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EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST AND  
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This cause presents issues for Ohioans who instead of transferring land within their immediate family (to their sons and daughters) are convinced to transfer land outside of their immediate family to older brothers such as Geo.Sr (who served them in some capacity as investment advisor or as a lease agent or as a manager of a co-owned family farm the family partnership had bought in 1947 with jointly owned assets) which places Geo.Sr as a rival to try to become wealthier than the one who owns the assets of which he is advising. When one such as John Sr. is convinced that his older brother has his best interests in mind, an a hidden promise is made by the one with a higher education as a means to convince the other that his farm can be better safeguarded by the educated man, does the original title holder (John Sr.) regain title by adverse possession once John Sr possesses the land for twenty-one years continuously?

According to Article One Sec. 1.

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

In the Estate of John Sr. v. Geo.Sr case at hand, Geo.Sr admits that John Sr. frequently purchased property and had trouble protecting the shop and the barn on his 43 acre farm and later had trouble protecting his barn on his 80 acre farm during a dispute with Parrillo over the land between the two properties, resulting in Parrillo being named as the suspected arsonist in the 1973 barn fire. John protected his property the best he could. The real estate in this suit is one of many properties he purchased Coshocton County, independent from the Pahoundis Family Partnership which was started when their father died before both of the boys were adults.

Geo. wants the court to take for granted that the 174 acre Killbuck farm belongs to him instead of the Pahoundis Family Partnership (P.F.P.) as a purchase money trust. He misleads people when he calls it "my farm" as he did in his deposition. When confronted about his deposition wherein he stated that John had moved his horses from "my farm" to "his farm", the court assumed Rodgers was misleading the defendant. The court saw no need to discuss the 174 acre farm, but its true ownership is important to this case. The court saw no reason to see George's reference to his brother's 80 acre farm as belonging to his brother when the truth accidentally came out in his deposition.

This Coshocton County property, which is what prompted this lawsuit is the Pearl, Ohio farm aka Fresno, Ohio farm which was found to be for sale in Crawford Township where Geo. Sr. and/or the P.F.P. had gas leases negotiations prior to John Sr's purchase of the land on January 14, 1970.

Article One Sec. 16. states that:

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law. ( Adopted Sept.3, 1912.)

John had no remedy to injury done him in his loss of his shop on his smaller farm around 1974 which Geo. Sr claims was burnt down on purpose by an unknown arsonist with drilling equipment and gas. John had no remedy to injury done to him in the loss of his farmhouse on or about May 8, 1977, four days after signing the farm over to Geo. Sr. for "protection". Many theft and arson reports were made but since none of the arsonists or thieves were ever found, no court could provide a remedy. But now things are different. This Court can provide a remedy. Geo. Sr. believed that if he stalled long enough he would never have to transfer the farm back to his

younger brother John Sr. The Fifth District Court of App. incorrectly assumes in ¶ 4 of their decision, that Rodgers demanded the title to the farm back from Geo.Sr, when it was John Sr. who demanded it prior to his death and was told to wait due to various excuses. Geo. revealed for the first time in court that he had secret information that John Sr. had filed for bankruptcy protection many times. Since John Sr. transferred his farm May 4, 1977; his duplex September 1978 and several of his vehicles during the same period, the possibility that John was doing this on the advice of others in a expected need to file for bankruptcy due to possible liability for the actions of his children. If anyone would have accompanied John Sr to see an attorney about filing bankruptcy, it would have been his only brother in Ohio--Geo.Sr. In fact, Geo.Sr. reveals in court to have knowledge that even I am not privy to even though I am the daughter of John Sr. If Geo. accompanied John Sr. to see John's attorney Milligan (former partner of Pomerene, Burns & Milligan) or one of the many P.F.P. attorneys, in Coshocton, to discuss a planned bankruptcy, it would be hard to discover who the attorney was. John believed he filed bankruptcy in 1978 but there is no record of such filing. Geo.is claiming he received preferential treatment as a creditor on May 4, 1977 by his receipt of the farm, even though there is no evidence he was a creditor and even though there is no proof he loaned John over \$4,500.00 before May 1977 and another \$4,000.00 in 1973. In fact, the endorsement side of the sole check for \$125, that was meant to be evidence of a loan to John Sr. prior to May 1977, was not presented to the court to show which of the three John Pahoundis men cashed the check. In this case, the Court of App. excluded the decision of the Holmes County court which denied a marriage license to the appellees and ignored the fact that there was no evidence of a valid marriage of the appellees. For the Court of App. to conclude that John's ex-girlfriend was legally his sister-in-law by adding a reference to the couple in ¶2 of the Court of App. decision, as husband and wife could override existing

marriage laws. Appellee Mary's marital status and the assets are important for her future eligibility for Medicaid from the state of Ohio. The Court of App. also decided that under the rules concerning the granting of summary judgments which is consistent with the provisions of the Ohio Constitution which state that citizens have a right to "justice administered without denial or delay", neither the trial court nor the Court of App. are bound by these rules entered into by the law makers of Ohio, but instead is entitled to enforce its own rules and regulations, partly because they assume that just because Geo.Sr. has the same last name as the original landowner. To assume that just because Geo.Sr was older, he must have been the one with the money and just because he was his brother, he must have given the deceased permission to maintain possession of the farm; store his important papers there (including cancelled checks); leave his furnishings and other possessions in the farmhouse; must have given the deceased permission to leave his farm equipment behind; his engines in the wood garage; and resettle on the land in a camper early in June of 1979, until his mobile home arrived is a stretch. Even the arsonist would have known the fire was best way to discourage John so that he would stay in the city and quit farming. He did not though. He continued in the thoroughbred race horse industry and in the breeding of horses. The Court of App. fails to provide any evidence for the Court's assumption in ¶ 55 that Jeffrey and his family had a camper on the farm. The definition of family is confusing, but here the Court mistakes Jeffrey's family with John's family. If the court means that John Sr., Betty Lou Pahoundis, Jeffrey and his siblings lived in a camper in June 1979, then that would be correct. No one contends that this entry back onto the farm was due to John Sr. calling Geo.Sr. from Akron to ask permission to see if it would be ok to bring a camper to the farm. The school year had ended and John's wife was no longer needed in Akron to care for her dying father. In fact, Geo.is a suspect in the shooting of the couple's fifteen year old son Julius,

the day Geo.Sr. came into the family restaurant and announced to his family, and to Rodgers, who was waitressing, that John **had** moved back onto the farm. The Court of App. fails to provide any evidence for the Court's assumption in ¶ 59 of the opinion, that the farmhouse fire made the family move away in the first place. There was no reason for the court to conclude this. Although John and Betty still kept many household items in the farmhouse, Frontier Power Electric records show that John and Betty had rented it out in 1976 and no one was living there in May of 1977. In fact, the May 9, 1977, *Coshocton Tribune* has the loss of the "old Pahoundis residence" set at \$500, so how is it that there was \$8,500.00 worth of repairs inside the house for which Geo.Sr. could have possibly paid for, in order to qualify as a creditor in May 1977?

The statute of limitations is meant to prevent people from asserting claims that they had not previously asserted. Geo. continued to refer to the farm as John's farm even after May 1977. This is evident in his deposition. The Court of App. fails to provide a remedy or remand it to demand Geo. answer all the rebuttal questions Rodgers had for him instead of the "one minute" in which to ask them in the rebuttal portion of the bench trial on day three. The transcript does not show Geo. chatting with the bailiff as an old friend. The Court misses the Judge's threat to end the trial early at lunch time on the first day. The public has a right to know what public moneys the P.F.P. and or Geo.Sr. received. Instead Geo. hides his gas and oil background in his deposition, claiming he was self-employed. If he has nothing to hide, then why is he hiding it and why is the court allowing it. The Court of App. and the Trial Court fails to see the need to settle the question concerning the Killbuck farm being jointly owned by John and his siblings as a Pahoundis Family Partnership. Surely the statute of limitations has passed, so why does Geo. deny that he asked John Sr. if he could bring drillers there to look for gas and oil? In court he reveals he knows all about the Clinton formation. He knew this before he gave the drillers

John's ok to come in and drill for gas and oil. Geo.Sr. had access to and would have understood the gas storage lease of the Diefenbach's who had earned royalties over 45 years on the Clinton Pool under the farm. John trusted his brother, but began to question on his death bed if Geo.had withheld information on the gas and oil from him, in order to trick him into signing it over to him without him knowing he was interested in John's gas, since Geo.Sr. was stalling at transferring it back to John Sr. The Court of App. fails to see that there is more going on by looking at the entire history of the arsons: John's shop; John's barn and the farmhouse all were torched within 7 years. John separated his family from George's family in 1970 even though costs were low at the Duncan farm (a property bought with the profits of the Pahoundis Family Partnership). John moved his family to the next county, in the middle of Amish country where families lived without electricity and indoor plumbing. John did not know his father's brothers; usually only saw his other brothers at funerals; never flew with Geo.to visit cousins in Greece or see lands that the brothers inherited abroad; never went to the Greek reunions in California, Philadelphia, or New Jersey. The Court of App. failed to find that the court did not provide adequate security cameras; one of plaintiff's witnesses were intimidated by Pahoundis family members reading high-powered rifle magazines; Julius was allowed to wander into the courtroom in spite of a separation order, making it impossible for Rodgers to question him about the June 13, 1977 shooting on the farm in which Geo.Sr had been identified as a suspect.

The Court of App. assumes that taxable values of constructed buildings are figured by the Auditor prior to completion of the building and the court erroneously determines John's wonderful steel garage complete with electricity, plumbing, doors and a hydraulic lift has a taxable value of \$30 (¶ 56 of Opinion. The Court of App. fails to realize that when testimony is given that John Sr. got the money to prevent the Treasurer's office from foreclosing on the farm

is not consistent with evidence that John paid \$3000 worth of back taxes in 2000, and the Defendant's admission that John probably paid the back taxes and the Plaintiff's offer to leave the stand for a second to retrieve the \$3000 original receipt from the Plaintiff's table etc. The Court of App. fails to realize that the question of whether or not various witnesses are aware as to who the Recorder's office has listed as the title holder, is irrelevant. In the 2008 Ohio Supreme Court ruling on adverse possession, it was the objective possession and not the intent of the possessor or the children of the relatives or the neighbors of the relatives that was ruled to be relevant. The App. court fails to see that it was Rodgers, who pointed out to her father that Geo. had mortgaged the farm in order to construct a house on Lake Buckhorn.

The App. court fails to see in ¶ 64 of their decision, that John started at Midland Ross Steel in January 1958, and retired in January 1983. By thinking that the high union wage position was not obtained until 13 years after he bought the farm and not until 6 years after he put the farm in George's name for protection, fails to give John credit for being the wealthier of the two prior to 1977. If rules of evidence allow for men to speak for the grave, why was the motion in *limine*. There is a problem if Bankruptcy laws question transfers from relative A to relative B as being possibly invalid and most likely the true possession of relative A, but adverse possession laws fail to question if there had been a transfer from relative A to relative B in the case, and relative B failed to take possession of the property at any time. Contrary to the decision of the App. Court in ¶ 128 that there's is no evidence presented in pretrial pleadings that John Sr. sought federal bankruptcy protection, there is a claim filed March 23, 2005 which is among the pretrial pleadings in the Coshocton County Probate Case Number 20310227 filed by Citicorp Credit Services, Inc. USA who when asked for verification (by the administrator of the estate in her capacity as administratrix) of the amounts John Sr borrowed from one of his Citicorp credit

cards to pay for the farm taxes, responded by filing its claim against the Estate of John D. Pahoundis Sr. claiming that John Sr.'s use of the Citicorp Credit card to pay the farm taxes is proof John's ownership of the farm was concealed from Citicorp in John's November 2002 bankruptcy and that Citicorp had no knowledge of the real estate as an asset and therefore neither did the bankruptcy court. This was filed before June 6, 2005 when the case was transferred to Common Pleas Div. and since it deals with the real estate in question, it is a claim against the real estate assets of John Sr to cover any part of the \$5,335.18 debt which might be valid. In the rush for the trial court to get my case over with so could handle a union strike. The decision of the Court of App. threatens the structure of life estates and adverse possession law created by the Ohio courts through the years. By its ruling the court of App. undermines legislative intent, ignores the plain meaning of the word "possession". Moreover, the court of App. decision establishes the illogical and untenable view that an App. court can ignore the decisions made in Holmes County and other Ohio courts. The App. Court also wrongly concludes that the Probate Court had ruled against Rodgers on a motion for a summary judgment when in fact it was Geo.Sr. who had been ruled against by Judge Pierce. That Geo.could have had over \$8,500 to loan, after caring for his family of ten, when the family restaurant was operating in the red is not explained. The court of App. decision elevates the position of Geo.to a partner on the horse farm instead of the agent with no proof. The implication of the decision of the court of App. affects the lives of many who can not afford to litigate their cases in Ohio courts. Since the approval of the motion for a summary judgment was required by law, the case should have never gone to trial. The public's interest in the orderly operation of the courts, family farms, inheritance, transfer of property, life estates and bankruptcy protection are profoundly affected by a holding that the one can allege a life estate after the fact and conceal the pressure that caused John to

transfer his asset, when all things point to this being a clear case. Such a ruling that undocumented life estates are possible would sabotage the integrity of well established adverse possession laws, and trust between brothers that they will keep their promises made in secret.

The Ohio Racing Comm oversees the horse racing industry that John worked as an “owner” and “breeder” and occasionally raced, but to muddy his reputation with claims that he is a high roller or a big risk taker is far from the truth. Geo.raised cattle. He had nothing to do with John’s horse farm. He complained about John’s interest in horses. Apart from these considerations, which make this one of great public interest, the decision of the court of App. has broad general significance. Thousands and thousands of citizens of Ohio transfer real estate, hide assets, take advice from non-attorneys, work in the gas and oil industry, advice their own family members, perform the essential work of advisors and managers of family farms; and would be offended by the assumption that all who are involved in the horse racing industry are big time gamblers. Not surprising, the judgment of the court of App. is contrary to both the statutory scheme which encourages summary judgment when appropriate. Finally, this case involves a substantial constitutional question. The decision offends Ohio’s constitutional scheme by delaying justice. Why should citizens be forced to endure five long years of a legal maze and three motions for frivolous summary judgments. Then to fault one for not dismissing the case until money was raised to hire an attorney for the trial, when a lie detector test and a prosecutor should have been able to get to the bottom of this quickly. In sum, this case puts in issue the essence of concealing property and the fate of family who conceal as a way of protecting, thereby affecting every governmental entity / court in Ohio who determines eligibility for programs based on assets.. To promote orderly and constructive negotiations between brothers, and to remove impediments to the process of passing property to one’s descendants, this court

must grant jurisdiction to hear this case and review the erroneous and dangerous decision of the court of Appeals.

#### STATEMENT OF THE CASE AND FACTS

The case arises from the attempt of Appellant Admin Rodgers to obtain a summary judgment on the claim that John Sr. had adversely possessed a farm for over twenty-one years. The App. court ruled that Administrator had correctly been denied her motion for a summary judgment by Judge C. Fenning Pierce of Coshocton County Probate Court, when Rodgers had never placed a motion for a summary judgment before Judge C. Fenning Pierce. The App. court overlooked the reasons for the ruling of Judge C. Fenning Pierce against the Appellee in his motion for a summary judgment and the Judge's reasons for deciding it the way he did.

The App. Court also ruled that the Admin had correctly been denied the September 2006 motion for a summary judgment by Judge Richard I. Evans of Coshocton County Common Pleas Court, even though the Appellee had failed to provide significant evidentiary material supporting the fact that he had loaned John Sr. any money and even though Appellee had failed to provide significant evidentiary material supporting the fact that he had the interests of John Sr. before his own self-serving interests. If after gaining title, the title holder never again brings his family for Christmas for 25 years until he is sick, does he fit the definition of family. Geo. breached his fiduciary duty when the county aided the township in their attempt to assist a trespasser in obtaining a right of way in spite of John's objections. In the deposition and throughout the trial, Geo. Sr. can not differentiate Rodgers from another family member and several sons of John Sr. are not familiar enough with the sons of Geo. Sr. to know who is who. Is this family? How much of an additional burden that the possession of the farm was permissive should be placed upon Rodgers because John and Geo. use the same last name? John secludes his family in an Amish

community. It is apparent that Geo.Sr and John Sr are not family when Geo.Sr betrays him to benefit his own family so that many of the ten members of his immediate "family" can use the profits of the land belonging to the family partnership that Geo.jointly owns with John, to secretly start corporations, secretly drill illegal gas wells, secretly steal from John Sr., secretly tell others that he is his brother's keeper while taking many vacation trips to California and Greece at his brother's expense while pretending to be a honest tax paying, self-made man worthy of giving advice. The Court refused to honor the law and found that Geo.Sr. had met the burden of proving that he had granted permission to John Sr. to enter onto the farm under a non-existent life estate. The court of App. erred in ruling that this matter should have not gone to bankruptcy court or rightly went to trial as Geo.Sr had not one piece of evidence to show that there was any money lent to John Sr prior to the May 4, 1977 transfer; no proof of a life estate granted to John Sr. The court of App. also erred in failing to recognize that that the Geo.Sr.'s revelation to the appellant while under oath in the presence of the trial court judge, that he had knowledge to which only he was privy regarding former bankruptcies of John Sr. should have caused the court to pause and inquire as to whether his allegations were true as transfers between family members (who were once close and met the definition of family when they were boys) should lead one to question whether or not the transfer is invalid.

In support of its position on these issues, the appellant presents the following argument.

#### ARGUMENT IN SUPPORT OF FINDING THAT THE COURT ABUSED ITS DISCRETION

The Court abused its discretion and failed to find that Rodgers' September 2006 motion for a summary judgment should have been granted. The failure of Geo.Sr. to provide one substantial piece of evidentiary material such as: a signed life estate document, a signed rental agreement; a signed rent check; a signed permission slip giving John permission to live in a camper until the mobile home is delivered on the farm; a note reminding John Sr to have the electric taken out of

his name since it was in the name of Geo.Sr.; no electric service at all in Geo.Sr.'s name at any time; no involvement of Geo.Sr in the horse farm for more than 21 years prior to the alleged assistance with delivering the P.F.P.scaffolding for the steel garage which the App. court later finds to be worth \$30 for the entire building (due to documents that were not up to date that were presented in court); no inquiry as to who was living in the five mobile homes; no inquiry as to who was hunting on the farm; no inquiry as to who was putting electric into their names; a signed permission slip giving John Sr. permission to hunt on the farm; a signed permission slip giving John Sr. permission to enter into contracts to drill water wells or install sewers on the farm. In fact Geo.Sr. admitted in his deposition that John Sr. never paid rent. Geo.then tries to claim that he is a partner of John Sr. in the horse racing industry, but failed to present one document showing joint ownership of any horse kept on the farm. Geo.Sr. admitted in Court that Geo.Sr was privy to secret bankruptcies that Appellant had no knowledge of, while complaining that appellant's counsel had not provided a copy of the 1982 W-2 that was evidence of John's high union wages. Administrator Rodgers testified that she had found a box of documents in the bedroom of John Pahoundis in his abandoned Memory Deville Mobile home. Among these documents was a bill from GA Stewart who is now deceased for research done on various properties along the sole access road of the farm; agency papers, affidavit(s), pay stubs (Midland Steel has been out of business for years); a survey; and photos. Geo.is the sole middleman serving as John's agent to oversee the drilling and relay negotiations for contracts and leases each weekend after returning home from a week in Cleveland. This is a fiduciary relationship. It is clear from Geo.Sr.'s testimony that he is aware that the farm sits on the Clinton Pool. This is information never revealed to John Sr. Why did John suspect a breach of fiduciary duty? Why would John ask his daughter to find out if his brother betrayed him and withheld the

information that there was gas or oil on the farm when he had allowed them to look soon after John bought the farm? Geo.knew what was there all along and kept John Sr. in the dark. Surely Geo.Sr who had secretly been working as a lease agent in Crawford Township in the 1960's knew that the farm sat on the Clinton Pool and that John had purchased a commercial property when he purchased the farm. Rodgers title search dated January 2006 revealed no roads near the farm, which conflicts with a "Legal Notice" prepared by the County Law Director on behalf of the Crawford Township Board of Trustees which prompted the barn burning.

Geo.is merely acquiescing to the dominance that John is exerting over the farm as the landowner it is apparent that John Sr. sees no reason what so ever to ask anyone where he should lay footers for the steel garage, or if he should use the wooden building as a garage or a storage building, or if he should raise horses or goats instead of cattle. The definition of family should be interpreted to mean immediate family which would include wife and children (such as is used by hospitals) when dealing with a married man who is in possession of land, as it is presumed children have a right to inherit from their parents over brothers due to the fact that they are descendents. For the court to allow Paul to leave the court house before Rodgers was able to recall him to the stand to rebut George's claim he did not participate in the proposal draft was an error. None of this should have made it to court. This plain meaning of the narrow exclusion embodied in the laws that favor summary judgments, that cases should go on to trial, only if the defendant has met his burden and proven that he had granted permission for his brother to possess the farm is clear, and is consistent with the language of the Ohio constitution that there should be no delays in justice supported by the language of the Article 1, section 16 provides that Ohio citizens, "shall have justice administered without denial or delay". In this case the court was required to find that there was no reason not to grant Rodgers' September 2006 motion for a

summary judgment. The law expressly permits a judge to grant a motion for a summary judgment. More forcefully, it requires a judge to grant a motion for a summary judgment if there is no substantial credible material evidence to back up the titled owner's claim that the possession was with permission. The court of App. held that, under this clear statutory scheme, the determination of who is eligible for an exception, and therefore eligible to force another into long term expensive litigation, is a prohibited topic for appeal. This holding ignores the evident meaning of the standing law regarding summary judgments and improperly broadens the narrow exceptions enumerated in real estate law to find that the verbal life estate mentioned in the 2004 eviction proceeding was evidence John was possessing the farm with George's permission. The court of App. erroneously interpreted the statutory meaning behind North v. Pa. Ry. Co., 9 Ohio St.2d 169, 224 N.E.2d 757, syllabus 2. and the reasons for requiring summary judgments be issued, to include the determination that a life estate can be orally given to explain away a citizen's possession of land after he is no longer around to require the title holder keep his promise to the deceased. Such a judicial expansion of a clear and carefully drafted statutory exclusion which only permits cases in which the defendant is able to provide materially evidentiary proof that he gave the other a life estate thereby negating all claims of John to ownership of the property, violates the rules of statutory construction established and applied by this court.

#### PROPOSITION OF LAW No 2.

John Sr. as landowner is bound only by an agreement entered into with John Doe, Inc as oil and gas well business by an agent with agency powers granted by John Sr. Public funds should not have been used to survey the John's land; draft a legal notice concerning John's land; pay for the newspaper fees for the publishing of the legal notice and the township should proved

the name of the true party who has a grievance with John's boundary line; cornerstone. Public funds should not be used to prosecute illegal drillers in Municipal court.

#### CONCLUSION

A party should not benefit by persuading John to transfer his land and vehicles and duplex in in case they need to file for bankruptcy protection. The Judge said at the closing of the bench trial that he would look take judicial notice of the cases that had been filed in Coshocton County Common Pleas court. The *General Index of the Court of Common Pleas of Coshocton County*, show which of the two families needed protection from creditors. It contains contains six case against the appelless by the Ohio Department of Taxation. Justice should not be this expensive and the courts should not be clogged with cases that can be settled at the pre-trial level. If the time was given to really hear this matter, a judge not familiar with Appellee's many cases due to failure to pay taxes, may have decided it differently. It appears we can not get a fair trial before this Judge and that we should not have had a trial. Even with the trial, it is not fair if witnesses can be prevented from testifying during the rebuttal period due to time constraints of the Judge.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served upon Jame R. Skelton, Attorney for Appellee, James R. Skelton, at Pomerene, Burns, & Skelton, 309 Main Street, Coshocton, Ohio 43821, by ordinary U,S, mail, postage prepaid this 17<sup>th</sup> day of October 2008.

*Cynthia M Rodgers*

Cynthia M. Rodgers Administrator  
of Estate of John D. Pahoundis Pahoundis Sr. Pro Se.  
605 Cass St  
Dresden, Ohio 43821  
740-754-2484  
cynthiarodgers77@hotmail.com

COURT OF APPEALS  
COSHOCTON COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

CYNTHIA M. RODGERS, Admin. of  
Estate of John Daniel Pahoundis  
  
Plaintiff-Appellant

-vs-

GEORGE D. PAHOUNDIS,  
Pahoundis Family Trust  
George D. Pahoundis, trustee  
Mary C. Brumme Pahoundis, trustee

Defendants-Appellees

JUDGES:

Sheila G. Farmer, P.J.  
Julie A. Edwards, J.  
Patricia A. Delaney, J.

Case No. 07 CA 0007

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal From Coshocton County Court  
Of Common Pleas Case No. 05 CI 375

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellant

For Defendants-Appellees

CYNTHIA M. RODGERS  
605 Cass Street  
Dresden, Ohio 43821

JAMES R. SKELTON  
Pomerene Burns & Skelton  
309 Main Street  
Coshocton, Ohio 43812

3512-100  
2:13 PM

*Edwards, J.*

{¶1} This matter is on appeal from the trial court's judgment in favor of appellees, George Pahoundis Sr. and The Pahoundis Family Trust, and against appellant, Cynthia Rodgers, as the administratrix of the Estate of John Pahoundis Sr. In the judgment on appeal the trial court denied appellant's action seeking an order that an 80 acre tract of farm land was rightfully a part of the estate of John Pahoundis Sr. pursuant to the existence of either a resulting or a constructive trust and/or adverse possession.

#### STATEMENT OF FACTS AND CASE

{¶2} The parties involved in this action, their relationships, and the matters in dispute are as follows: Appellant, Cynthia Rodgers (hereinafter, "Rodgers") is the daughter of John Pahoundis Sr. and the administratrix of his Estate. John Pahoundis Sr. (hereinafter, "John Sr.") died intestate on July 24, 2003. Appellee, George Pahoundis Sr. (hereinafter, "George Sr."), is the brother of John Sr., deceased. Appellee, the Pahoundis Family Trust with George and Mary Pahoundis (husband and wife) trustees is the holder of an 80 acre tract of farm land which is the property in dispute.

{¶3} George Pahoundis Sr. holds the duly recorded deed to the 80 acres of property aka the 80 acre farm. John Pahoundis Sr., deceased, his wife, children and his children's families lived on the 80 acre farm from approximately 1979 until 2004 when they were evicted from the property by George Sr. The history of the case is as follows:

{¶4} John Sr. died intestate on July 24, 2003. After the death of John Sr., Rodgers opened an estate for her father in the Coshocton County Probate Court. In her capacity as administratrix of the estate, she asked George Sr. to transfer the 80 acre

farm to John Sr.'s estate. In response, George Sr. refused to transfer the 80 acre farm to the estate.

{¶5} Thereafter, on August 20, 2003, George and Mary Pahoundis conveyed the 80 acre farm into the Pahoundis Family Trust by quit claim deed with George Sr. and Mary as trustees.

{¶6} On October 13, 2004, George Sr. filed a forcible entry and detainer action in Coshocton Municipal Court seeking to remove John Sr.'s family from the 80 acre farm. On November 2, 2004, the Coshocton Municipal Court issued a writ of restitution in favor of George Sr. and against John Sr.'s family.

{¶7} On November 2, 2004, Rodgers, by and through attorneys Samuel Elliot and Craig Eoff, filed an action in the Coshocton County Probate Court against George Sr. and the Pahoundis Family Trust for declaratory judgment, unjust enrichment, constructive trust, resulting trust, breach of fiduciary duty and adverse possession.<sup>1</sup>

{¶8} In the probate complaint, Rodgers stated that on January 15, 1970, John Sr. and Betty Pahoundis purchased the 80 acre farm for eight thousand and five hundred dollars (\$8,500.00). Thereafter, on May 4, 1977, John Sr. conveyed the 80 acre farm by general warranty deed to his brother George Sr. Rodgers alleged that, by oral agreement, George Sr. was to act in a fiduciary capacity and hold the 80 acre farm in trust for the purpose of safeguarding the property for John Sr.'s children until John Sr.'s death. Rodgers also stated that John Sr. and his family had continued to live on the property, maintain the property and improve the property thereby establishing adverse possession. Rodgers also claimed that George Sr. had been unjustly enriched by John Sr.'s improvements to the property including the construction of a steel garage,

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<sup>1</sup> The record reflects that Rodgers retained several attorneys throughout this case.

water wells and fencing. Finally, Rodgers argued that George Sr. and the Pahoundis Family Trust had received royalties for oil and gas leases on the property which were rightfully part of John Sr.'s estate.

{¶9} For these reasons, Rodgers moved the probate court to impose a resulting trust or a constructive trust and to order George Sr. and the Pahoundis Family Trust to transfer the 80 acre farm and oil and gas leases to John Sr.'s estate. In the alternative, Rodgers moved the court to find that John Sr. acquired the property by adverse possession thereby making the property and the oil and gas leases assets of John Sr.'s estate.

{¶10} On November 30, 2004, George Sr. and the Pahoundis Family Trust filed a joint answer and counterclaim to Rodgers' probate complaint. In the answer, George Sr. and the Pahoundis Family Trust generally set forth denials to the allegations regarding the creation of a constructive or a resulting trust or adverse possession. In the counterclaim, George Sr. and the Pahoundis Family Trust alleged that the property was conveyed by John Sr. to George Sr. as reimbursement for money which John Sr. had borrowed. George Sr. and the Pahoundis Family Trust argued that John Sr.'s debt exceeded eight thousand and five hundred dollars (\$8,500.00) and that the brothers agreed to exchange the 80 acre farm in exchange for cancellation of the debt. The counterclaim further stated that the brothers agreed that they would record the value of the conveyed 80 acre farm as being eight thousand and five hundred dollars (\$8,500.00) so that John Sr. would only have to pay a minimal conveyance fee to the county auditor for the property transfer. George Sr. and the Pahoundis Family Trust alleged that as a result of this agreement, the deed transferring ownership of the 80

acre farm from John Sr. to George Sr. reflects payment to the Coshocton County Auditor of a minimal conveyance fee in the amount of seventeen dollars (\$17.00). (i.e. for the transfer of property valued at \$8,500.00).

{¶11} On December 28, 2004, Rodgers filed an answer to George Sr. and the Pahoundis Family Trust's counterclaim.

{¶12} On May 11, 2005, George Sr. and the Pahoundis Family Trust filed a motion for summary judgment against Rodgers. On May 18, 2005, by and through her second attorney, attorney John Woodard, Rodgers filed a response to George Sr. and the Pahoundis Family Trust's motion for summary judgment. On June 1, 2005, the probate court denied Rodgers' motion for summary judgment.

{¶13} On June 6, 2005, the probate court determined that the General Division of the Common Pleas Court of Coshocton County, Ohio, had jurisdiction over the issues alleged in Rodgers' complaint filed on November 2, 2004. Counsel for both parties agreed with the probate court's conclusion. Accordingly, by judgment entry, the probate court transferred the matter to the General Division of the Common Pleas Court of Coshocton County, Ohio.

{¶14} On June 28, 2006, George Sr. and the Pahoundis Family Trust filed a motion for summary judgment in the general division of the Coshocton County Court of Common Pleas on the same grounds as previously filed in the probate division. On July 11, 2006, new counsel for Rodgers and the estate, Attorney Amanda Paar, filed a notice of appearance. Attorney Paar had been retained by the appellant solely for the purpose of filing a response to appellees' motion for summary judgment. On August 6, 2006,

after being granted leave of court, Rodgers filed a response to George Sr.'s and the Pahoundis Family Trust's motion for summary judgment filed on June 28, 2006.

{¶15} On September 18, 2006, Rodgers filed a motion for summary judgment. In support, Rodgers attached her own affidavit. Rodgers argued that the estate was entitled to judgment as a matter of law because there was no question of fact that John Sr. and his family had established exclusive and adverse possession of the 80 acre farm by their residency, maintenance and use of the property for over twenty-one years. Rodgers further argued that the evidence established that there was no question of fact that the agreement between John Sr. and George Sr. which resulted in the transfer of the property was not intended to benefit George Sr. but rather was either a resulting trust or constructive trust created by the oral agreement of John Sr. and George Sr. The agreement was that George Sr. would hold the family farm in trust for the benefit of John Sr.'s children upon his death.

{¶16} On October 10, 2006, George Sr. and the Pahoundis Family Trust filed a response in opposition to Rodgers' motion for summary judgment. The affidavit of George Sr. was attached in support. The appellees argued that there was a question of fact as to the existence of any resulting trust, constructive trust and/or adverse possession.

{¶17} On October 16, 2006, George Sr. and the Pahoundis Family Trust filed a third motion for summary judgment. Rodgers filed a timely response.

{¶18} On November 17, 2006, by judgment entry, the trial court overruled George Sr.'s and the Pahoundis Family Trust's motions for summary judgment filed on June 28, 2006, and October 16, 2006. The trial court also overruled Rodgers' motion for

summary judgment filed on September 18, 2006. The trial court scheduled the matter to proceed to trial on November 28, 2006. By a separate judgment entry, the trial court granted Attorney Paar's motion to withdraw as counsel for appellant.<sup>2</sup>

{¶19} On November 28, 2006, Rodgers appeared for trial, pro se, on behalf of the estate. After the presentation of evidence on February 8, 2007, the trial court issued a judgment entry in favor of George Sr. and the Pahoundis Family Trust, thereby dismissing Rodgers' complaint for declaratory judgment, unjust enrichment, constructive trust, resulting trust, breach of fiduciary duty and adverse possession. It is from this judgment that Rodgers now seeks to appeal.

{¶20} Rodgers, who is appealing pro se, has set forth sixty one (61) assignments of error in her "Statement of Assignment of Error Presented for Review". However, Rodgers has only set forth one (1) argument. Rodgers' merit brief fails to comply with Rule 16 of the Appellate Rules of Procedure. Pursuant to App.R. 16(A)(7), an appellant is required to set forth an argument with respect to "each assignment of error presented for review and the reasons in support of the contention, with citations to the authorities, statutes and parts of the record on which appellant relies." However, upon examination of Rodgers' single "argument" we can infer the following assignments of error:

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<sup>2</sup> Cynthia Rodgers testified that she hired Attorney Parr to respond to appellees' motion for summary judgment but had never paid her to appear and handle the trial. TII.452-453. She stated, "The day before this trial was to begin, negotiations were still underway with Amanda Parr so that she could handle this matter for us. And it required a \$12,000.00 retainer, which we didn't have, but we were working on funding for that. And it fell through. And so I was stuck with handling this or just dismissing it." TII.450.

{¶21} "I. THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO GRANT APPELLANT'S MOTION FOR SUMMARY JUDGMENT FILED SEPTEMBER 18, 2006.

{¶22} "II. THE TRIAL COURT'S FINAL JUDGMENT IN FAVOR OF THE APPELLEES AND AGAINST THE APPELLANT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶23} "III. THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO ADMIT A BOX OF DOCUMENTS SUBMITTED BY THE APPELLANT.

{¶24} "IV. THE TRIAL COURT FAILED TO SUA SPONTE TRANSFER THE CASE TO THE FEDERAL BANKRUPTCY COURT.

I, II

{¶25} In the first assignment of error, appellant argues that the trial court erred in not granting her motion for summary judgment on the issues of resulting trust, constructive trust and adverse possession. In appellant's second assignment of error, she argues that the trial court's verdict in favor of the appellees on their counterclaim and dismissing appellant's complaint for resulting trust, constructive trust adverse possession, breach of fiduciary duty and unjust enrichment, was against the manifest weight of the evidence.

#### STANDARDS OF REVIEW

{¶26} The standards of review for summary judgment and whether the verdict is against the manifest weight of the evidence are as follows:

{¶27} We review an appeal from summary judgment under a de novo standard of review. *Baiko v. Mays* (2000), 140 Ohio App.3d 1, 746 N.E.2d 618, citing *Smiddy v.*

*The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 506 N.E.2d 212; *Northeast Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.* (1997), 121 Ohio App.3d 188, 699 N.E.2d 534. Accordingly, we afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate. *Id.* at 192, citing *Brown v. Scioto Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 622 N.E.2d 1153. Under Civ.R. 56, summary judgment is appropriate when: (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion which is adverse to the nonmoving party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

{¶28} In reviewing the trial court's verdict, it is axiomatic that judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, at the syllabus; *Gerijo, Inc. v. Fairfield* (1994), 70 Ohio St.3d 223, 226, 638 N.E.2d 533. Furthermore, in considering whether a judgment is against the manifest weight of the evidence, it is important that this court be guided by the presumption that the findings of the trier of fact are correct. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273. If the evidence is susceptible of more than one interpretation, we must construe the evidence consistently with the trial court's judgment. *Gerijo*, 70 Ohio St.3d at 226, 638 N.E.2d 533.

{¶29} On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed. The discretionary power to grant a new hearing should be exercised only in the exceptional case in which the evidence weighs heavily against the judgment." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. Because the trier of fact is in a better position to observe the witnesses' demeanor and weigh their credibility, the weight of the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, syllabus 1.

#### APPLICABLE LAW

{¶30} The law regarding equitable trusts, (such as resulting trusts and constructive trusts), and adverse possession are as follows:

{¶31} Equitable trusts are commonly divided into two categories: resulting trusts and constructive trusts. *Union S. & L. Assn. v. McDonoug* (1995), 101 Ohio App. 3d 273, 655 N.E.2d 426. The burden of proving the existence of a trust rests with the party asserting it. *Hill v. Irons* (1953), 160 Ohio St. 21, 29, 113 N.E.2d 243. The existence of a trust must be demonstrated by clear and convincing evidence. *Eckenroth v. Stone* (1959), 110 Ohio App. 1, 5, 158 N.E.2d 382. A trial court's decision regarding the existence of a trust will not be reversed where it is supported by some competent, credible evidence going to all the essential elements of the case. *Robbins v. Warren*

(May 6, 1996), Butler App. No. CA95-11-200, unreported, citing *Seasons Coal Co., Inc. v. City of Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

{¶32} A resulting trust arises where property is transferred under circumstances that raise an inference that the transferor, or person who caused the transfer, did not intend the transferee to take a beneficial interest in the property. *Bilovocki v. Marimberga* (1979), 62 Ohio App.2d 169, 172, 405 N.E.2d 337, 341. By employing its equitable powers in creating a resulting trust, a court seeks to enforce the parties' intentions. *Id.*

{¶33} In *First National Bank of Cincinnati v. Tenney* (1956), 165 Ohio St. 513, 515-516, 138 N.E.2d 15, 17, the Supreme Court noted that, "A resulting trust has been defined as 'one which the court of equity declares to exist where the legal estate in property is transferred or acquired by one under facts and circumstances which indicate that the beneficial interest is not intended to be enjoyed by the holder of the legal title'. \* \* \* The device has historically been applied to three situations: (1) Purchase-money trusts; (2) instances where an express trust does not exhaust the res given to the trustee; and (3) express trusts which fail, in whole or in part. 2A *Bogert on Trusts*, 405, Section 451." *Bilovocki v. Marimberga* (1979), 62 Ohio App.2d 169, 171, 405 N.E.2d 3375, citing, *Scott on Trusts*, Section 404.2 (1967); See also, *Univ. Hosps. Of Cleveland, Inc. v. Lynch* (2002), 96 Ohio St. 3d 118, 129, 2002-Ohio-3748, 772 N.E.2d 105.

{¶34} A purchase-money resulting trust occurs "when property is transferred to one person, but the entire purchase price is paid by another." *Glick v. Dolin* (1992), 80 Ohio App.3d 592, 597, 609 N.E.2d 1338, citing *Restatement of the Law 2d, Trusts*

(1959) 393, Section 440 and 5 Scott on Trusts (4 Ed.1967), Section 440. In such a case, "a resulting trust arises in favor of the person by whom the purchase price is paid[.]" *John Deere Indus. Equipment Co. v. Gentile* (1983), 9 Ohio App. 3d 251, 255, 459 N.E.2d 611, citing Restatement of the Law, Trusts 2d (1959) 393, at Section 440. Central to the determination of whether a purchase money resulting trust exists are the issues of (1) who paid for the purchase and, (2) who was intended to beneficially enjoy the property. *Cayten v. Cayten* (1995), 103 Ohio App. 3d 354, 359, 659 N.E.2d 805, citing *Glick v. Dolin* (1992), 80 Ohio App.3d 592, 597, 609 N.E.2d 1338.

{¶35} A constructive trust is a remedial device utilized to prevent fraud and unjust enrichment. *Ferguson v. Owens* (1984), 9 Ohio St.3d 223, 459 N.E.2d 1293; *Bilovocki v. Marimberga*, 62 Ohio App.2d 169, 171, 405 N.E.2d 337. It is an equitable remedy used "[w]hen property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest." *Ferguson v. Owens*, 9 Ohio St.3d at 225, 459 N.E.2d 1293, quoting *Beatty v. Guggenheim Exploration Co.* (1919), 225 N.Y. 380, 386, 122 N.E. 378; *Cosby v. Cosby*, 96 Ohio St. 3d 228, 2002-Ohio-4170, 773 N.E.2d 516.

{¶36} "The duty to convey the property may arise because it was acquired through fraud, duress, undue influence or mistake, or through a breach of a fiduciary duty, or through the wrongful disposition of another's property. The basis of the constructive trust is the unjust enrichment which would result if the person having the property were permitted to retain it." *Bilovocki v. Marimberga*, 62 Ohio App.2d at 169, 171-172, citing 5 Scott on Trusts, Section 404.2 (1967). Unjust enrichment occurs when one person has and retains money or benefits which in justice and equity belong to

another. *Liberty Mut. Ins. Co. v. Indus. Comm.* (1988), 40 Ohio St.3d 109, 110-111, 532 N.E.2d 124; *Hummel v. Hummel* (1938), 133 Ohio St. 520, 14 N.E.2d 923. "Ordinarily a constructive trust arises without regard to the intention of the person who transferred the property." *Bilovocki v. Marimberga*, 62 Ohio App.2d 169, 171, 405 N.E.2d 3375, citing, Scott on Trusts, Section 404.2 (1967).

{¶37} By imposing a constructive trust, a court orders a person who owns the legal title to the property to hold or use the property for the benefit of another or to convey the property to another to avoid unjust enrichment. *Everhard v. Morrow*, Cuyahoga App. No. 75415, (December 2, 1999), unreported. When construing constructive trusts, courts are required to apply the often quoted maxim, "equity regards done that which ought to be done." *Bilovocki v. Marimberga*, 62 Ohio App.2d 169, 171, 405 N.E.2d 337.

{¶38} A constructive trust will not attach to property acquired by a bona fide purchaser-one who acquires title to property for value. See *In re Bell & Beckwith* (C.A.6, 1988), 838 F.2d 844, 845, citing Restatement of the Law, Restitution (1937), Section 172(1).

{¶39} Adverse possession focuses on the acts of the one claiming prescriptive ownership. "Adverse possession is a common law device by which one in unauthorized possession of real property acquires legal title to that property from the titled owner." *Hamons v. Caudill*, Huron App. No. H-07-020, 2008-Ohio-248, citing, 1 Curry and Durham, Ohio Real Property and Practice (5th Ed.1996) 276.

{¶40} Adverse possession focuses on the acts of the one claiming prescriptive ownership, and requires proof of exclusive possession and open, notorious, continuous

and adverse use for a period of 21 years. *Grace v. Koch* (1998), 81 Ohio St.3d 577, 692 N.E.2d 1009, syllabus; See also *Pennsylvania Rd. Co. v. Donovan* (1924), 111 Ohio St. 341, 349-350, 145 N.E. 479, 482. See, also, *State ex rel. A.A.A. Invest. v. Columbus* (1985), 17 Ohio St.3d 151, 153, 478 N.E.2d 773, 776; *Gill v. Fletcher* (1906), 74 Ohio St. 295, 78 N.E. 433, paragraph three of the syllabus; *Dietrick v. Noel* (1884), 42 Ohio St. 18, 21. To prevail on a claim for adverse possession, a claimant must establish these factors by clear and convincing evidence. *Grace v. Koch*, supra at 580. A party who fails to prove any of the elements fails to acquire title through adverse possession. *Grace v. Koch*, supra at 579; *Pennsylvania Rd. Co. v. Donovan*, supra; *Houck v. Huron Cty. Bd. of Park Commrs.*, 6th Dist. No. H-05-018, 2006-Ohio-2488, ¶ 12, affirmed 116 Ohio St.3d 148, 2007-Ohio-5586.

{¶41} When the original entry onto another's property is permissive or conferred by grant then any use reasonably consistent with such grant or permission is not adverse. *Heggy, et. al v. Lake Cable Recreation Association, et. al*, Stark App. No. CA 4704, (December 15, 1977); See also, *Kelley v. Armstrong* (1921), 102 Ohio St. 479, 132 N.E.2d 15. "If a claimant's use of the disputed property is either by permission or accommodation for the owner, then it is not "adverse," for purposes of establishing adverse possession". *Coleman v. Penndel Co.* (1997), 123 Ohio App. 3d 125, 703 N.E.2d 821, Syllabus at 3.

{¶42} The party claiming title by adverse possession must establish a prima facie case of adverse use before the alleged owner is required to rebut the claim. *Goldberger v. Bexley Properties* (1983), 5 Ohio St.3d 82, 84, 5 OBR 135, 137-138, 448 N.E.2d 1380, 1382-1383. However, if the owner of the property in question claims that

the use was permissive, the owner has the burden of proving it. *Pavey v. Vance* (1897), 56 Ohio St. 162, 46 N.E. 898.

{¶43} Each case of adverse possession rests on its own peculiar facts. *Bullion v. Gahm* (2005), 164 Ohio App. 3d 344, 349, 842 N.E.2d 540, citing *Oeltjen v. Akron Associated Invest. Co.* (1958), 106 Ohio App. 128, 130, 153 N.E.2d 715. Failure of proof as to any of the elements results in failure to acquire title by adverse possession. *Pennsylvania Rd. Co. v. Donovan*, 111 Ohio St. at 349-350, 145 N.E. at 482.

#### ANALYSIS

##### {¶44} A. Summary Judgment.

{¶45} In the case sub judice, on September 18, 2006, Rodgers filed a motion for summary judgment on the issues of the existence of either a resulting trust (purchase money) or constructive trust by unjust enrichment and/or adverse possession. In the motion, Rodgers stated that John Pahoundis Sr. and his wife Betty purchased the 80 acre farm on January 15, 1970, for the price of eight thousand and five hundred dollars (\$8,500.00) and financed the entire purchase through Baltic State Bank. Rodgers argued that on November 15, 1975, John Sr. paid off the mortgage and held the property in fee simple. Rodgers stated that on May 4, 1977, John Sr. and Betty transferred the property to George Sr. to act in a fiduciary capacity and hold the farm in trust for John Sr.'s family and to protect the property from financial liability.

{¶46} In support, Rodgers attached her own sworn affidavit. In the affidavit, Rodgers stated that her father (John Sr.) and George Sr. entered into a oral agreement whereby they both agreed that, George Sr. would hold the 80 acre farm in trust for the

benefit of John Sr.'s children and that, in the event of John Sr.'s death, George would convey the farm outright to John's Sr.'s children.

{¶47} In the sworn affidavit, Rodgers also stated that John Sr. and his family lived on and operated the 80 acre farm from 1979 until 2003. She stated that John Sr.'s family logged the farm and kept the proceeds of the logging, used the land to store miscellaneous junk and old automobiles, farmed the land for their own personal use, raised horses for horse racing on the land, built a steel garage wherein John Sr.'s children did auto repairs, dug water wells, and installed a septic system for the numerous family members who had brought their mobile homes onto the property. She stated that all these activities occurred in an open and notorious manner, were adverse to George Sr.'s claim of ownership, occurred without the permission of George Sr. and were continuous for a period of more than twenty-one years.

{¶48} Rodgers argued that the estate was entitled to summary judgment as a matter of law because there was no question that John Sr. and his family had established exclusive and adverse possession of the 80 acre farm by their residency, maintenance and use of the property for over twenty-one years. Rodgers further argued that the evidence established that there was no question of fact that the oral agreement between John Sr. and George Sr. which resulted in the transfer of the property to George Sr. was not intended to benefit George Sr. but rather was intended to bestow on George Sr. a fiduciary duty to hold the farm in trust for the benefit of John Sr.'s children. Finally, appellant argued that the facts established that if George Sr. and the Pahoundis Family Trust were permitted to keep the 80 acre farm they would be unjustly enriched by the improvements to the property made by John Sr. and his family.

{¶49} On October 10, 2006, George Sr. and the Pahoundis Family Trust filed a response in opposition to Rodgers' motion for summary judgment. In support, the appellees attached the sworn affidavit of George Pahoundis Sr. In the affidavit, George Sr. stated that he loaned John Sr. money "various times" during John Sr.'s life in an amount in excess of eight thousand and five hundred dollars (\$8,500.00). He stated that on May 4, 1977, he agreed to accept the 80 acre farm as full payment for John Sr.'s loan debts in excess of \$8,500.00, and that John Sr. and his family moved off the property to make a new start. He stated that after the transfer, John Sr. and his family suffered financial hardship and he gave John Sr. permission to move back onto the 80 acre farm with his family. As a result, appellees argued that there was a question of fact as to the existence of any oral agreement, a resulting trust, a constructive trust and/or adverse possession.

{¶50} On November 17, 2006, by judgment entry, the trial court overruled Rodgers' motion for summary judgment.

{¶51} Upon de novo review we find that the conflicting affidavits of Rodgers and George Sr. created questions of material fact as to whether valuable consideration was provided by George Sr. to John Sr. for the transfer of the 80 acre farm, as to the intentions of John Sr. and George Sr. regarding the transfer and as to whether John Sr.'s family had adversely possessed the 80 acre farm for more than twenty-one years. For these reasons, we find that to the trial court did not err in denying appellant's motion for summary judgment.

{¶52} B. Verdict.

{¶53} With regard to the trial court's verdict, the record before the trial court was as follows:

{¶54} During the trial the appellant presented the testimony of the following witnesses: George Pahoundis as on cross, Jeffrey Pahoundis, Julius Pahoundis, Jerry Duane Pahoundis, Joseph Pahoundis, and Deborah Pahoundis Beamer. Rodgers testified on her own behalf.

{¶55} Jeffrey Pahoundis, (hereinafter, , "Jeffrey"), the son of John Sr., testified in pertinent part that for over three years he had participated in building a steel garage which he guessed was worth approximately three thousand dollars (\$3,000.00) and had helped drill water wells on the 80 acre farm. TI.162, 173, 181. He testified that he and his family had a camper and had lived on the 80 acre farm. TI.176. He testified that his father raised six thoroughbred horses on the property and had other animals on the farm. TI.188. He stated that the family had approximately thirty junk cars sitting around the farm because his dad kept the junk cars for parts. TI.188-189. He testified that all these activities occurred without George Sr.'s permission.

{¶56} On cross-examination, Jeffrey testified that the Coshocton County Treasurer's records showed that the steel garage had only increased the value of the 80 acre farm by thirty dollars (\$30.00) and that the taxable value of all the buildings on the farm was approximately six hundred and twenty dollars (\$620.00). TI.218 and 224. He testified that when his father (John Sr.) asked him to participate in building the steel garage he told his dad that he didn't want to put the building up because the farm wasn't in his dad's name. He testified, "I told my dad I didn't want to put the garage up because

the farm was in George's name. Therefore, if we put the garage up, anything happens to dad, we lose the garage and everything." Tl.227. He further testified that George Sr. participated in the placement of the lean-to for the horses and may have also helped construct the steel building.Tl.223-224.

{¶57} Julius Pahoundis, the son of John Sr., testified that he moved to the farm with his parents in 1979. (Transcript of Proceedings dated November 29, 2006, at page 244, hereinafter TII.\_\_). He testified that he helped build a lean-to and a steel garage on the 80 acre farm and that his father raised horses on the farm.TII.245-251.

{¶58} Jerry Duane Pahoundis, (hereinafter, , "Jerry") the son of John Sr., testified that he lived in a mobile home on the 80 acre farm without George Sr.'s permission and worked on cars in the steel garage before he became disabled.TII.252, 261-263. He testified that he helped build the steel garage and contributed bolts, nuts and washers to the project.TII.254-256. He testified that the family accumulated a lot of junk cars on the property.TII.264. He testified that the family had a garden on the farm and raised oats for the horses.TII.270. He testified that he helped build the lean-to for the horses and that his Uncle George (George Sr.) came by and said that he would have helped to build a pole barn.TII.271, 279,309, 311. He testified that his dad would go to the horse races in West Virginia and bet money.TII.295. He testified that he went with his dad one time to pay taxes on the farm and remembered that his dad worked to get the taxes lowered because the property was being used in part for agriculture purposes. TII.298. He testified that in 2000, his dad was upset because the treasurer's office filed a foreclosure action against the farm for back taxes and his dad got the money to keep the farm from being sold.TII.299-300. He testified that he and

Charles,(George Sr.'s son), got into an argument because Charles thought it wasn't fair that he (Jerry) could live on the property for free when George Sr. owned the property and paid all the taxes.TII.301.

{¶59} On cross-examination Jerry testified that his father and grandfather made repairs to an old farm house on the property but before they could move in, the farm house burned down and they had to move to a different location.TII.311-312. He testified that the department of human services became involved with the family and in 1973 he and his brothers and his sisters were removed from his parent's care and were placed in foster care. TII.313. He testified that by 1978, his father managed to get all the children returned to his custody.TII.313.

{¶60} Joseph Pahoundis, (hereinafter, , "Joseph") testified that, when he lived on the 80 acre farm, he brush hogged the property, mowed grass, cut down trees and dug ditches for the driveway.TII.321. He testified that he put up no trespassing signs on the property.TII.326. He testified that he had a mobile home on the farm without George Sr.'s permission.TII.327. He testified that he helped put up the steel building and contributed money to cover the costs of the steel building.TII.332. He testified that shortly after his father passed away the family received a letter from George Sr. with a proposal that the children keep forty acres and sell forty acres of the farm and divide the money.TII.367.

{¶61} On cross-examination, Joseph admitted that he had been convicted of felony drug trafficking, receiving stolen property and breaking and entering. TII.341-342. He testified that he gave his dad money all the time.TII.349. He testified that he had known since he was a little boy that George Sr. owned the 80 acre farm.TII.356.

{¶62} Deborah Pahoundis Beamer (hereinafter, , "Deborah") testified that prior, to being disabled in a car accident, she worked at a rehabilitation center for the deaf and visually impaired. TII.403. She testified that she had a mobile home on the 80 acre farm, hunted and dumped junk cars on the property without George Sr.'s permission. TII.377, 408. During the testimony, Rodgers presented Deborah with a stack of documents labeled Plaintiff's "Exhibit 14" which Deborah testified appeared to include some receipts, bills, handwritten notes, pay stubs and a request for unclaimed funds prepared by John Sr. TIII376-377, 381. She testified that the family drilled a water well near her trailer. TII.379. She testified that when she needed bail money for a criminal charge, her father and George Sr. used the farm as collateral. TII.398. 422.

{¶63} On cross-examination, Deborah testified that, when the farm was used as collateral for the bail, George Sr. signed the bond. TII.422. She testified that she has known that the farm was in George Sr.'s name for years. TII.422. She testified, "It's no big mystery, it's common knowledge." TII.423.

{¶64} Finally, Rodgers took the stand on her own behalf and testified that her father, John Sr. had started working at Midland Ross in January of 1983 and was a member of the United Auto Workers. TII.430. She testified that she found a check issued to her father by East Ohio Gas for a gas lease and that no one else has claimed the royalties on the gas lease. TII.433. She testified that her father took out a loan in 1970 with Baltic State Bank for nine thousand dollars (\$9,000.00) to purchase the property for eight thousand and five hundred dollars (\$8,500.00). TII.435. She testified that her father, prior to his death, told her that George Sr. had used the farm as collateral to build a one hundred and sixty seven dollar (\$167,000.00) home but that the amount had

been paid off. TII.437. She testified that prior to her father's death they visited an attorney to discuss putting the 80 acre farm in a trust. TII.438. She testified that after her father died she was presented with George Sr.'s proposal regarding the farm. TII.443. She testified that she contacted George Sr. and told him that her dad did not want the farm sold but that he wanted it in trust. TII.443. She testified that she had been told by her father that the boys were getting into trouble and that the farm had to be put in George Sr.'s name for protection. TII.444. She testified that various documents indicated that her father could borrow or use property for collateral if he needed money and that he did not need to borrow money from George Sr. TII.451.

{¶65} On cross-examination, Rodger's testified that in 1964 her parents gave custody of their eleven children to various relatives. TII.455. She testified that she was ordered to live with George Sr. and his family TII.456. She testified that in 1965 she was reunited with her parents and resided with them until 1973. TII. 457. She testified that her father worked at Midland Steel in 1973 and 1974 and that he earned approximately one hundred and ninety one dollars (\$191.00) a week. TII.473. She testified that in July of 1973 she again was removed from her parents custody by children's services for neglect and placed in a receiving home in West Lafayette. TII.457, 459. She testified that in September of 1973 her father made a four thousand dollar (\$4,000.00) payment on the 80 acre farm but she was not aware of the source of the money. TII.458. She testified that she never returned to the farm. TII.460. She testified that the taxes would come in George Sr.'s name and that her father would pay the taxes. TII.465. However, she was not able to produce any evidence to show that her father had actually made any tax payments on the 80 acre farm. TII.465-470. After the

conclusion of her testimony, Rodgers rested her case pending the admission of her exhibits.

{¶66} In their case in chief, George Sr. and the Pahoundis Family Trust presented the testimony of Sandra Corder, Michelle Damer and John Paul Pahoundis. George Sr. testified on his own behalf.

{¶67} Sandra Corder testified that she is the County Auditor for Coshocton County. (Transcript of proceedings dated November 30, 2006, at page 521, hereinafter TIII.\_\_). Ms. Corder authenticated a copy of a warranty deed filed in the auditor's office on May 12, 1977. She testified that it was a deed from John Pahoundis as grantor to George Pahoundis as grantee. TIII.522. She testified that a conveyance fee is based on the purchase price of the property. TIII.522. She testified that the deed in this case indicated that the payment of the conveyance fee on the 80 acre farm was seventeen dollars (\$17.00). She stated that in 1977 the conveyance fee was two dollars (\$2.00) per thousand meaning the cost of the property was eight thousand and five hundred dollars (\$8,500.00). TIII.523. She testified that at the time of the conveyance it was possible to arrange to transfer property from one party to another in trust without paying a conveyance fee. TIII.523. She stated that this particular transaction would have qualified for a waiver of a conveyance fee to the grantor, (John Sr.) but that a trust waiver had not been requested or prepared by the lawyer who handled the conveyance. TIII.525.

{¶68} Michelle Damer from the Coshocton County Treasurers Office, testified as standard policy, real estate tax bills are mailed to property owners. TIII.530-531. She identified defendant's "exhibit A" as being a contractual agreement between George Sr.

and the Coshocton County Treasurer's Office to pay delinquent taxes on the 80 acre property. TIII.532-533. She further testified that since 1987 she had numerous conversations with George Sr. regarding delinquent taxes and had expected and waited for George Sr. to come to the Treasurer's Office to pay the delinquent property taxes on the 80 acre farm. TIII.532, 562. She testified, on cross examination, that in 2004, the tax value of the eighty acre farm was one hundred and sixty seven thousand fifty dollars (\$167,050). TIII.560.

{¶69} John Paul Pahoundis, the son of George Sr. and Mary Pahoundis, testified that he runs an oil, gas and water well rig business. TIII.563. He testified that he drilled a water well on the 80 acre farm at no charge to John Sr. TIII.567. He also testified that George Sr. and his family rarely went to the farm because John Sr.'s family was always in trouble. TIII.564

{¶70} George D. Pahoundis (George Sr.) testified that he gave John Sr. financial assistance throughout John Sr.'s life. TIII.592. He testified that John Sr. had a difficult time supporting eleven children, his race horses and the gambling habits of himself and his wife. TIII.593. He stated that, in 1970, he loaned John Sr. two to three thousand dollars to purchase the 80 acre farm but that John Sr. used the money to buy a tractor. TIII.593. He testified that, in 1973, he loaned John Sr. four thousand dollars (\$4,000.00) so that he could get his life back together and get his children back from human services. TIII.595. He testified that he gave John Sr. various cars and trucks. TIII.596.

{¶71} George Sr. testified that John Sr. and his wife Betty decided that they would transfer the 80 acre farm to him by deed as compensation for the money they

had borrowed from George Sr. TIII.599. He testified that John Sr. and his wife also wanted a place to live for the rest of their lives and that he told them he would provide that for them. TIII.599. He testified that John Sr. told him that he could do what he wanted with the farm after his death and that his children would be alright. TIII.599. He testified that John Sr. never asked him to put the farm in trust for his children. TIII.599.

{¶72} George Sr. also testified that John Sr. contacted him and asked him for permission to move onto the farm and to remove timber. TIII.602. He testified that he gave John Sr. permission to move back with his family and timber the land and that he never took any money from John Sr. for the timber. TIII.602. He testified that he was aware that John Sr. was erecting buildings on the property and even helped with the construction. TIII.603. He testified that he was aware that John Sr. was keeping horses on the property and that he would often have to help care for the horses and helped build the lean-to to house the livestock. TIII.603-604.

{¶73} George Sr. testified that John Sr. asked him if they could get oil and gas leases on the property in order to obtain free gas. He stated that he agreed to John Sr. obtaining the oil and gas leases, but that they were never able to drill wells on the property. TIII.605. He testified that he knew John Sr.'s children were on the property and he didn't consider them to be trespassers. TIII.605.

{¶74} George Sr. testified that he used vegetables from the farm's garden at his restaurant and that he had used the farm as collateral for a mortgage and to post bond for his niece. TIII.607. He testified that he leased the property for farming but that the relationship with the local farmers only lasted a year because their tools and equipment

were stolen from the land. TIII.609. Finally, he testified that he paid all the taxes on the 80 acre farm. TIII.611.

{¶75} Upon review, we find that there was competent, credible evidence to establish that George Sr. accepted the 80 acre farm as compensation for John Sr.'s outstanding loans in excess of \$8,500.00. The evidence also established that, once the transfer was complete, George Sr. received the real estate tax statements, was recognized by the County Treasurer's Office as being the owner of the property, paid the real estate taxes and made arrangements with the Treasurer's Office to make up for any arrears in the real estate taxes. George Sr. also exhibited ownership and used the property to his benefit by using the property as collateral as bail for John Sr.'s daughter and by signing the bail papers and by using the property as collateral for his new home.

{¶76} Furthermore, we do not find the evidence established that George Sr. would be unjustly enriched. The evidence established that the changes to the property were either detrimental, such as the dumping of junk and cars, or financially minimal, such as erecting structures which added little value to the property. As such, we find that the trial court did not err in finding that Rodgers failed to establish by clear and convincing evidence the existence of either a resulting or constructive trust.

{¶77} The evidence further established that George Sr. gave John Sr. and his family permission to live on the 80 acre farm. George Sr. promised John Sr. that he would always have a place to live. As a result, when John Sr. and his family were reunited, had very little income and no place to live, George Sr. kept his promise and gave John Sr. and his family permission to live on the 80 acre farm. George Sr. testified that he did not consider his brother and family to be trespassers. George Sr. also gave

John Sr. permission to log the property and keep the proceeds and to seek both oil and gas leases. John Sr.'s children testified that they knew the property belonged to George Sr. stating that it was "common knowledge." Jeffrey testified that he didn't want to help his dad (John Sr.) erect a steel building on the 80 acre farm because he knew that the land did not belong to his dad and he was worried that if anything happened to his father they would lose the building. For these reasons, we do not find that the trial court erred in finding that Rodgers failed to establish by clear and convincing evidence title by adverse possession.

{¶78} Accordingly, appellant's first and second assignments of error are not well taken and are hereby overruled.

### III

{¶79} In the third assignment of error, the appellant argues that the trial court erred in denying the admission of her miscellaneous exhibits.

{¶80} Appellant states in her brief that the trial court erred in failing to admit the "original carbon copy" of the 1975 Shroyer/JD Pahoudis Purchase agreement and a box of original documents which included personal checks dating back to the 1960's, certificates of registration for 30 horses, survey drawings dated 1973 from Stewart surveying, account records, receipts and purchase agreements and an original check dated May 1972 for gravel used to make the oil drilling rig road.

{¶81} Appellant, in her brief, further argued that "[t]he photos from John Sr.'s mobile home and the financial records in the Admin.'s possession also showed improvements which included the water well that John Sr. a check paid to Marc A. Pahoundis, an employee of Buckeye Union Drilling which J.P. Pahoundis testified he

owned." [sic] Appellant also argued in her brief that the trial court should have admitted into evidence "a certified certificate which would have been evidence that George Sr.'s marriage was not legal[,] as well as a "marriage certificate to show that John Daniel Pahoundis, Sr. had married Betty Pahoundis twice, once in 1956 and again in 1974." (Appellant's brief pages 28 and 29.)

{¶82} The record reflects that, after the close of her case, appellant moved for the admission of twenty-three exhibits. Appellees objected to the introduction of several exhibits. The trial court then addressed each exhibit individually. The following colloquy took place with regard to the exhibits which were not admitted.

{¶83} "Court: We will discuss the exhibits one at a time. Ms. Rodgers, why should Plaintiff's exhibit 1 be admitted notwithstanding the objection?

{¶84} "Rodgers: \*\*\*it was. One of the original documents attached to the original complaint.

{¶85} "Court: 1 is denied admission. 2 appears to be an oil and gas lease. \*\*\*

{¶86} "Rodgers: Same reasons.

{¶87} "Court: Plaintiff's 2 is denied admission. Plaintiff's 3 appears to be a document entitled purchase contract, dated October 10, 1975. \*\*\*Why should it be admitted?

{¶88} "Rodgers: That was in my possession as a part of being the administratrix of the estate. And I have the original if the court would like it. I'm not sure what was provided in discovery, but mentioning the terms that were relevant to the case of the contract were referenced in one of the affidavits that were filed.

{¶89} "Court: The Court finds insufficient identification of Plaintiff's Exhibit [3] to authorize its admission. Admission to Plaintiff's exhibit 3 is denied. Plaintiff's exhibit 4 is a multi page document. The first page of which says Ohio Division of Geological Survey. \*\*\*The fifth page, in fact, appears to be some sort of unidentified, out-of-court hearsay statement. Why should plaintiff's exhibit 4 be admitted?

{¶90} "Rodgers: Were those the Crawford Township Wells?

{¶91} "Court: It does mention Crawford Township, yes. 1 is identified as Limbacher—one not identified—one contains the name Limbacher, one contains the name Stein, one contains the name Lorenz, one contains the name Dent Thomas.

{¶92} "Rodgers: Those were within the packet that was given to Mr. Skelton at the 2004 eviction proceedings. They were things that I came across in the—in my duties as administratrix of the estate in this investigation.

{¶93} "Court: The admission of Plaintiff's exhibit 4 is denied. \*\*\*<sup>3</sup>

{¶94} "Court: \*\*\*Plaintiff's 10 is a 12-page document, appears to be a series of digital colored photographs of various parts of the property in question. You object to Plaintiff's 10, to each of the photographs in Plaintiff's 10, Mr. Skelton?

{¶95} "Skelton: Yes\*\*\*

{¶96} "Court: The objection to Plaintiff's 10 is sustained. They are of questionable relevance and probative value. There was no testimony at all about whether they constituted fair and accurate representations of what they purported to show and that's a fundamental basis for the admission of photographs. 10 is denied. Plaintiff's 11 is a truly multiple page document. I have no idea how many pages are in there, but I would guess there to be in excess of 100. It's about a half an inch thick. And

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<sup>3</sup> Plaintiff's exhibits 5 through 9 were admitted without objection.

the outside document appears to be a photocopy of front and back of a check drawn on the account of John D or Betty Pahoundis to Deep Rock Manufacturing, July 19<sup>th</sup>, 1990, \$373. Mr. Skelton I take it you are objecting to all pages of Plaintiff's 11; is that correct?

{¶97} "Skelton: That's correct, your honor.

{¶98} "Court: Ms. Rodgers, why should Plaintiff's 11 be admitted notwithstanding the objection?

{¶99} "Rodgers: The majority of those pages in that document are pages that have to do with the many horses that are on the horse farm as part of the adverse possession that shows continuing use of the property as a horse farm and that those horses were owned by John Pahoundis and those documents from the jockey club out of New York are, I believe, copies of official registration of those horses.

{¶100} "Court: Plaintiff's 11 in its entirety is denied admission. They were not properly identified and their relevance is not immediately clear.<sup>4</sup> \*\*\*

{¶101} "Court: \*\*\*Plaintiff's exhibit 14 is, again, a large stack of documents, better than a half inch thick. The outside document appears to be an invoice from Carter Lumber with a date which is really difficult to read but may be December 29<sup>th</sup>, 2001. \*\*\*Why should the contents be admitted?

{¶102} "Rodgers: Those pages of the packet were some of the same pages that were shown to the defendant at his deposition in which he didn't—in which he stated he had stated he did not know why John would be buying all that sand and gravel at that time. And that was the time in which the steel garage was being constructed.

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<sup>4</sup> Plaintiff's exhibit 12 was admitted over objection and Plaintiff's exhibit 13 was admitted without objection. TII.510-511.

{¶103} "Court: Plaintiff's 14 is denied admission. The documents are insufficiently identified or authenticated and of undemonstrated relevance. Plaintiff's exhibit 15 is a four-page document, the outside of which appears to be a photocopy of a check. Again, it's Deep Rock Manufacturing to John or Betty Pahoundis August 10, 1993, \$32. Plaintiff's 15 looks like a legal ad or part of a legal ad, and I'm not sure what the other pages are. \*\*\*Why should 15 be admitted\*\*\*?

{¶104} "Rodgers: The notice that is on Page 2 of that is a notice that was required by the courts to be filed in the newspaper to notify all parties who might be interested in that property, which is the parcel in question here, as part of 00-CI either 207 or 211, which were both being handled in that –at the same period.

{¶105} "Court: Admission of Plaintiff's 15 is denied. The documents are insufficiently identified or authenticated. Plaintiff's 16 appears to be a transcript of proceedings in a trial to the court before Judge David Hostetler of the Coshocton Municipal Court October 26<sup>th</sup>, 2004. In part, and then there are other documents attached to the back of the transcript, including an Els Court Reporting Services invoice, a copy of a temporary restraining order from a case in probate court, perhaps this case, but it is not signed or filed, a plaintiff's motion for temporary restraining order and an affidavit. \*\*\*Why should 16 be admitted?

{¶106} "Rodgers: That is the transcript that was provided by the court reporter, Lynn Els, for the appeal that was filed in the Fifth District Court of Appeals concerning that case and counterclaim of the case exceeded the jurisdiction of municipal court and then was transferred to this court and scheduled for a bench trial in December of 2005, prior to George Pahoundis dismissing the claim.

{¶107} "Court: 16 is denied admission. 16 is not a self-authenticating document. It has not been adequately identified or authenticated and its relevance is not clear. 17 appears to be a photocopy of something called mortgage loan record book, Baltic State Bank. \*\*\*admission 17 is denied. The document is obviously a copy and is inadequately identified. 18 appears to be –perhaps an original mortgage loan record book Baltic State Bank.\*\*\*Why should 18 be admitted?

{¶108} "Rodgers: At the time those documents were hand stamped each time someone came in to make a payment, and it shows that the person possessing the book would have been the one going in to make get the stamp in person. And it's original that I found in my father's files on the farm.

{¶109} "Court: What leads you to conclude that the document, as you say, indicates who actually carried the money in?

{¶110} "Rodgers: Because when you go in, they stamp it and so whoever is taking in the money would have that with them.

{¶111} "Court: Admission of Plaintiff's 18 is denied. There is no testimony supporting the assertion. The document is inadequately identified. It is inadequately authenticated and it has no apparent relevance. 19 appears to be a facsimile cover sheet from Frontier Power and a letter to Cynthia Rodgers from Marty Shroyer, representative Frontier Power. Mr. Skelton, you object to 19, both the cover sheet and attached letter?

{¶112} "Skelton: Yes, Your honor.

{¶113} "Court: For the standing reasons and perhaps it would be hearsay?

{¶114} "Skelton: That would be correct.

{¶115} "Court: 19 is denied admission. 20 is again, a multi-page document. Very cumbersome to deal with documents that are in multiple pages because some parts may require different rulings. This appears to be 20 or 30-page document. The outside page says Department of Health, Coshocton County. And includes within the documents attached though is something called Dave's 80 acre farm formerly owned by John. \*\*\*why should Plaintiff's Exhibit 20 be admitted notwithstanding the objection?

{¶116} "Rodgers: The document from the Department of Health was provided to the defendant at his deposition, and he testified concerning that document.

{¶117} "Court: That would somehow make it admissible at this trial without further authentication in your view? The admission of Plaintiff's Exhibit 20 is denied. Plaintiff's Exhibit 21 appears to be a sworn affidavit; a statement to the Coshocton County Sheriff's Department, the statement is of Jerry D. Pahoundis. It looks like it was notarized and dated October 5, 2005 by Mary Fritz.\*\*\*why should 21 be admitted notwithstanding the objection?

{¶118} "Rodgers: Because it's a notarized affidavit.

{¶119} "Court: Plaintiff's 21 is denied admission. Plaintiff's 22 is, again, a multi-page document, at least eight pages, having something to do with Frontier Power, billing system inquiries, connect orders, an invoice for something, and what appears to be some sort of map or drawing.\*\*\*

{¶120} "Court: 22 is denied admission. There was no identification or authentication for 22 from any source. 23 is a multi-page document, appears to be some 30 pages or so. The first page is a letter on the head—a letter with the name Midland Steel Products Company across the letterhead and then a series of documents

relating, I believe, generally speaking, to the income of John Pahoundis. \*\*\*why should 23 be admitted notwithstanding the objection?

{¶121} "Rodgers: Because those were copies of the originals that I had in his documents and also because I was questioned on the stand concerning those documents.

{¶122} "Court: Admission of Plaintiff's 23 is denied. The documents are not adequately authenticated or identified and their relevance is not immediately clear." (Transcript of Proceedings for November 30, 2006, at pages 503 -518.)

{¶123} This Court further notes that the only witness who examined documents during Rodgers' case in chief was Deborah Pahoundis Beamer. Deborah examined "Exhibit 14" and testified that it appeared to include some receipts, bills, hand written notes, pay stubs and a request for unclaimed funds. T.11. 376-377, 381. Deborah did not authenticate the documents or express any knowledge regarding their identity or content.

{¶124} A condition precedent to the admissibility of documents is that documents must be authenticated or identified. *St. Paul Fire & Marine Ins. Co. v. Ohio Fast Freight, Inc.* (1982), 8 Ohio App.3d 155, 157, 456 N.E.2d 551. "Generally, authentication or identification is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." *Id.* at paragraph three of the syllabus; Evid.R. 901(A). "The common manner of identifying a document is through testimony of a witness with knowledge." *St. Paul Fire & Marine*, *supra*, at paragraph four of the syllabus.

{¶125} In this case, Rodgers sought to introduce numerous documents at the close of her case. No witnesses were called to identify or authenticate the documents. The documents appear to have simply been presented for admission. Therefore, upon a review of the record we find that the documents were not properly introduced, identified or authenticated by any person with knowledge of their character or content. For these reasons, the trial court did not abuse its discretion in sustaining the appellees' objection to their admission for consideration by the trial court. Accordingly, appellant's third assignment of error is not well taken and is hereby overruled.

#### IV

{¶126} In the fourth assignment of error, appellant argues that the trial court erred in failing to change the venue of the case to the Federal Bankruptcy Court. Specifically, in her brief she states, "[s]ince Geo. States that he had knowledge that John Sr. had sought federal bankruptcy protection, this case should have been removed to federal bankruptcy court", citing 76 Am.Jur.2d Trusts Section 710, p. 695. (Appellant's brief page 30). This argument is without merit.

{¶127} It is well-established that issues raised for the first time on appeal are not reviewable. See *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 1997-Ohio-401, 679 N.E.2d 1099. An issue otherwise waived because of a failure to object may be brought up on appeal only through the doctrine of plain error. *Id.* In civil appeals, "the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial

IN THE COURT OF APPEALS FOR COSHOCTON COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

CYNTHIA M. RODGERS, Admin. of  
Estate of John Daniel Pahoundis

Plaintiff-Appellant

-vs-

GEORGE D. PAHOUNDIS,  
Pahoundis Family Trust  
George D. Pahoundis, trustee  
Mary C. Brumme Pahoundis, trustee

Defendants-Appellees

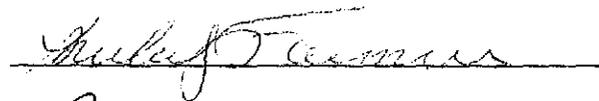
JUDGMENT ENTRY

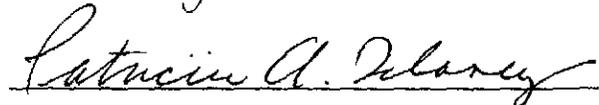
CASE NO. 07 CA 0007

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Coshocton County Court of Common Pleas is affirmed. Costs assessed to appellant.

FILED  
DATE \_\_\_\_\_ SEP 2 2008 \_\_\_\_\_  
TIME \_\_\_\_\_ 2:13 PM \_\_\_\_\_  
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JUDGES