelry spinner to the jewelry counter. N.T. at 48-49. Focusing on Sommers' acts, the Court considers Sommers' actions to be a substantial step toward Retail Theft as defined by 18 Pa. C.S. §3929(a)(5). Without cutting the cord, Sommers could not take possession of the jewelry.

The Court also notes that Sommers' actions could be considered a substantial step toward Retail Theft under 18 Pa. C.S. §3929(a)(1), where-

⁵ Because Sommers' actions clearly address his intent, this Court need not address the issue of whether Sommers concealed store merchandise by placing it into a shopping cart.

⁶ If the Commonwealth had charged Sommers under §3929(a)(5), this Court would come to the same conclusion. This section of the Retail Theft statute merely requires a suspect to destroy or render inoperative a "mechanism designed or employed to prevent an offense under this section with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof." 18 Pa. C.S. §3929(a)(5). Because Sommers cut the metal cord that anchored the spinner to the counter, this Court would have found that the Commonwealth met its burden.

by Sommers committed Criminal Attempt to Commit Retail Theft by taking a substantial step toward taking possession of Kmart merchandise without remitting full retail value for the merchandise. Based on our finding that Sommers took substantial steps toward Retail Theft under §3929(a)(5), however, further discussion would be superfluous.

3. *Criminal Mischief*

A person commits Criminal Mischief if he intentionally damages another person's real or personal property. *See* 18 Pa. C.S. §3304(a)(5). Here, based on the foregoing facts and analysis, Sommers unquestionably intentionally damaged Kmart's property by severing the metal cord that connected the jewelry spinner to the counter. N.T. at 48-49.

In his brief supporting his Omnibus Pretrial Motion, Sommers alleges that the Commonwealth cannot establish a *prima facie* case of Criminal Mischief because it cannot support the charge with an appropriate identification of the defendant. However, accepting as true all testimony produced by the Commonwealth and the inferences reasonably drawn from it that would support a verdict of guilty, *see Packard*, supra, 767 A.2d at 1070-1071, we conclude that the Commonwealth established sufficient identification. Both Smith and Fogel testified at the preliminary hearing that the man who severed the spinner's cord and placed it into a nearby shopping cart was Sommers. N.T. at 9, 23, 41-42, 58.

WHEREFORE, we enter the following:

ORDER

AND NOW, this 23rd day of September, 2010, upon consideration of Defendant's Motion for Habeas Corpus and the parties' briefs, it is hereby ORDERED that Defendant's Motion is DENIED.

NORTHAMPTON COUNTY REPORTER DIGEST—2011-1

Caption: **Judith G. Samer, Executrix of the Estate of William R. Samer, Deceased v. Frank Dashner, III, City of Bethlehem, Service Electric Cable TV, Inc., and Altronics, Inc.**

Term No.: C-0048-CV-2010-5548

Keywords: Wrongful Death; Survival Action; Gross, Wanton and Reckless Conduct; Punitive Damages

Attorney(s): Daniel Webster Munley, Esquire for Plaintiff
Robert G. Hanna, Jr., Esquire for Defendants Dashner and City of Bethlehem
Allen R. Bunker, Esquire for Defendant Service Electric Cable TV, Inc.
E. David Chanin, Esquire for Defendant Altronics, Inc.

Date of Order: November 17, 2010

Judge: Craig A. Dally, J.

Description of Decision:

Plaintiff filed a Complaint bringing wrongful death and survival claims against each defendant in connection with an accident resulting in the death of Plaintiff's decedent. Defendant Service Electric Cable TV, Inc. filed preliminary objections thereto, seeking to strike averments of "gross, wanton and reckless conduct," for Plaintiff's failure to aver facts in support of a punitive damages claim. The Court sustained the preliminary objections upon a finding that as pled, the averments of the Complaint were insufficient to sustain such a claim.

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