

# Franklin County Legal Journal

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*Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.*

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**Marvin N. Peck and Geraldine M. Peck, h/w, Plaintiffs v. D. Andrew Washabaugh, III, and Joyce Washabaugh, h/w, Defendants**  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch, Civil Action - Ejectment No. 2012-201

**HEADNOTES**

*Non-jury trial, ejectment, bona fide purchaser, recording statute, mutual mistake*

1. Ejectment is an action filed by a plaintiff who does not possess land, but has a right to possess it, against a defendant who has actual possession. *Siskos v. Britz*, 790 A.2d 1000 (Pa. 2000).
2. A plaintiff in an ejectment action must establish the right to immediate exclusive possession based only on the strength of his own title, not the weakness of defendant's title. *Doman v. Brogan*, 592 A.2d 104, 108 (Pa. Super. 1991).
3. The Pennsylvania recording statute (21 P.S. § 351) protects subsequent purchasers by giving a subsequent bona fide purchaser for value without notice of a prior transaction priority over the equitable estate of the first owner. *Lund v. Heinrich*, 189 A.2d 581 (Pa. 1963); *Long John Silver's Inc. v. Fiore*, 386 A.2d 569 (Pa. Super. 1978).
4. As the Pecks did not pay valuable consideration for the property and had constructive notice of the Washabaughs' interest in the property, the Pecks do not qualify as bona fide purchasers and therefore are provided no protections by the recording statute.
5. When there is a mutual mistake in the description of the land to be conveyed, reformation is appropriate in the absence of intervening rights of innocent third persons or other considerations which would make reformation inequitable. *Uniontown Sav. and Loan Co. v. Alicia Land Co.*, 13 A.2d 65, 66 (Pa. 1940).
6. For the same reasons that the Pecks are not bona fide purchasers, they do not qualify as innocent third parties.

Appearances:

Leo Wallace, Esq., *Attorney for Plaintiffs*

Tamela Mellott Heming, Esq., *Attorney for Defendants*

**DECISION OF THE COURT AFTER A NON-JURY TRIAL**

Before Krom, J.

For the reasons that follow, the Court finds that the Pecks are not entitled to immediate possession of the Bethlehem Church Building.

**Findings of Fact**

1. Property of any local United Methodist congregation that has been abandoned or is no longer used by the local congregation becomes the property of the Central Pennsylvania Conference of the United Methodist Church (“Conference”) for purposes of sale or disposition.

2. After the congregation of Knobsville United Methodist Church absorbed the congregation of the Bethlehem United Methodist Church, the Bethlehem Church Building (which for purposes of this Decision and Order includes the associated land) was no longer used.

3. In the Fall of 1992, the Conference deemed the Bethlehem Church Building abandoned and available for sale.

4. The Bethlehem Church Building appraised for \$7,000.00.

5. Traditionally, negotiations for the sale of real estate are carried out by the local congregations, but the Conference actually conveys the real estate and executes the deeds.

6. Immediately next to the Bethlehem Church Building is the Bethlehem Cemetery.

7. The Bethlehem Cemetery was owned by the Bethlehem Cemetery Association even after the merger of the two congregations.

8. D. Andrew Washabaugh and Joyce Washabaugh (collectively “the Washabaughs”), negotiated with the Knobsville United Methodist Church to purchase the Bethlehem Church Building.

9. Part of the negotiations centered around removal of a stained glass window, pews, and alter furniture from the Bethlehem Church Building by the Knobsville United Methodist Church after the sale. See D’s Exhibit 11.

10. The Washabaughs intended to buy the Bethlehem Church Building to store antiques.

11. The Knobsville United Methodist Church and the Conference intended to convey the Bethlehem Church Building.

12. The Conference did not own the Bethlehem Cemetery and traditionally did not sell cemeteries (other than to a cemetery association).

13. The real estate description in the deed dated February 4, 1994 and the undated agreement of sale between the Conference and the Washabaughs describes the Bethlehem Cemetery (Deed Book 72, Page 370). D’s Exhibit 10; P’s Exhibit 5.

14. The Washabaughs paid the Conference \$7,000.00, the appraised value of the Bethlehem Church Building.

15. The quitclaim deed between the Conference and the

Washabaughs was executed on February 4, 1994 and recorded on April 8, 1994. D's Exhibit 2, P's Exhibit 5.

16. After the sale was complete, the Washabaughs paid for the removal of the stained glass window (to be retained by the Knobsville United Methodist Church) and the costs associated with filling in the hole.

17. Since 1994, the Washabaughs have maintained the Bethlehem Church Building and the Bethlehem Cemetery.

18. Since 1994, the Washabaughs have stored antique furniture in the Bethlehem Church Building and are at the Bethlehem Church Building at least twice a week.

19. Since 1994, the Washabaughs have paid the taxes on the Bethlehem Church Building. See D's Exhibit 4 (2004- 2010).

20. At some point in 2003, Marvin N. Peck and Geraldine M. Peck (collectively "the Pecks") searched the land records of Fulton County and determined that the Trustees of the Bethlehem United Brethren Church/ Congregation (or the Conference) had never conveyed the Bethlehem Church Building after its use was discontinued by the local congregation.

21. Prior to 2003, the Pecks had a right of way through the Bethlehem Church Building in order to access a plot of land they owned that was adjacent to the Bethlehem Church Building.

22. At some point in 2003, the Pecks approached the Conference about purchasing abandoned real estate, the Bethlehem Church Building.

23. The Pecks had the land surveyed and a legal description of the Bethlehem Church Building prepared.

24. On February 20, 2004, the Conference conveyed to the Pecks the Bethlehem Church Building for \$1.00.

25. The Pecks recorded the quitclaim deed on February 23, 2004. P's Exhibit 1.

26. The Pecks claimed a realty transfer tax exemption on the basis that they had obtained the property via a "quitclaim deed without consideration." P's Exhibit 1.

27. On December 28, 2004, the Pecks executed and recorded a merger deed that encompassed both the Bethlehem Church Building (Tract 2) and another tract of land adjacent to the Bethlehem Church Building (Tract 1). P's Exhibit 3.

28. The Pecks have not paid any taxes on the Bethlehem Church Building.

29. The Pecks have not maintained the Bethlehem Church Building

aside from filling the roadway located in the right of way.

30. There was a verbal exchange between the Pecks and the Washabaughs about ownership of the Bethlehem Church Building shortly after the Pecks purchased the property.

31. Former counsel for the Pecks sent a letter to the Washabaughs on August 31, 2005 informing them that the Bethlehem Church Building belongs to the Pecks.

32. At some point after learning that their deed described the Bethlehem Cemetery rather than the Bethlehem Church Building that they occupied since 1994, the Washabaughs contacted the Susquehanna Conference of the United Methodist Church (successor to the Conference).

33. The Susquehanna Conference executed a corrective deed on October 4, 2011 in order to convey the Bethlehem Church Building to the Washabaughs.

34. The corrective deed was recorded on November 10, 2011. D's Exhibit 7.

35. On June 8, 2012, the Pecks initiated the instant action in ejectment against the Washabaughs.

36. The Pecks also sought to recover the fair rental value of the Bethlehem Church Building.

37. On July 5, 2012, the Washabaughs filed an Answer along with a counterclaim for unjust enrichment.

38. A non-jury trial was held on this matter on November 25, 2014.

39. At trial Mr. Peck was the only witness who testified on behalf of the Pecks.

40. Clyde Bookheimer, a former member of the Board of Trustees of Knobsville United Methodist Church, and Pastor Michael Minnix, former member of the Board of Trustees of the Conference, along with Mr. Washabaugh testified on behalf of the Washabaughs.

41. The Court finds that all of the witnesses were credible.

42. Proposed findings of fact and conclusions of law were submitted by the parties after the close of evidence.

### **Conclusions of Law**

1. Ejectment is an action filed by a plaintiff who does not possess land, but has the right to possess it, against a defendant who has actual possession. *Siskos v. Britz*, 790 A.2d 1000 (Pa. 2000).

2. As the Pecks are not in possession of the Bethlehem Church Building, they appropriately brought an ejectment action.

3. A plaintiff in an ejectment action must establish the right to immediate exclusive possession based only on the strength of his own title, not the weakness of defendant's title. *Doman v. Brogan*, 592 A.2d 104, 108 (Pa. Super. 1991).

4. Even where the language of the deed is clear on its face, the court may permit the use of parol evidence at trial to determine the intent of the parties. *Baker v. Zingelman*, 393 A.2d 908, 910 (Pa. Super. 1978); *Wysinski v. Mazzotta*, 472 A.2d 680, 683 (Pa. Super. 1984).

5. While on its face the deed dated February 4, 1994 conveys the Bethlehem Cemetery, the intention of the Conference was to convey the Bethlehem Church Building to the Washabaughs and the Washabaughs intended to purchase the Bethlehem Church Building.

6. Upon receipt of \$7,000 to the Conference, equitable title in the Bethlehem Church Building passed to the Washabaughs as of February 4, 1994. *See Ross v. Baker*, 72 Pa. 186 (1872).

7. "All deeds, conveyances, contracts, and other instruments of writing where it shall be the intention of the parties executing the same to grant, bargain, sell and convey any lands...shall be recorded in the office for the recording of deeds in the county where such lands...are situate. Every such deed, conveyance, contract, or other instrument of writing which shall not be ...recorded, as aforesaid, shall be adjudged fraudulent and void as to any subsequent bona fide purchaser..." 21 P.S. § 351.

8. The Pennsylvania recording statute protects subsequent purchasers by giving a subsequent bona fide purchaser for value without notice of a prior transaction priority over the equitable estate of the first owner. *Lund v. Heinrich*, 189 A.2d 581 (Pa. 1963); *Long John Silver's, Inc. v. Fiore*, 386 A.2d 569 (Pa. Super. 1978).

9. Who has a right to possess the Bethlehem Church Building depends on whether the Pecks are bona fide purchasers.

10. To be deemed a bona fide purchaser of real property, one must pay valuable consideration, have no notice of the outstanding rights of others, and act in good faith. *Poffenberger v. Goldstein*, 776 A. 2d 1037, 1042 (Pa. Commw. Ct. 2001).

11. Nominal consideration is defined as "one bearing no relation to the real value of the contract or article, as where a parcel of land is described in a deed as being sold for 'one dollar.'" Black's Law Dictionary, Revised 4th Edition (1968).

12. The Pecks did not pay valuable consideration for the Bethlehem Church Building.

a. \$1.00 bears no relationship to the real value of the property which was appraised for \$7,000 in the 1990s.

b. The Pecks used the lack of consideration to their benefit in order to not pay realty transfer taxes.

13. “The law presumes that a purchaser of real estate will not trust merely to the title papers and records, but will inquire of the person in possession whether he claims title to the land: If the possession is distinct and unequivocal, it is sufficient to put the purchaser on inquiry, and amounts to constructive notice.” *Sailor v. Hertzog*, 4 Whart. 259 (Pa. 1839).

14. Tax assessment records do not provide actual or constructive notice of the existence of equitable or legal title. *Lund v. Heinrich*, 189 A.2d 581, 584 (Pa. 1963) (citing *Morey v. Herrick*, 18 Pa. 123 (1851)).

15. The Washabaughs have exclusively possessed and maintained the Bethlehem Church Building since 1994, using it as a storage facility for antiques which was inconsistent with the land records such that the Pecks had constructive notice of the Washabaughs’ interest in the property.

16. The Court makes no determination as to whether the Pecks acted in good faith.

17. As the Pecks did not pay valuable consideration for the property and had constructive notice of the Washabaughs’ interest in the property, the Pecks do not qualify as bona fide purchasers and therefore are provided no protections by the recording statute.

18. The Pecks have not established their right to immediate possession of the Bethlehem Church Building based on the strength of their title.

19. In the deed between the Conference and the Washabaughs there was a mutual mistake in the description of the land to be conveyed.

20. When there is a mutual mistake in the description of the land to be conveyed, reformation is appropriate in the absence of intervening rights of innocent third persons or other considerations which would make reformation inequitable. *Uniontown Sav. and Loan Co. v. Alicia Land Co.*, 13 A.2d 65, 66 (Pa. 1940).

21. For the same reasons that the Pecks are not bona fide purchasers they do not qualify as innocent third parties. See *MacKubbin v. Rosedale Memorial Park, Inc.*, 257 A.2d 587 (Pa. 1969).

22. The Conference appropriately agreed to correct the 1994 deed in 2011 to accurately describe the Bethlehem Church Building.

23. As a result of the execution and recordation of the corrected deed (Book 547 Page 858), the Washabaughs are currently vested with legal title to the Bethlehem Church Building.

24. The Washabaughs' counterclaim is moot.

### **ORDER OF COURT**

**NOW THIS** 3rd day of February, 2015, after trial held on this matter on November 25, 2014 and consistent with foregoing Opinion,

**IT IS HEREBY ORDRED:**

1. As to Count I of the Complaint- Ejectment- the Court finds in favor of Defendants and against Plaintiffs.
2. As to Count II of the Complaint- Mesne Profits- the Court finds in favor of Defendants and against Plaintiffs.
3. As to Defendants' Counterclaim- Unjust Enrichment- the Court finds Defendants' counterclaim is moot.

**IT IS FURTHER ORDERED** that D. Andrew Washabaugh, III, and Joyce Washabaugh hold valid legal title to the land described in the deed recorded in Fulton County at Deed Book 547 Page 858, and known colloquially as the Bethlehem Church Building.

*Pursuant to the requirements of Pa.R.C.P. 236 (a)(2),(b) and (d), the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.*