

"[a]t all times and places herein alleged, Donald R. Pryor was employed by the Borough of Waynesboro, was its servant, was under its direction and control, and at all times was acting within the scope of his authority."

As we said, in this case we are required to render judgment on the pleadings for Pryor and Waynesboro, and we will.

### ORDER OF COURT

NOW, January 19, 1979, the Motion for Summary Judgment is granted. Costs shall be paid by the Plaintiff.

SHANNON v. SHEARER, C.P. Franklin County Branch, Eq. Doc. Vol. 7, Page 88

*Practice - Equity - Real Property - Preliminary Objections - Pa. R.C.P. 1019(f) - Pa. R.C.P. 1028(a)*

1. A demurrer which merely states that a complaint fails to "state a claim upon which relief can be granted" is prohibited by Pa. R.C.P. 1028(a) and will be dismissed.
2. The mere averment that a legally significant event occurred "some twenty or more years ago" lacks specificity under Pa. R.C.P. 1019(f).
3. A preliminary objection in the nature of a motion for more specific pleading will be granted where it is alleged that a retaining wall has been demolished but fails to state when it was destroyed.

*Kenneth E. Hankins, Jr., Esq., Attorney for Plaintiff*

*Thomas J. Finucane, Esq., Attorney for Defendants*

### OPINION AND ORDER

KELLER, J., January 17, 1979:

This action in equity was commenced by the filing of a complaint on March 9, 1976, and the service of the same upon the defendants on March 15, 1976. The plaintiff seeks to have the defendants enjoined from using and interfering with the plaintiff's use of a certain well allegedly located in part on plaintiff's land and part on defendants' land, and also to enjoin the defendants from impeding the defendants' use of a certain driveway or portion of the driveway, to restore a drain and retaining wall and do whatever else is necessary to prevent

certain alleged flooding conditions. The complaint alleges the plaintiff's rights in and to the exclusive use of the well and the said driveway occurred by adverse possession. The defendants filed preliminary objections in the nature of a demurrer and motion for a more specific pleading on August 10, 1978. The matter came on for argument on November 2, 1978, and is now ripe for disposition.

The defendants' demurrers allege nothing more than that the two counts of the plaintiff's complaint fail "to state a claim upon which relief can be granted." In response, the plaintiff correctly contends that the demurrers must be dismissed because they are general demurrers prohibited by Pa. R.C.P. 1028(a) which states that "preliminary objections shall state specifically the grounds relied upon." *Goodrich-Amram 2d 238 Section 1020(a)* and cases cited thereunder. The demurrers will be dismissed.

While we will not dispose of defendants' demurrers on the merits, we do observe that defendants' contention that the action should have been brought in ejectment or as an action to quiet title is without merit.

Paragraph 8 of the complaint alleges:

"The said well was drilled some twenty-six (26) or more years ago, while the aforesaid Wingerts were the owners of the plaintiff's real estate."

The defendants contend that this paragraph is insufficiently specific because it fails to state when the well was drilled and for whom the well was drilled.

Pa. R.C.P. 1019 provides inter alia:

"(a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form"

"(f) Averments of time... shall be specifically stated."

To the extent the plaintiff is able to allege with more specificity the date that the well was drilled, she should do so. We also feel the rights of the parties may be affected by the issue whether the well was dug for the plaintiff or her predecessors, or the defendants or their predecessors or for the joint use of the then owners of the plaintiff's and defendants' land. The defendants' preliminary objection No. 3 will be granted.

The defendants contend in preliminary objection No. 4 that paragraph 9 of the complaint fails to state the circumstances under which the plaintiff claims her use of the well was exclusive, adverse, hostile, open, notorious and well-known to the owners of the real estate now owned by the defendants. "The function of a complaint is to set forth concisely only the material and issuable facts on which the plaintiff relies for his claims, not the evidence by which such facts are to be proved." Standard Pennsylvania Practice, Vol. 3, Section 35, P. 142. Paragraph 9 of the complaint does state that the well had been cased and connected to the pumping equipment and the plaintiff and her predecessors in title have used the well and equipment open and adversely for 21 years. Any further allegations as to how the plaintiff used the well open and adversely would be evidentiary. The allegations set forth in paragraph 9 of the complaint are sufficient in apprising the defendants of the nature of the claim so that they can investigate the allegations and prepare a responsive answer. Therefore, objection No. 4 is dismissed.

Paragraph 13 of the plaintiff's complaint alleges:

"The said acts of the defendants constitute a continuing trespass against the plaintiff's aforesaid real estate and well, as well as a threat to diminish her water supply."

Preliminary objection No. 5 demands a more specific complaint alleging that paragraph 13 fails to state "in what way there is a trespass against plaintiff's alleged real estate, the alleged trespass being only the use of a well allegedly on the property line between the defendants and the plaintiff."

The acts of the defendants referred to in paragraph 13 are more specifically alleged in paragraph 12 wherein it is alleged that, "The defendants caused digging operations to commence around said well, for the purpose and with the expressed threat of connecting plumbing into the said well to draw water therefrom to supply the defendants and the real estate they claim to own." While we understand the position of the plaintiff to be that she has an easement by adverse possession to the exclusive use of the well and the water in the well, we are nonetheless uncertain as to the meaning of the expression digging around said well. This could mean digging either on the lands of the plaintiff or the lands of the defendants. They are entitled to a clarification of the ambiguity. To that extent preliminary objection No. 5 is sustained.

Preliminary objections 6, 8 and 9 allege that the plaintiff did not sufficiently describe the driveway. The complaint in paragraphs 20, 23 and 24 describes the driveway as

approximately 10 feet wide, proceeding along the boundary line of the two properties from Siloam Road to just beyond the rear of the plaintiff's house, and at the intersection of the driveway and Siloam Road it arcs. These averments, along with the defendants' own personal knowledge of the road and the fact that the defendants had a survey of the area in dispute prepared, are sufficient to inform them of the facts alleged, the issues to be met, and permit them to prepare a responsive answer. Therefore, preliminary objections 6, 8 and 9 are dismissed.

In preliminary objection No. 7 the defendants allege that the plaintiff has failed to state the way in which the use of the driveway was exclusive, adverse and hostile as to them. Paragraphs 21 and 22 of the complaint clearly allege that the plaintiff and her predecessors in title use the right-of-way for ingress, egress and regress, openly, notoriously and adversely for 26 years. Taking all of the allegations of the complaint in proper context, we find nothing more need be pleaded and preliminary objection No. 7 is dismissed.

Preliminary objection No. 10 complains that the plaintiff has failed to allege in what way the defendants have caused a drain to become clogged. Paragraph 31 specifically alleges they caused it to become clogged "with ground, rock, and other debris." We find this sufficiently specific and the objection is dismissed.

Paragraph 32 of the complaint alleges:

"In addition, the defendants have caused the retaining wall next to the edge of the driveway on the real estate claimed by defendants to be torn down."

The defendants by their preliminary objection No. 11 move for more specific pleading on the grounds that the paragraph fails to state when and who removed the alleged retaining wall. To the extent that the plaintiff is able to allege the date of the demolition of the retaining wall that should be pleaded. We feel the allegation that the defendants caused the demolition is sufficient to comply with the rules of pleading, but if the plaintiff knows the identity of the individual or individuals who removed the wall, it would be well to plead the same. Preliminary objection No. 11 will be sustained.

ORDER

NOW, this 17th day of January, 1979, Preliminary Objections 3, 5 and 11 are sustained. All other Preliminary Objections are dismissed.