

Cynthia M. Rodgers, Admin of
Estate of John D. Pahoundis ,
Appellant,

Case No.: 2008:2028

Expedited Review Requested

vs.

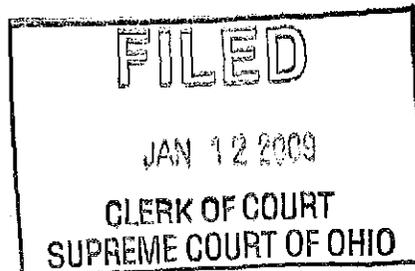
Pahoundis Family Trust, et al,
Appellees

APPELLANT CYNTHIA M. RODGERS, ADMINISTRATRIX OF ESTATE OF JOHN D. PAHOUNDIS' MOTION FOR PRELIMINARY INJUNCTION STAYING ADDITIONAL PROCEEDINGS UNTIL FURTHER ORDER OF THIS COURT ALONG WITH THE BARRING OF ANY TRESPASS BY THE APPELLEES OR THEIR ASSIGNS, ONTO THE LANDS POSSESSED BY THE ESTATE OF JOHN D. PAHOUNDIS ALONG WITH AN ORDER OF REPLEVIN FOR THE RETURN OF JOHN'S MARE NAMED "PATCH ANGEL" AND STALLION NAMED "POKEY'S SAILOR" AND THE MARE NAMED LADY LUCK AND THE FOALS; ONE HORSE TRAILER AND THE UNITED STATES MAILBOX AND MISCELLANEOUS ORDERS INCLUDING THE APPOINTMENT OF A RECIEVER.

James R. Skelton
Pomerene, Burns & Skelton
309 Main Street
Coshocton, Ohio 43821
740-622-2011

Cynthia M. Rodgers, Admin. of
Estate of John D. Pahoundis
605 Cass Street
Dresden, Ohio 43821
740-754-2484
Email: cynthiarodgers77@hotmail.com

Attorney for Appellees
George D. Pahoundis,
Mary Catherine Pahoundis, trustee
George D. Pahoundis, trustee
Pahoundis Family Trust



IN THE SUPREME COURT OF OHIO

Cynthia M. Rodgers Admin of) SUPREME COURT CASE NO.2008:2028
Estate of John D. Pahoundis)
)
Appellant,)
) ON APPEAL FROM THE JUDGMENT
v.) ENTERED IN THE COSHOCTON
) COUNTY COURT OF APPEALS,
George D. Pahoundis, et al.,) FIFTH APPELLATE DISTRICT
) COURT OF APPEALS
Appellees.) CASE NO. 07CA007

Now comes Appellant Cynthia M. Rodgers, Admin. of Estate of John D. Pahoundis and moves this Court for an order staying all proceedings in this matter and related matters in Municipal Court or in the trial court until this Court has either declined to accept jurisdiction over this matter or until the appeal process is concluded, if jurisdiction is accepted. The reasons for this Motion are more fully set forth in the Brief which is attached hereto and incorporated by reference herein.

Respectfully submitted,

Cynthia M. Rodgers
 Cynthia M. Rodgers *Admin.*
 605 Cass Street
 Dresden, Ohio 43821
 605 Cass Street
 Dresden, Ohio 43821
 Telephone: 740-754-2484
cynthiarodgers77@hotmail.com
 Pro Se

BRIEF

On September 2, 2008, the Coshocton County Court of Appeals, Fifth Appellate District affirmed the trial court's order dismissing Appellant's complaint for a Declaratory Judgment, Breach of Fiduciary Duty, Resulting Trust, Constructive trust, **and Adverse Possession.** Unjust Enrichment. A copy of the Court of Appeals' Opinion and Judgment Entry is attached hereto and incorporated by reference herein.

Appellees' counsel is expected to commence in the Coshocton County Court of Common Pleas and/or the Coshocton Municipal Court proceedings to eject or evict the Estate of John D. Pahoundis from the premises possessed by ^{John} and his family since January 1970 and or rule on a Motion to Dismiss filed by Appellees' counsel in a related case 05CI703 which has been pending for a jury trial since October 2005 and which has been delayed due to the appeal of this matter to the Fifth District Court of appeals and on to the Supreme Court. Further complicating matters, George ordered the removal of the United States mailbox labeled J.D.P. from the base of the hill.

Rodgers had a temporary forwarding order in for John D. Pahoundis, but the United States Postal service lacks a procedure for long term temporary forwarding orders. Rodgers uses her home mailing address for all estate and farm related documents such as with the County Auditor's CAUV discount

program which George was reinstated after having lapsed for twenty years unnoticed. (Exhibit A) A check of the auditor's records show that it was the fact that John had a horse farm and conserved timber acreage on the northern section of the farm that qualified it for the CAUV discount. This discount was reinstated after John was not around to pay the taxes any more and George thought he would have to start paying them. Since then Rodgers has made several payments on the farm taxes with the assistance of siblings.

During the last week Rodgers has been advised by counsel that since the Estate of John Diefenbach was open at the time John purchased the farm and since the Estate of John Diefenbach did not have licensed appraisers determine the value of the farm or the size of the farm, and since the farm was not advertised for sale in the *Coshocton Tribune*, and since there is an irregularity in the signature found on an "Executor's Deed" and the estate may contain a fraudulent conveyance(s). The executor was a farmer who made the letter "C" in a distinctive way, yet the person who signed his name on the executor deed and one receipt was one who was trained in penmanship as taught in the 1880s which is like calligraphy. John Diefenbach left his nieces and nephews \$5 and left the remainder of his estate to Elmhurst Illinois College, and since the man selling the farm to John may have not owned the farm, a new Title Search is needed. Elmhurst

Illinois College has been notified of this finding. (Exhibit B)

A review of the Tax Maps at the Coshocton County Recorder's office shows John Diefenbach is listed as the owner from 1911 through the 1950s and John Pahoundis is listed as the owner in the 1970s therefore a title abstractor would have needed to check with Probate Court for their Estate records or with the sole electric provider (Frontier Power Cooperative) for area to learn that there are over 35 years of electric (from 1970 to 2005) in the name of John D. Pahoundis or his family until the children of John Pahoundis temporarily had it turned off for safety reasons due to the vandalism George Pahoundis was causing to occur on the premises. This is also the case with the telephone service. George kept cutting the telephone line so John's children temporarily disconnected the service. There is no public water supplier, but a check of cases at the Court of Common Pleas shows a case filed by as the *Cynthia M. Rodgers Admin. of Estate of John D. Pahoundis vs Buckeye Union Development et. al*, (08CI803) for a water well on the property with a sewer pipe and a breach of contract claim. A check of Municipal court cases shows six horse at large cases since 1976 at the farm address of Route 3 Fresno or 29575 TR 469 filed against John D. Pahoundis or his daughter Debbie Lou Pahoundis Beamer.

The Estate of John Pahoundis has continued with John's claim of this property ever since John died. Transfers from brother to brother are questionable in many situations as not being true transfers. This is one of those cases. In every way John Pahoundis was the owner of the farm.

In reviewing the estate of John Diefenbach, a "Certificate Transmitted to County Recorder" recorded September 23, 1925 was discovered which shows John Diefenbach inherited half of his father's estate which at one time included over 258 acres as found in:

Deed Volume 56 page 11 lands formerly owned by Anthony & Emma Stall: 40 Acres

**Deed Volume 70 page 135-136 lands formerly owned by Phillip & Phebe Geib & Charles Young (Deifenbacher)
Four (4) tracts:124acres+20acres+10.5acres+104 acre and 52 Rods**

**Deed Volume 73 page 596-597 lands formerly owned by William P. Young
Four (4) tracts:124acres+20acres+10.5acres+104 acre and 52 Rods**

**Deed Volume 75 page 567-568 lands formerly owned by Sarah Young
Four (4) tracts:124acres+20acres+10.5acres+104 acre and 52 Rods**

**Deed Volume 77 page 615-616 lands formerly owned by Jacob Young
Four (4) tracts: 124acres+20acres+10.5acres+104 acre and 52 Rods**

**Deed Volume 86 page 222-223 lands formerly owned by John & Emma Young
Four (4) tracts: 124acres+20acres+10.5acres+104 acre and 52 Rods**

Every part of the remainder of John Diefenbach's share of the 258 acres he owned at the time he died, in addition to the John Diefenbach 80 acre farm, were to go to Elmhurst Illinois College in 1972 and Appellant believes that George and his employer/gas & oil well venturers; partners/ co-investors knew it.

Appellant believes that the Coshocton County Probate Court of 1971 overlooked the fact that a petition to sell the real

estate had not been filed; that gas royalties were not accounted for; that licensed appraisers had not been appointed and that a public sale had not been held for any purpose other than selling the personal property of John Diefenbach. An "Executor's Deed" had been signed but it did not appear to have the signature of the executor, but appears to have been written by a man with excellent penmanship. None of John Diefenbach's share of the 258 acres he had inherited from his father were accounted for. This recent finding has been brought to the attention of Elmhurst College, and it will take some time for the trustees to review the matter to determine what action to take.

Appellant believes the Court of Appeals erred in affirming the court's Order dismissing her Motion for a Summary Judgment and her complaint. On October 17, 2008, Appellant filed a Notice of Appeal and Memorandum in Support of Jurisdiction. On February 7, 2008, the Admin. of the Estate of John D. Pahoundis filed a "Motion for a New Trial" while the case was pending at the Fifth District Court of Appeals. This Motion was denied by the trial court without even an evidentiary hearing. Rodgers believed a new trial was needed based a faulty title search by Varsity Title and Ward D. Coffman III 0015723 ¹ and perjury of George who failed to answer questions fully concerning who he was working

¹ *Cynthia M. Rodgers Admin. of Estate of John D. Pahoundis vs Varsity Title Services LLC, Coffman Law Offices and Ward Coffman III Complaint for Breach of Contract, Negligence and Legal Malpractice Muskingum County Common Pleas Court Case Number CH2009-0013. Filed January 5, 2009.*

for, and the names of Gas and Oil companies for which he served as an agent as this was needed to obtain a copy of the "Parrillo-Pahoundis Agreement"; the "Right of Way" agreement; Contract #6125 ² and the 1972 Gas Drilling lease concerning the farm prior to John's transfer to him on May 4, 1977 so that it could be determined to what extent he breached his fiduciary duties to John. On January 7, 2009, Appellant filed Appellant's Brief in that matter under case number 08CA0018 with the Fifth District Court of Appeals.

Because Appellant has appealed the Court of Appeal first judgment, all proceedings in Judge Evan's Court or the Municipal Court should be stayed until this Court decides either to decline to review this matter or to accept jurisdiction and resolve the issues raised on appeal. The parties should not have to expend time and money for proceedings in the trial court until the appeal process is exhausted. The trial court should not have to spend time and effort on this case unnecessarily. In the interest of judicial economy, the trial court proceedings should be stayed until the appeal process is exhausted and so that further restraining orders are not needed against the son(s) of George D. Pahoundis, Appellees and their assigns and their sons should be ordered to not trespass onto the lands

² See John and Betty Lou Pahoundis Private gas well drilled in 1972 plus two Gas Leases dated 1976.

claimed by John and his family and should be ordered to return John's mare named "Patch Angel" and stallion named "Pokey's Sailor" and the foal of 2008 named "Zora II" along with the United States Mailbox as this behavior is not proper of a former United States rural mail carrier. In addition, George should provide full veterinary records for these horses for the period he caused them to be removed and should be barred from selling, assigning or transferring any alleged interest in Patch Angel or Pokey's Sailor or foal(s) or Lady Luck. Defendant's should return the horses to the farm by 4:30 pm on January 15, 2009 and should refrain from injuring the horses, cutting fences or knocking down gates which would result in Appellees' counsel filing additional cases against John's daughter Debbie Lou Pahoundis Beamer or Appellant for having a "horse at large". These Motions are being made for good cause. Appellant Cynthia M. Rodgers, Admin of Estate of John D. Pahoundis respectfully request that her Motion to Stay Proceedings and Emergency injunction barring trespass onto the land by the appellees or their assigns or their sons and the order of replevin for the two thoroughbred horses, another horse named "Lady Luck" that pastures with them along with one of the two jointly owned horse trailers. Furthermore, Rodgers requests a Receiver be appointed in Columbus, Ohio for the gas royalties associated with the property so that a third party that is not interested in the

proceedings can hold the funds, so as not to be released, until it is determined which of the following parties have a valid claim to the land and the royalties and their percentages:

1. Elmhurst Illinois College,
2. The Estate of John Diefenbach
3. The Estate of John Pahoundis,
4. John D. Pahoundis II,
5. Debbie Lou Pahoundis Beamer,
6. Cynthia M. Rodgers
7. Mary Louise Pahoundis-Parks,
8. Theresa Irene Pahoundis Barker,
9. Julius Dean Pahoundis,
10. Jeffrey Dee Pahoundis Sr,
11. Jerry D. Pahoundis,
12. James David Pahoundis,
13. Joseph Dale Pahoundis
14. Minor sons of Elizabeth Joanne Pahoundis Meckley (deceased)
15. The George and Mary Catherine Pahoundis Family Trust
16. The John D. Pahoundis and Betty Lou Pahoundis Family Trust

Because an important part of any real estate is the access route, Rodgers requested clarification from the Ohio Department of Transportation as to why they were funding the maintenance of our private road. (Exhibit C) ODOT is looking into the matter. It is believed that this take over attempt has to do with the Pahoundis-Parrillo gas well as the Board of Trustees for Crawford Township started trying to take it over ever since John let George bring a driller on the farm to look for gas in 1972. The township's "469" signs and our "Private Road" signs disappear due to this dispute.

ODNR Joe Hoerst told Rodgers during a visit to the property on September 21, 2007 that the gas drilling site was so close to

the Parrillo farm that there had to be a Pahoundis-Parrillo agreement. There has been an ongoing dispute with Parrillo's over the right to use our road and in 2003, Carl Parrillo purposefully drove though our closed gate.

I respectfully request that this honorable court order the Board of Crawford Township Trustees and the Parrillo's to produce their documents as George denies the drilling ever took place. In addition, I respectfully request that Worthington Oil and Gas, Pomstone, MFC Drilling, OGM, NUCORP, Gary Zinkon (Federal Prison Beckley, WV), Energy Investment Corporation, Gary Zinkon Auction Realty, City of Coshocton, Opportunity Ranch and W.G. Close Gas open their records so that it can be determined if Appellees assets should be frozen to reimburse Elmhurst Illinois College and John D. Pahoundis for the gas drained from the six properties when it should have been evident through a title search that the estate of John Diefenbach owned the properties or the 45 year old John Pahoundis (instead of the 18 year old nephew named John Pahoundis) owned or possessed one of the properties

I also respectfully request that this court reinstate the ten year Protection Order once put in place by Judge Evans to prevent the sons of George from coming near the property or properties rented by the family members of John which includes the Appellees.

Due to the 1955 fatal shooting of Harold Hull during hunting season on John and George's mother's Holmes County property, I respectfully request that this court order that George and his family hunt/fish/swim on the Holmes County farm on "odd days" and John's family hunt/fish/swim on "even days" until that matter is settled by a lower court. In addition, no timber should be cut, no sales of lands be made and all rents, profits, and royalties from the Pahoundis wells should be held by the Receiver until it is determined which of the following parties have a valid claim to the land and the royalties and their percentages:

1. The Estate of Mary Naomi Davis
2. The Estate of Roger Lee Davis
3. The Estate of John Pahoundis
4. The Estate of Sophia Louise Rivera Black Pahoundis
5. John D. Pahoundis II
6. Grace E. Pahoundis Peel
7. James Timothy E. Pahoundis Sr
8. Paul Allen Pahoundis
9. Lou E. Pahoundis Jr.
10. John D. Pahoundis II,
11. Debbie Lou Pahoundis Beamer,
12. Cynthia M. Rodgers
13. Mary Louise Pahoundis-Parks,
14. Theresa Irene Pahoundis Barker,
15. Julius Dean Pahoundis,
16. Jeffrey Dee Pahoundis Sr,
17. Jerry D. Pahoundis,
18. James David Pahoundis,
19. Joseph Dale Pahoundis
20. Minor sons of Elizabeth Joanne Pahoundis Meckley (deceased)
21. The George and Mary Catherine Pahoundis Family Trust
22. The John D. Pahoundis & Betty Lou Pahoundis Family Trust
23. George D. Pahoundis II
24. Sandra Darlene Pahoundis Klingler Mikesell
25. Linda Diane Hunter

26. John Paul Pahoundis
27. Louis William Pahoundis
28. Marc Anson Pahoundis
29. Charles Adrian Pahoundis
30. Pamela Cookson Pahoundis
31. and others

Finally, I would like this court to appoint a receiver to hold that share of the rents from the Pahoundis aka Antimisiaris properties abroad as it appears unjust that male Ohioans such as John D. Pahoundis Sr. are barred from inheriting from Greek grandparents if the Italians ruled Greece at the time of his grandparent's death. (See Exhibit D)

I. Relief Requested and Applicable Standard

This Court should immediately issue a preliminary injunction staying the enforcement any eviction or ejection order Appellees or their assigns attempt to enforce or obtain until after this Court rules this matter.

To grant a preliminary injunction, the court examines four factors: (1) whether there is a substantial likelihood that plaintiff will prevail on the merits; (2) whether the plaintiff will suffer irreparable injury if the injunction is not granted; (3) whether no third parties will be unjustifiably harmed if the injunction is granted; and (4) whether the public interest will be served by the injunction. *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co.* (10th Dist. 1996), 109 Ohio

App.3d 786, 790, 673 N.E.2d 182, citing *Valco Cincinnati, Inc. v. N & D Machining Serv., Inc.* (1986), 24 Ohio St.3d 41, 492 N.E.2d 814. On appeal, a trial court's judgment regarding relief will not be disturbed in absence of a clear abuse of discretion. *Corbett v. Ohio Bldg. Auth.* (1993), 86 Ohio App.3d 44, 89, 619 N.E.2d 1145.

II. Appellant is likely to succeed on the merits of her appeal.

The recent in-depth Title research shows that the John Diefenbach estate owned the farm as part of an open estate in 1971, but that John D. Pahoundis and his family would have acquired title from that estate in 1991.

III. An injunction is necessary to provide the estate of John D. Pahoundis a meaningful opportunity to challenge this takeover attempt.

The Estate of John D. Pahoundis has a right to challenge this takeover attempt. If the takeover attempt succeeds before this court has the opportunity to consider the merits of the appeal pursuant to appeal laws, the estate of John D. Pahoundis will already have suffered much of the harm his appeal aims to avoid. An injunction is vital to providing the estate of John Pahoundis meaningful relief.

IV. This Court should grant the Estate of John Pahoundis' emergency motion because the estate of John Pahoundis will suffer irreparable harm if an eviction action or ejection action is enforced before this Court rules upon Petitioner's appeal.

An immediate stay is warranted because the enforcement of an eviction action to which the Estate was not a party to in the past and a new one is imminent and will cause irreparable harm. Although the administratrix regularly checks on the property, and to take pictures of the "No trespassing" sign (Exhibit E) and to prop the gate back up. George tried to make a claim on half of John's property in 2003 when he schemed with John's youngest brother (who is a California real estate broker) to break his promise to John and only give back half of the farm instead of transferring back the entire farm back as agreed.

Rodgers posted a second sign at the gate on January 7, 2009 which read "No Hunting without Permission" on which Rodgers wrote "Estate of John D Pahoundis. 605 Cass Street, Dresden, Ohio 43821 740-754-2484"; a second sign that reads "Private Road" at the base of the hill where it branches off of New Crawford Township Road 88. Simultaneously with this motion, Appellant filed a brief in 05CA0018 regarding the erroneous title search done by Varsity Title Services LLC and Ward D. Coffman which should have listed that the property became the property of John D. Pahoundis and his family in 1991 due to

adverse possession against the estate of John Diefenbach and Elmhurst College; John's gas and oil well leases; and information on East Ohio Gas transfer via trade and the East Ohio Gas Contract #6125.

Appellant has no adequate remedies to redress the harm she will suffer if an eviction order or ejection order is obtained or enforced now. Also Ohio has a two year statute of limitation on evictions and the estate has been open since January 2004 and no eviction action has been taken against the estate in these ~~five~~ (5) years, therefore the court should consider a permanent injunction barring Pahoundis Family Trust, or its assigns or the children of George Pahoundis or their associates or from interfering in anyway with the Estate's possession of the farm. George failed to join the estate as a party to any eviction action.

Should this Court grant an injunction **after** the estate is evicted or ejected from the property, there is no guarantee that the estate can prevent permanent changes to the property. Certainly, there is no guarantee the two families will ever be the same, and that would be a shame as these are the families of the only two sons of Reverend E.G. Pahoundis who have lived in Ohio most of their lives. Granting a stay will help prevent this irreparable injury.

V. No third parties will be unjustifiably harmed if the injunction is granted, and the public interest will be served.

No one will be injured if this Court allows the Estate of John D. Pahoundis to keep possession of the farm, because the estate of John D. Pahoundis is the lawful possessor of the property. To further ensure no third parties will be unjustifiably harmed the Pahoundis Family Trust account and the accounts of George and Mary Pahoundis at the Millersburg Commercial Savings and Loan and the Killbuck Savings & Loan Bank should be frozen.

Further, it is in the interests of all the parties, as well as the public, for this Court to stay the enforcement of any eviction or ejection action as this Court's ruling on the estate's appeal to the Ohio Supreme court has not been heard yet.

VI. Conclusion

A preliminary injunction should issue because:

- 1.) The Estate is likely to succeed on the merits of his appeal based on the new title research;
- 2.) An injunction is necessary to provide the Estate a meaningful opportunity to challenge an eviction or ejection action;

3.) The Estate will suffer irreparable harm if an eviction or ejection action is enforced before this Court rules upon the Estate's appeal; and,

4.) Granting the Estate injunctive relief is the appropriate way to serve the public interest in this matter, to continue in the raising of some of the best Ohio thoroughbred horses; ^(EXHIBIT F) to continue benefiting from the sacrifices their parents and the family made while they paid off the mortgage with Baltic State Bank on the farm; and to continue rebuilding the house that John started in 2000; repair the wooden garage; repair the steel garage he finished in 2003; care for the pastureland, woods, springs and to plow the fields; plant gardens; harvest without interference; and to continue to conserve the land for the next generations of grandchildren.

Respectfully submitted,

Cynthia M. Rodgers, Admin.

Cynthia M. Rodgers Admin.
Estate of John D. Pahoundis
605 Cass Street,
Dresden, Ohio 43821
740-754-2484
cynthiarodgers77@hotmail.com



BRETT A. NELSON
Notary Public, State of Ohio
My Commission Expires Nov. 13, 2011

Signed & sworn to in my presence this 9th day of January 2009.

-18-

Brett A. Nelson
NOTARY

Nov 13 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR PRELIMINARY INJUNCTION STAYING ADDITIONAL PROCEEDINGS UNTIL FURTHER ORDER OF THIS COURT ALONG WITH THE BARRING OF ANY TRESPASS BY THE APPELLEES OR THEIR ASSIGNS, ONTO THE LANDS POSSESSED BY THE ESTATE OF JOHN D. PAHOUNDIS ALONG WITH AN ORDER OF REPLEVIN FOR THE RETURN OF JOHN'S MARE NAMED "PATCH ANGEL" AND STALLION NAMED "POKEY'S SAILOR" AND THE MARE NAMED LADY LUCK AND THE FOALS; ONE HORSE TRAILER AND THE UNITED STATES MAILBOX AND MISCELLANEOUS ORDERS INCLUDING THE APPOINTMENT OF A RECIEVER was forwarded by regular U.S. mail to the Appellees mailing it to the office of James R. Skelton, Pomerene, Burns & Skelton 309 Main Street, Coshocton, Ohio 43812.

Cynthia M. Rodgers, Admin.

Cynthia M. Rodgers Admin.
Estate of John D. Pahoundis
605 Cass Street,
Dresden, Ohio 43821
740-754-2484
cynthiarodgers77@hotmail.com

*Signed & sworn to this 9th day of
January 2009.*



BRETT A. NELSON
Notary Public, State of Ohio
My Commission Expires Nov. 13, 2011

Brett Nelson
NOTARY

*My commission expires
Nov. 13, 2011*

Sandra Corder
Coshocton County Auditor
349 Main Street - Room 101
Coshocton, Ohio 43812-1587



ORIGINATOR OF OFFICE

PAHOUNDIS FAMILY TRUST
C O CYNTHIA RODGERS
605 CASS STREET
DRESDEN OH 43821

4382159783 R002

AP



EXHIBIT A

RE: Will

From: **Cynthia Rodgers** (cynthiarodgers77@hotmail.com)

Sent: Tue 4/29/08 3:42 PM

To: Bruce Hill (bruceh@elmhurst.edu)

ok
thanks

cynthiarodgers77@hotmail.com

CONFIDENTIALITY NOTICE: This e-mail message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately. In other words the information contained in this e-mail message and any attachments is or may be legally privileged and confidential, and is intended only for the use of the individual or entity to which it is addressed. If the reader is not the intended recipient of this message, you are hereby notified that you are prohibited from printing, copying, storing, disseminating or distributing this communication. If you have received this communication in error, please delete it from your computer and notify the sender by reply e-mail. Thank you.

From: bruceh@elmhurst.edu
To: cynthiarodgers77@hotmail.com
CC: lucks@luckslaw.com
Subject: RE: Will
Date: Mon, 28 Apr 2008 16:16:49 -0500

Cindy,

You can provide this information to Barbara Lucks. She is an attorney in Circleville, OH, and a member of the Elmhurst College Board of Trustees. Her email is lucks@luckslaw.com or the address is 203 S Scioto Street, Circleville, OH 43113 (740) 474-7500. I have copied her on this email.

Bruce Hill

Elmhurst College

Senior Development and Planned Giving Officer

Is Elmhurst College a part of your estate plans?

Visit our website at <http://www.plan.gs/Home.do?orgId=756> for more information.

EXHIBIT B

Re: Fw: public highways and roads

From: **Joe.Hausman@dot.state.oh.us**

Sent: Mon 1/05/09 10:00 AM

To: Jason.Sturgeon@dot.state.oh.us

Cc: cynthiarodgers77@hotmail.com; Julie.Gwinn@dot.state.oh.us; Bill.Ramsey@dot.state.oh.us

Jason,

I am out of the office in FLA and will look into this when I return (1/7/09). Quickly looking at the tab, I can tell you that the township trustees have been receiving funds and have signed mileage certification forms for this road since 1973. That doesn't mean that they spent money on this particular road, however it is part of the inventory.

The only reason that this road would have been put on the inventory was that some local official told us to. If this is not a public road then the trustees/county engineer should let us know and we will remove it from the inventory.

I'll be in contact with Cynthia later this week.

Joseph J. Hausman
Roadway Information Manager
Office of Technical Services
1980 West Broad St.
Columbus, Ohio 43223

Phone# 614-752-5732
Fax# 614-752-8646

Roadway Information Web Site: <http://www.dot.state.oh.us/Divisions/Planning/TechServ/OfficeOrg/Pages/RoadwayInformationSection.aspx>

-----Jason Sturgeon/Production/D05/ODOT wrote: -----

To: Joe Hausman/TechServices/CEN/ODOT@ODOT
From: Jason Sturgeon/Production/D05/ODOT
Date: 12/29/2008 12:46PM
cc: cynthiarodgers77@hotmail.com
Subject: Fw: public highways and roads

Joe,

Could you answer the question raised by Cynthia regarding possible improper payment for maintenance of Madison Township Road 469 in Coshocton County? According to Cynthia's research there is no such roadway. Our roadway inventory lists 0.17 miles and appears to be last modified in 1973. I do not have any background on how our inventory is verified.

Since this is a Township Roadway I can do nothing other than refer Cynthia to the local officials (Twp Trustees and County Engineer) for more information to help answer the other questions she has related to the roadway/driveway.

Thanks

Jason Sturgeon, P.E.
ODOT District 5
phone (740) 323-5186
fax (740)323-5125

----- Forwarded by Jason Sturgeon/Production/D05/ODOT on 12/29/2008 12:36 PM -----

Cynthia Rodgers
<cynthiarodgers77@hotmail.com> To <jason.sturgeon@dot.state.oh.us>

11/26/2008 03:04 PM cc <julie.gwinn@dot.state.oh.us>, ODOT Julie Brogan ODOT Julie Brogan
<julie.brogan@dot.state.oh.us>

SubjectRE: public highways and roads

EXHIBIT C

Jason:

Thanks for getting back with me. I have some other questions about public funding of highways and roads.

Can you tell me when Crawford Township started asking you for public funds to maintain our driveway? My father bought our farm in 1970. He would not give a right of way to anyone. I had a title search done in Jan 2006 which confirmed there is no right of way. The researcher checked with the County Recorder's, Clerk of Courts, County Commissioner's Records, and other sources of public records and found none.

We have seven people who get mail at the farm and think that we should be able to use Route 3 Fresno, Ohio or 54500 Township Road 88 which is between our neighbors house numbers. Someone took down our mailbox which was located at the spot where it was in 1970 when Dad bought the farm.

Parrillo was named as the arsonist in our Sept 1973 barn fire. He was mad at Dad because Dad would not grant a right of way. I found in the Legal Notices of the Coshocton Tribune in Nov 1973 that Crawford township was taking bids for a fence along the Pahoundis-Parrillo road when no such road exists. I wonder who got the winning bid and who was the bonding company.

Dad did not get along with his brother in law Carl C. Parrillo (both now deceased). Parrillo never had any rights to our road. It is the Pahoundis Road. My dad renamed it "JDPahoundis Boulevard" before he died since he and his six sons all have the initials JDP. Please update your records to show that JDPahoundis Boulevard is a private road owned by John Daniel Pahoundis and is not eligible for public funds for maintenance. ODOT should get a refund as we never asked the township to do anything on it. The tax map lady said the township was getting money for about 1000 feet. They are doing it under the pretense that 469 or 468 is a township road. The neighbors have their own access routes from TR 88 and don't need our driveway.

The neighbors to the west have a longer driveway than ours and theirs was not made a public road. I wonder who the aggrieved party was in the 1973 Legal Notice that Crawford Township failed to mention. (In the Bedford fence case that is attached, the aggrieved party was published.) I suspect it is the gas company of the man who asked Dad if he could lay pipes on our land whom Dad would not grant a right of way.

Townships should not get involved in disputes over right of ways. Public funding should not be used for any private gas company wanting to gain access to Dad's land or Dad's gas well under the pretense that our driveway/road was taken by necessity. The township did not need it and neither did anyone else. If they did they would have asked Dad if they could buy it from him. Is there an eminent domain person there that can look at this abuse of public funds for this takeover attempt? I would also like to know who this aggrieved party was. Any documents you could get for me would be appreciated.

cynthiarodgers77@hotmail.com

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To: cynthiarodgers77@hotmail.com
CC: Julle.Gwinn@dot.state.oh.us; Julie.Brogan@dot.state.oh.us
Subject: Re: Fw: public highways and roads
From: Jason.Sturgeon@dot.state.oh.us
Date: Wed, 12 Nov 2008 14:23:44 -0500

Cynthia,

ODOT only keeps records of purchases made for establishment of public roads which fall under ODOT's control. Our records include any property rights obtained as well as original right of way and construction plans.

Depending on the age of the roadway and if another governmental agency (County, City, etc.) established the roadway County Recorder's, Clerk of Courts, County Commissioner's Records, and other sources of public records may need researched.

The first contact you make should be with the maintaining authority for the roadway and if necessary further research the public records for a document establishing a public right of way on the property in question.

Re: Greece inheritanceFrom: **Theodore Vakrinis** (tvakrinos@gmail.com)

Sent: Wed 11/26/08 4:15 PM

To: Cynthia Rodgers (cynthiarodgers77@hotmail.com)

Hello, Ms. Cynthia:

Since 1946 (introduction of the existing Greek Civil Code) we have been following the laws of the hereditary rights. That means, if there is a legitimate last will & testament we follow the text of the will. If there is no will left, then, we follow the principles of the intestate succession. The statement of having the oldest son or the oldest daughter getting everything is not accurate. Prior to 1946, only in certain areas of Greece, like the island of Carpathos at that time under Italian occupancy, the oldest daughter was getting, according to local custom, the estate left her parents.

You may find the inherited items by looking into the brother's records. However, since the computer system has yet to be implemented in most of the title offices, the research is done manually only lawyers. You have to know the property's location in order to go and check the records of that office. If I can be of more help, please let me know. In the meantime, I wish you a healthy and joyful Thanksgiving Holiday.

Sincerely,

Theodore Vakrinis (currently in Greece)

Cynthia Rodgers wrote:

Hi,

I was wondering if there is a way to find out about an estate in Greece.

When a boy inherits in 1919 from his father and dies after coming to US at age 33 in 1938, is there a way to find out what he should have inherited by looking at records in Greece or the assets of his older brother in New Jersey claims was his sole inheritance as he was the administrator of his father's estate and not the custodian of his little brother's assets? They are trying to convince us that the oldest son or the oldest daughter in greece always gets everything.

Thanks

Cynthia

cynthiarodgers77@hotmail.com

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EXHIBIT D

The Jockey Club

Parentage
Qualified

No. 9639046

CERTIFICATE OF FOAL REGISTRATION

THIS IS TO CERTIFY THAT *the* Chestnut Colt *named* Pokey's Sailor
foaled June 12, 1996 *by* Sailor's Record
out of Celestial Angel *by* Verbatim
is duly registered by The Jockey Club,

Marks: Star pointed to left and connected short stripe to right, ending to right at eye level; short thin stripe slightly to left on bridge of nose.---
Median cowlick at eye level.---
Left fore: scattered white hairs on coronet in front.---
Left hind: three-quarters pastern white, higher in back.---
Right hind: ankle white, higher on inside.---
Right fore: scattered white hairs on coronet.---
Cowlick behind poll on both sides.***

Issued to John D. Pahoundis
Bred by John D. Pahoundis
Foaled in Ohio, U. S. A.

James C. Maff
Secretary
Edward A. Bixby
Registrar

EXHIBIT E

THIS CERTIFICATE IS ISSUED ON THE BASIS OF INFORMATION SUBMITTED TO THE JOCKEY CLUB BY THE APPLICANT AND IS SUBJECT TO REVOCATION IF FURTHER INFORMATION IS RECEIVED INDICATING IMPROPER ISSUANCE. 1/9/98

CERTIFICATE TO BE PRESERVED AND TRANSFERRED TO PURCHASER GRATIS IF THIS HORSE IS SOLD. POSSESSION AND PRESENTATION OF THIS CERTIFICATE IS A REQUIREMENT TO RACE OR BREED THE HORSE IT IDENTIFIES. RECORD TRANSFER ON REVERSE SIDE.

a CAUV discount?

A I do not know.

Q Do you know how many horses are on the farm now?

A Somebody told me there was two. I don't know. I thought there was four, but somebody said there is two. I haven't been over to see. I don't know.

Q Do you know who owns those horses?

A Well, they should have belonged to John, but I don't know who owns them now. They originally were John's horses. I don't know who owns them now.

Q Had you ever participated with him in the raising of race horses?

A Well, we raised horses over at the other farm in Killbuck.

Q Did you have any horses of your own that were thoroughbred race horses?

A Yes, I did.

Q How many did you have?

A I had one.

Q Did you ever accompany John when he went to any of the racetracks?

A Yes.

Q Did you ever see his horses win?

A Yes.

Q Do you know if he made very much money?

EXHIBIT F

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.¹

{¶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,

¹ 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.²

{¶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:

² 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 287.

{¶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. Pennndel 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. Bextley 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. TII.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 1980'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. ***³

{¶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

³ 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 19th, 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.⁴ ***

{¶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 29th, 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.

⁴ Plaintiff's exhibit 12 was admitted over objection and Plaintiff's exhibit 13 was admitted without objection. T11.510-511.

{¶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-C1 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 26th, 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

process, thereby challenging the legitimacy of the underlying judicial process itself." *Id.*
at syllabus.

{¶128} In this case, there was no evidence presented in pretrial pleadings or during the trial that John Sr. sought federal bankruptcy protection, and appellant has failed to provide any citations to the record as to where such issue was raised in the trial court. Additionally, there is nothing on the record to suggest that Federal Bankruptcy Court would have jurisdiction over this matter. Furthermore, the record establishes that appellant never requested that the matter be transferred for any reason to federal bankruptcy court.

{¶129} For these reasons, this argument is not reviewable on appeal. Accordingly, appellant's fourth assignment of error is not well taken and is hereby denied.

{¶130} The judgment of the Coshocton County Court of Common Pleas is hereby affirmed.

By: Edwards, J.
Farmer, P.J. and
Delaney, J. concur

s/Julie A. Edwards

s/Sheila G. Farmer

s/Patricia A. Delaney

JUDGES

JAE/0417

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

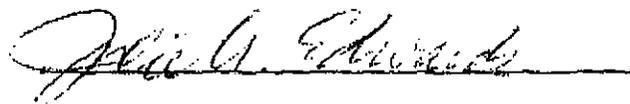
Defendants-Appellees

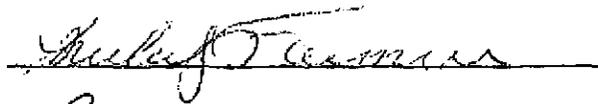
JUDGMENT ENTRY

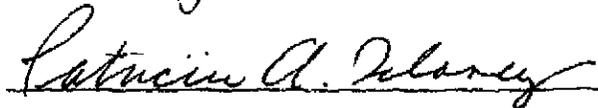
CASE NO. 07 CA 0007

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.

DATE SEP 2 2008
TIME 2:13 PM
FILED







JUDGES