

**Commonwealth of Pennsylvania
Before the Pennsylvania Public Utility Commission**

In the Matter of:

Francene Tearpock-Martini
Complainant

Docket No. C-2023-3038237

v.

Frontier Communications of
Pennsylvania, LLC.
Respondent

REPLY TO FRONTIER COMMUNICATIONS PA, L.L.C. ON NEW MATTER

Present Status and Background

This present case is about Trespass resulting in damage to trees and shrubs caused by Frontier Communications of Pennsylvania, LLC while in the process of running fiber optic wires from UGI Utility Pole #44016-36274 to Utility Pole #44025-36282 along Complainant's property. Workers were not performing work for Complainant at her property but were caught by her trespassing and causing damage on December 1, 2022.

Complainant is the property owner residing at 56 South Main Street, Shickshinny, PA 18655. The property is unique in that it is on an escarpment high above the South Main Street (SR 11) and includes an historic stone wall with once a flagstone walk surrounding the front east side and north side of the property at Furnace Street. The property is also adjacent to (SR 200), West Butler Street, to the south side of the property. The Complainant's property also runs across Furnace Street to the north which contains a rolling landscaped hill to showcase the main parcel where the home, cut stone wall and Carriage House are situated.

The Complainant purchased this property in the 1970's and is in fact only the 3rd family to own the property since 1861. It was originally the property of the Town Founder, George Washington Search, 2nd Owner was Dr. Miron Briggs, and Francene Tearpock-Martini is the 3rd owner to the present time.

Complainant's property was nominated and placed on the National Register of Historic Places in 2009, is well maintained, and an asset to the community.

The Complainant has been a customer of Frontier Communications ever since such company took ownership from previous telephone company owners going back to 1977. The Complainant has also been a customer of UGI Utilities, Inc. since acquiring her property and to the present time.

Complainant had over the many years strategically planned the surrounding landscaping of the home and property since the 1970's. There were no utility poles along the Complainant's Furnace Street side of her property nor on her sidewalk adjacent to her Historic Stone wall and Carriage House until 1997. That pole had always been on the opposite side of Complainant's property - the northwest side of Furnace Street. The Utility Pole # 44025-36282 has been a problem starting in 2008 when UGI Utilities trespassed upon her property without notice and caused significant damage to her rare Purple River Beech tree at which time the Complainant filed with the PUC a violation of trespass.

As of the present time and modern technology, the Utility pole # 44025-36282 began to increase in size taking on larger loads with various other Utility Companies renting space on UGI poles including Frontier Communications PA, LLC and now running of their fiber optic wires with no supervision by UGI Utilities, Inc. and trespass, liability issues and damages taking place at the Complainant's property. Thus, the need for intervention from our Public Utility Commission.

INTRODUCTION

Complaint involves the December 1, 2022 incident where Complainant witnessed the trespass and caught Frontier and its contractor trespassing and 'chopping at her Magnolia tree and shrubbery' at her property and confronted the situation from her porch immediately after hearing disturbances and commotion outside her home on that cold winter day.

Complainant has a history over time with UGI and their trespass activities on her property dating back to 2008 when they trespassed and caused damage to her Purple River Beech Specimen Tree after their moving of a Utility Pole from the north side of Furnace Street to the opposite south side of Furnace Street onto her sidewalk next to her stone wall and Carriage House.

On December 1, 2022 Complainant did personally witness Frontier and employees and subcontractors trespassing on her property with equipment cutting and chopping her Magnolia Tree and shrubbery.

Frontier did not follow any rules or regulations as was required by the Commission investigation of 2008 when specifically UGI was instructed to notify Complainant property owner due to the historic nature of the property (at that time which was on the Pennsylvania Historic Register) that any work being done on or near her property Complainant was to be notified in advance and scheduled.

COMPLAINANT'S REPLY TO NEW MATTER

11. Admit/Deny in Part: Frontier Communications of PA, LLC does not own or maintain UGI Utility Poles to the best of Complainant's knowledge; however, from conversation over the telephone after the incident on December 1, 2022 with Michael Spencer, Foreman for Frontier for all the State of Pennsylvania, it was acknowledged that Frontier rents poles from UGI Utilities and in certain parts of the State, UGI rents poles from Frontier. Therefore, it is recognized that they have an Agreement.

12. Admit/Deny in Part: No ROW was granted to UGI and or Frontier or anyone. Complainant maintains her own vegetation management program through the services of a variety of Contractors to include Dincher & Dincher Certified Arborists, Williamsport, Pennsylvania; Boulder Landscaping Services Berwick, Pennsylvania, Eshleman's Nursery and other more local services within her area. Pruning of her trees is carried out through a Supervised Program to maintain her significant Historical Property, (which is now on the National Historic Register since 2009), and the wellbeing of her

plants and ornamental trees. In 2008, UGI was told by PUC Investigator to notify Ms. Tearpock-Martini if and when UGI was to do work on and or around her historic property in advance of such.

NO NOTIFICATION WAS PROVIDED TO COMPLAINANT by UGI Utilities or Frontier or their sub-contractors. Complainant was hearing disturbances outside her residence and caught them. Frontier cut shrubs and Ornamental trees without prior notification or permission trespassing on her property with equipment cutting and chopping her Magnolia Tree and shrubbery. By the time Complainant was able to dress appropriately for the cold weather outside her home, the men were loading up the trucks with equipment, branches and limbs leaving some behind. One young man was standing outside her stone steps from the Historic cut stone wall Arboretum area as she was descending down and was 'mouthing off' to her what she was doing there.

The Commission does have the jurisdiction to adjudicate trespass. This was demonstrated in 2008 when UGI trespassed onto Ms. Tearpock-Martini's property at nearly the same location as presently and UGI was ordered to pay penalties. This was also demonstrated during a more recent issue when UGI was trespassing with "guy wires" at the hill location of her landscaped property.

Frontier and UGI have failed to show Certified Land Surveys with any proof of ROWs at her property. When Complainant held a telephone conversation with Michael Spencer of Frontier on December 1, 2022, he mentioned coming to her property with "maps" telling her he had ROWs but he never came. Mr. Spencer told her he would be there the next day and he never came. Complainant phoned Mr. Spencer end of next day December 2nd and he told her he was in meetings all day and would be there on Monday the following week. Complainant asked that he let her know when he was coming so that she could be prepared to meet him outside in the cold weather but he never called and he never came. Mr. Spencer never showed claimant any proof with ROWs or sidewalks, maps he claimed to have, or anything. He never showed up.

Has UGI given Frontier permission to trespass and do what they wanted to do in order to deploy the fiber optic line on UGI Utility poles. No proof or permission was shown to Complainant; no prior notification was provided that they would even be at her property. Complainant communicated with Attorney Tim McHugh of UGI through email December 12th and Attorney McHugh stated in email December 19th that he would not want anyone to think UGI was not taking this allegation seriously and were looking into this matter but Complainant never heard back from Attorney McHugh again regarding this matter. Complaint was filed with PUC on February 9, 2023.

13. Admit/Deny in Part: The Commission does not have jurisdiction to adjudicate claims of Property Damage. Frontier and Fiber Optic Contractor for Frontier did cut and chop on the half century old Magnolia Tree and adjacent shrubs and vegetation on Complainant's property. Complainant was witness to this activity. It cannot yet be determined as to the extent of the damage that the Magnolia tree received from the hacking done. The beautiful tree is disfigured and stressed. Complainant can only state with certainty that her beautiful Magnolia tree did not come into bloom this spring until much later than other Magnolia trees in the Shickshinny community.

Complainant talked with Michael Spencer over the telephone on two occasions. Once on the date of the Incident December 1, 2022. He said he was the Foreman for Frontier for all the State of Pennsylvania. Mr. Spencer told Complainant he had "maps". Mr. Spencer stated that he knew where my property was located. He promised to meet with Complainant on two occasions but never came to

meet with her although she made herself available and waited for him to call and meet with her. That never happened. Complainant received a return phone call from Frontier in same time frame of incident occurrence and Complainant provided a recorded statement to the caller, "Josh".

Complainant received several phone calls from Paralegal Theresa Shea, Frontier Connecticut. One call was received on March 02, 2023. Ms. Shea said she needed an extension, "this is how we do things" she said to me. I explained that I had filed a Complaint with the PUC on both Frontier and the owner of the pole, UGI Utilities. Complainant explained the PUC had her complete two separate filings and there were some delays in that. Theresa Shea told Complainant they had a ROW on "Main Street". I provided the Utility Pole number to her near the location of the damage which is on "Furnace Street".

Another phone call from Theresa Shea Internal Legal Frontier on 05 11 23. She said "her people" were not chopping at my tree. I suggested she talk with Michael Spencer and that I personally saw them chopping at my Magnolia tree with my own eyes and verbally communicated with them.

Complainant has many photographs of her property including photography of her trees. Frontier states Michael Spencer has revisited the Complainant's location on May 11, 2023 and photographed trees from public ROW. Mr. Spencer has pictures as to how the property looks now after the fiber optic line deployment. I have photographs as to what things looked like before the fiber line deployment - and after. (Photo Exhibits will be included with this filing)

14. Admit/Deny in Part: It has been stated that the PUC cannot grant remuneration for the cutting and hacking of Complainant's trees and shrubs. Trespass has occurred and there are damages to Complainant's property. Complainant witnessed the activity. Respondent had no permission to Trespass. Complainant was not notified that they would be at her property or that any pruning would be needed at her property. They are in violation of PUC rules and regulations for property owner.

Denied: Complainant did not request that Frontier remove any poles by her Carriage House. Discussion with Ms. Shea was strictly informational and UGI owns the poles. Frontier rents them. They are a liability. They are sitting on Complainant's sewer lines. They have gotten larger over time due to heavier equipment loads. Complainant is certain that moving the pole back to its original location across Furnace Street - Northwest side, would resolve many issues including ongoing trespass onto her property causing damages.

UGI is the owner of the Utility Poles. Complainant does receive her electricity from UGI Utilities and not from Frontier. Complainant's service to her home is received from the W. Butler Street location which UGI poles are across W. Butler Street from her home. Moving the problem pole # 44025-36282 on Furnace Street back across the Street to where it was on the Northwest side of Furnace Street would eliminate any need for trimming of her trees and be a direct shot to the pole with their lines on South Main Street Northeast Pole # 44024-36283.

Presently that problem Utility pole is sitting on Complainant's sewer line. Across Furnace Street there are no impediments either below or above ground. Put the pole back where it was safe and secure away from pedestrian traffic and ample clearance on the road for two cars and the pole. Everyone would benefit - Complainant, UGI, Frontier and all the other Utility providers that utilize those Poles.

CONCLUSION

Complainant offered a reasonable solution to this continuous and ongoing problem the UGI Utility, Inc. has with their own employees and secondary contractors such as Frontier Communications et. al. that rent their Utility poles unsupervised causing damages to Complainant's Historic property.

Complainant never suggested that Frontier Communications of PA, L.L.C. move UGI Utility Poles. However, Frontier caused damage to her half century old Magnolia tree and shrubbery. The beautiful cascade of the tree is destroyed, they disfigured her landscape, the leaf life and sustaining limbs to the old tree are gone leaving a reasonable person doubt if the tree will survive the stress. PUC has a responsibility to the public property owners to see that Utilities abide by rules, regulations and agreements. It is unreasonable to imply that Complainant would not have a right to file complaints with the PUC under these circumstances.

The Complainant will provide photographs and proof of ownership as Exhibits and requests that Frontier Communications of PA L.L.C. provide documentation and proof that they have any ROW as was suggested by Michael Spencer, Construction Foreman for Frontier of PA.

For the reasons outlined herein, Complainant pleads for the proceeding to be ruled in her favor by the Public Utility Commission and bring relief back to the property owner and the property she maintains with such care.

Respectfully Submitted,



Francene Tearpock-Martini
56 South Main Street
Shickshinny, Pennsylvania 18655
(570) 542-2346
Email - ftm@epix.net

DATE: May 19, 2023

C-2023-3038237- Francene Tearpock-Martini v. Frontier Communications PA, LLC

(A) EXHIBITS:

1. Tearpock-Martini Deed of Confirmation, Luzerne County deed Book - Indenture
March 6th, 2017.
2. Survey Map - Subdivision
3. Photograph - Magnolia Tree
4. Photograph - Magnolia Tree - 2023
5. Photograph - (a) Pruning by Arborist Dincher
- (b) Pruning by Arborist Dincher
6. Photograph - 3 Pole view - South Main/Furnace Street
7. Photograph - Overview of Complainant's Property
- Corner Furnace & South Main Streets

DEED OF CONFIRMATION

THIS INDENTURE MADE this 6th day of March in the year Two Thousand and Seventeen (2017).

BETWEEN FRANCENE TEARPOCK-MARTINI, unmarried, of the Borough of Shickshinny, County of Luzerne and Commonwealth of Pennsylvania, hereinafter called,

GRANTOR

AND

FRANCENE TEARPOCK-MARTINI, unmarried, of the Borough of Shickshinny, County of Luzerne and Commonwealth of Pennsylvania, hereinafter called,

GRANTEE

WITNESSETH, That the said Grantor for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America, unto her well and truly paid by the said Grantee at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, has granted, bargained and sold, aliened, enfeoffed, released and confirmed, and by these presents does grant, bargain and sell, alien, enfeoff, release and confirm unto the said Grantee, her successors and assigns, all those certain pieces or parcels of land situate in the Borough of Shickshinny, County of Luzerne and Commonwealth of Pennsylvania, bounded and described as follows, to wit:

FIRST THEREOF (LOT 1)

BEGINNING at a point, said point being located at the intersection of the southwesterly right-of-way line of Furnace Street and the westerly right-of-way line of State Route 1100 (also known as South Main Street);

THENCE along the westerly sideline of South Main Street, South 1 degree 29 minutes 40 seconds West, 51.14 feet to a corner at the intersection of the westerly sideline of South Main Street and the northerly right-of-way line of State Route 4004 (also known as Butler Street);

THENCE along the northerly sideline of Butler Street, North 73 degrees 20 minutes 00 seconds West, 97.00 feet to a Drill Hole in concrete found at the southeast corner of lands now or formerly of Vincent and Colleen Noble;

THENCE along lands now or formerly of Noble the following four courses and distances:

1) North 17 degrees 10 minutes 30 seconds East, 89.01 feet to an Iron Pin/Cap set;

- 2) North 72 degrees 52 minutes 55 seconds West, 15.56 feet to an Iron Pin/Cap set;
- 3) South 17 degrees 35 minutes 10 seconds West, 16.00 feet to a Drill Hole set in concrete;
- 4) North 73 degrees 20 minutes 00 seconds West, 24.32 feet to an Iron Pin/Cap set on line of lands now or formerly of Leona M. Sherrick;

THENCE along lands now or formerly of Sherrick, North 17 degrees 10 minutes 30 seconds East, 69.77 feet to a Drill Hole set in a concrete wall on the southwesterly right-of-way line of Furnace Street;

THENCE along the southwesterly line of Furnace Street, South 35 degrees 55 minutes 55 seconds East, 154.01 feet to the point of **BEGINNING**.

CONTAINING 9,007.96 square feet.

THE ABOVE DESCRIBED LOT is a combination of the following two parcels:

1) Deed of Francene Tearpock-Martini, et vir., to Francene Tearpock-Martini, dated September 14, 1987, and recorded in Deed Book 2247, at Page 224;

2) Deed of Homecomings Financial Network, Inc. to Francene Tearpock-Martini, dated September 20, 2004, and recorded in Record Book 3004, at Page 2394 71.

ALSO BEING the combined Lot shown on the Francene Tearpock-Martini Subdivision as surveyed by Randy L. Howard, P.L.S., dated February 14, 2005 and recorded in Map Book 175, at Page 59, and on the revised plat of the same recorded in Map Book 176, at Page 20.

TOGETHER WITH all of the rights and privileges as more fully set forth and described in a certain "Deed of Easement" from Leona M. Sherrick to Francene Tearpock-Martini, the Grantor and Grantee herein, dated the 9th day of May, 2005, and recorded in the Office of the Recorder of Deeds in and for Luzerne County, Pennsylvania, in Record Book 3005, at Page 118915.

UNDER AND SUBJECT to the following restrictive covenants, which shall be deemed to be covenants running with the land:

1. No subdivision of the herein described premises shall be hereafter undertaken.
2. No trees or other plantings made by Francene Tearpock-Martini upon the premises shall be cut down, removed, or otherwise destroyed or taken from the herein described premises.

UNDER AND SUBJECT, ALSO, to any and all exceptions, reservations, restrictions, conditions, covenants, licenses, easements and/or agreements as are or may be contained in prior instruments forming the chain or line of title to the premises herein conveyed and/or as may be ascertained from a visible inspection of the premises herein conveyed.

The Property Identification Number/Parcel Identifier Number (“PIN”) of the premises herein conveyed is: L4SE1 B025 L001 and L005 (now combined).

Said allotment BEING the premises conveyed to the grantor herein by deed dated May 19, 2005 and duly recorded in and to the Office of the Recorder of Deeds of Luzerne County at Deed Book 3005, page 182622, et seq.

SECOND THEREOF (LOT 2)

BEGINNING at the southeasterly corner of lands of now or formerly of Harold Beach, in the westerly line of Main Street; thence along the line of lands of now or formerly of H. Beach, north 73 degrees 03 minutes 00 seconds West 8.60 feet; thence along the same, North 54 degrees 56 minutes 00 seconds West 104.76 feet to an iron pin corner; thence along the line of lands now or formerly of B. Caverly, South 35 degrees 35 minutes 00 seconds West 34.03 feet to an iron pin corner; thence along the northerly side of Furnance Street, South 38 degrees 01 minutes 40 seconds East 184.42 feet; thence along the westerly side of Main Street, North 00 degrees 05 minutes 00 seconds East 110.25 feet to the place of beginning.

CONTAINING 8,055 square feet of land.

The Property Identification Number/Parcel Identifier Number (“PIN”) of the premises herein conveyed is: L4SE1 B26 L6 001.

Said allotment BEING the premises conveyed to the grantor herein by deed dated May 25, 2005 and duly recorded in and to the Office of the Recorder of Deeds of Luzerne County at Deed Book 3005, page 182618, et seq.

UNDER AND SUBJECT, to any and all matters of record, provided that such matters remain operative and valid in connection with the herein described Lot 1 and Lot 2. Lot 1 and Lot 2 described herein is collectively called the, “Property”.

Together with all and singular the buildings, improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted Property belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantor), as well at law as in equity, of, in and to the same.

This is a Deed of Confirmation from Grantor to herself as Grantee made pursuant to the Adjudication and Decree of Court entered on January 31, 2014 in the civil action docketed to

Luzerne County docket number 2009 – 17205 and captioned as, “Francene Tearpock-Martini, Plaintiff v. Vincent Noble and Colleen Noble, Defendants,” regarding the creation and imposition of an easement by prescription (hereinafter referred to as the, “Easement”) whereby the Property is the dominant tenement. A copy of the Adjudication and Decree of Court is attached hereto, made a part hereof and marked as Exhibit “A”. No consideration has been transferred between the Grantor and the Grantee herein.

The Property Identification Number/Parcel Identifier Number (“PIN”) of the premises burdened by the easement described above is: L4SE1 B25 L4, being the same premises conveyed to Vincent Noble and Coleen Noble, his wife, now or formerly of 30 Conyngham Street, Shickshinny, Pennsylvania, by deed dated May 31, 2000 and duly recorded in and to the Office of the Recorder of Deeds of Luzerne County at Deed Book 2723, page 0001, et seq.

To have and to hold the said Property above described, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, her heirs, personal representatives, successors and assigns, to and for the only proper use and benefit of the said Grantee, her heirs, personal representatives, successors and assigns, forever.

SUBJECT AS AFORESAID.

AND the said Grantor does covenant, promise and agree, to and with the said Grantee, her successors and assigns, by these presents, that she, the said Grantor and her successors and assigns, all and singular the Property herein above described and granted, or mentioned and intended so to be, with the Appurtenances, unto the said Grantee, her successors and assigns, against her, the said Grantor and her successors and assigns and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, by from or under her or any of them, shall and will, Subject as aforesaid, WARRANT and forever DEFEND.

IN WITNESS WHEREOF, said Grantor has hereunto set her hand and seal the day and year first above written.

Signed, Sealed and Delivered
in the presence of

Witness:



Grantor/Grantee

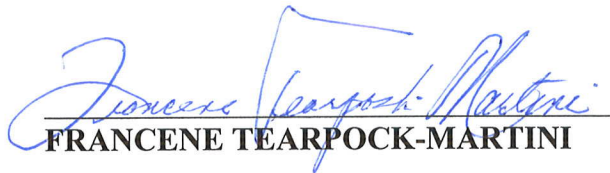

_____ **FRANCENE TEARPOCK-MARTINI**

EXHIBIT “A”



Filing ID: 1842535
2009-17205-0053 Other

Luzerne County Civil Records
1/31/2014 3:24:03 PM

IN

OF LUZERNE COUNTY

FRANCENE TEARPOCK-MARTINI,

Plaintiff

vs.

VINCENT NOBLE and COLLEEN NOBLE,

Defendants

NO. 17205 OF 2009

CIVIL ACTION

2014 JAN 31 PM 2:40

FILED
PROthonotary
LUZERNE COUNTY



ADJUDICATION

On July 6, 2012, Plaintiff, Francene Tearpock-Martini ("Tearpock-Martini" or "Plaintiff") filed an Amended Complaint whereby Defendants, Vincent Noble and Colleen Noble, (collectively "The Nobles" or "Defendants") would be ordered to remove a certain fence which separates their properties and prevents Plaintiff's vehicular access to her property. Plaintiff's Complaint is premised on the contention that Plaintiff has established ownership of a prescriptive easement which entitles her to rights of ingress and egress over the Nobles' portion of a seventeen-foot wide driveway, portions of which are located on their respective properties. Plaintiff also seeks a court order directing that the Defendants be permanently enjoined from further interference or obstruction of Plaintiff's exercise of her easement over the Defendants' portion of the subject driveway. Defendants filed an Answer wherein they admit to having constructed the subject fence as aforesated but assert that any use of the Defendants' property by Plaintiff was granted to her on a limited and momentary basis or that Plaintiff trespassed on Defendants' property without their knowledge or consent. The Defendants further acknowledge in their Answer that they did occasionally grant permission to Plaintiff to

use the driveway for brief periods of time, but that Plaintiff abused that privilege, leading Defendants to have erected the fence in question. After a non-jury trial conducted on November 25, 2013, and upon consideration of this matter, we enter the following Adjudication and Decree pursuant to Pa.R.C.P. No. 1038.

ISSUE

The issue in this action is: Whether Plaintiff is the owner of a prescriptive easement over Defendants' portion of the subject driveway located on their properties so as to enable vehicular access to Plaintiff's property and to accommodate deliveries of coal and large bags of salt and other maintenance items?

FINDINGS OF FACT

1. Tearpock-Martini is the owner of real property improved with a single-family home and Carriage House/garage with an address of 56 South Main Street, Shickshinny, Luzerne County, Pennsylvania 18655, more particularly described in a deed dated May 19, 2005, and recorded to Luzerne County Deed Book 3005, Page 182622, et seq., as well as a deed dated May 25, 2005, and recorded to Luzerne County Deed Book 3005, Page 182618, et seq. (collectively the "Martini Property").
2. Tearpock-Martini has owned the Martini Property, upon which the House and Garage are situated, since November 18, 1977.
3. Tearpock-Martini and her former spouse, David Martini, acquired the Martini property by way of a Deed dated November 18, 1977, and recorded to Luzerne County Deed Book 1944, Page 873, et seq.
4. Pursuant to a stipulation filed to an action in divorce filed with the Prothonotary of Luzerne County to Luzerne County Docket Number 1331-C of 1982,

David Martini conveyed his interest in the Martini Property to Tearpock-Martini by way of a Deed dated September 14, 1987, and recorded to Luzerne County Deed Book 2247, Page 224, et seq.

5. Vincent Noble and Colleen Noble, husband and wife, (The Nobles) currently reside at 8 West Butler Street, Shickshinny, Luzerne County, Pennsylvania 18655.

6. The Nobles acquired ownership of their aforesaid property located at 8 West Butler Street by Deed dated May 31, 2000, and recorded to Luzerne County Deed Book 2723, Page 0001, et seq., on June 5, 2000. ("The Noble property").

7. The Noble property was previously owned by Betty Jane Wojcik, Marie Uram and Joanne Scott, by way of a deed dated April 6, 1999, and recorded to Luzerne County Deed Book 2673, Page 1023, et seq., on April 7, 1999.

8. The Martini Property and the Noble Property are immediately adjacent to and contiguous with each other on the southwest side of the Martini Property as depicted in a survey map obtained by Tearpock-Martini and dated February 14, 2005.

9. Vehicular access to and from the Martini property is over a concrete paved driveway located partly on the Martini Property and partly on the Noble Property and shared by the Noble Property and the Martini Property being 17-feet wide (10 feet 6 inches on the Noble Property and 6 feet 6 inches on the Martini Property) and extending from the foundation of the Noble home to the foundation of the Martini home as depicted and described on a survey plat prepared by Randy Howard, P.L.S., dated February 14, 2005.

10. The portion of shared driveway located on the Martini Property is not sufficiently wide for someone to enter and exit on the Martini driveway without entering

a narrow paved portion of the Noble property immediately adjacent and contiguous to the Martini property.

11. Plaintiff has had vehicular access over the aforesaid 17-foot wide driveway area located on the Tearpock-Martini and Noble properties continuously for a period of time running from November 18, 1977, to the present time, except when the Nobles erected a fence obstructing the aforesaid access sometime in calendar year 2009.

12. The Nobles' predecessors in title at no time granted permission to the Plaintiff or her former husband to use the subject easement area.

13. Defendants, sometime during calendar year 2009, impeded Plaintiff's access as aforestated by way of constructing a makeshift picket fence along the property line separating the Tearpock-Martini and Noble properties and later dismantled and replaced it with a crude rebar and wire fence in the driveway along the property line separating the subject properties.

14. The construction of the rebar fence has prevented Tearpock-Martini and her guests or invitees from more easily having coal, large bags of salt, and/or other maintenance items delivered to the Martini property.

15. The construction of the rebar fence has prevented Tearpock-Martini and her guests and invitees from utilizing the driveway to enter and exit the Martini Property.

16. Use of the driveway by Tearpock-Martini, and her guests and invitees, was adverse, open, continuous, notorious, and uninterrupted for a period of time in excess of twenty-one (21) years prior to Defendants' acquisition of their property and prior to Defendants' construction of the picket fence.

DISCUSSION

It is well settled that in order to acquire an easement by prescription, the exercise of possession must be adverse, open, notorious, continuous, and uninterrupted for a period of at least 21 years and that proof of such exercise must be clear and positive. *See Keefer v. Jones*, 467 Pa. 544, 547, 359 A.2d 735, 736-37 (1976); *Lewkowicz v. Blumish*, 442 Pa. 369, 371, 275 A.2d 69, 70 (1971); *see also Waltmyer v. Smith*, 383 Pa. Super. 291, 556 A.2d 912 (1989). Also, it is equally well settled that the principle of easement by prescription is derived from the concept of adverse possession. Our Supreme Court has held that one who claims title by adverse possession must prove that he had actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the land in question for 21 years. *Conneaut Lake Park, Inc. v. Klingensmith*, 362 Pa. 592, 66 A.2d 828 (1949).

We must now examine whether the Plaintiff, in the instant case, has established the necessary elements to support her claim of an easement by prescription. It is important to focus on the timeframe commencing with Tearpock-Martini's ownership and use of her property beginning on November 18, 1977, and prior to Nobles' acquisition of their property on May 31, 2000, well before Nobles' placement of a picket fence along the property line in 2009.

Tearpock-Martini's unrefuted testimony establishes that during the aforementioned years, from late in calendar year 1977 through the beginning of calendar year 2000, she had used significant portions of the driveway in question to accommodate delivery of coal, salt bags, and other maintenance items to her property. This usage was adverse, open, and notorious as against Nobles' predecessors in title

(Wojcik) and was continuous and uninterrupted for a period well in excess of twenty-one (21) years, all of which pre-dated Nobles' acquisition of their property in calendar year 2000. The record is devoid of any evidence that the Tearpock-Martini's use of the Wojcik portion of the driveway was permissive. The record is undisputed that the property line establishes the Tearpock-Martini portion of the driveway being six feet six inches in width and the Nobles' (Wojcik) side being ten feet six inches in width. It is patently clear that the coal trucks in question which delivered substantial amounts of coal used by Tearpock-Martini to heat her sizable home were significantly wider than six feet six inches and that accessing three (3) separate coal shoots on her property would have required passing over the easement area and utilizing same to complete coal deliveries.

Accordingly, we can conclude that the necessary elements that the adverse use be open and notorious have been readily established by the Plaintiff. When no special relationship exists between the parties, a sufficiently notorious use will be presumed to be enough to alert the owner of the land to an adverse claim. *See Waltmyer, supra*. In the case at bar, there has been shared use of the alleged easement area during the prescriptive period, with Tearpock-Martini and her predecessors in title claiming a right to vehicular access over a portion of the Nobles' driveway such that both the user and owner have had material access over each other's areas of their respective properties.

The fact that the usage by Tearpock-Martini was interrupted with the Nobles' erection of a fence in calendar year 2009 has done nothing to diminish her adverse rights acquired previous to the Nobles' acquisition of their property. The twenty-one (21) year requisite period of adverse use had already been met and the Nobles' attempt

to thwart Tearpock-Martini's use by erecting a fence did not serve to destroy the prescriptive rights which the Tearpock-Martini had previously acquired.

CONCLUSIONS OF LAW

1. Plaintiff has established, clearly and positively, the essential elements to acquire an easement by prescription over the driveway portion of the Noble property.
2. Defendants have failed to establish an interruption in the adverse use during the prescriptive period.



Filing ID: 1842489
2009-17205-0052 Order with Rule 236

Luzerne County Civil Records
1/31/2014 3:23:36 PM

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1-31-14
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OF LUZERNE COUNTY

FRANCENE TEARPOCK-MARTINI,

Plaintiffs

vs.

VINCENT NOBLE and COLLEEN NOBLE,

Defendants

NO. 17205 OF 2009

CIVIL ACTION

FILED
PROthonARY
LUZERNE COUNTY
2014 JAN 31 PM 2:41

DECREE

AND NOW, this 31st day of January, 2014, following trial in this matter, and based upon a careful and thorough review and analysis of the record, it is hereby ORDERED, ADJUDGED, and DECREED as follows:


1. That Defendants, Vincent Noble and Colleen Noble, shall remove the rebar fence which they have erected along the property line located within the 17- foot driveway area shared with Plaintiff, Francene Tearpock-Martini, located along the southwesterly boundary line of Plaintiff's property with a current address of 56 South Main Street, Shickshinny, Luzerne County, Pennsylvania, 18655.
2. That neither Defendants, Vincent Noble and Colleen Noble, nor their heirs, successors or assigns, shall block the subject right-of-way and said right-of-way shall be kept open subject to the reasonable needs of the adjoining property owners in addressing service to their properties.
3. That neither Plaintiff nor Defendants and their successors, heirs and assigns, respectively, shall erect any fence or other obstruction in the shared driveway preventing its full use by both Plaintiff and Defendants. Plaintiff and Defendants

shall cooperate in the use, upkeep, and maintenance of the shared driveway and shall share the cost thereof equally.

4. The Court shall retain jurisdiction in this matter in order to ascertain compliance herewith.

5. The Prothonotary is directed to notify the attorneys of record and each party, if unrepresented, of the filing of this Adjudication and Decree pursuant to Pa.R.C.P. No. 236.

By the Court:


P. J.

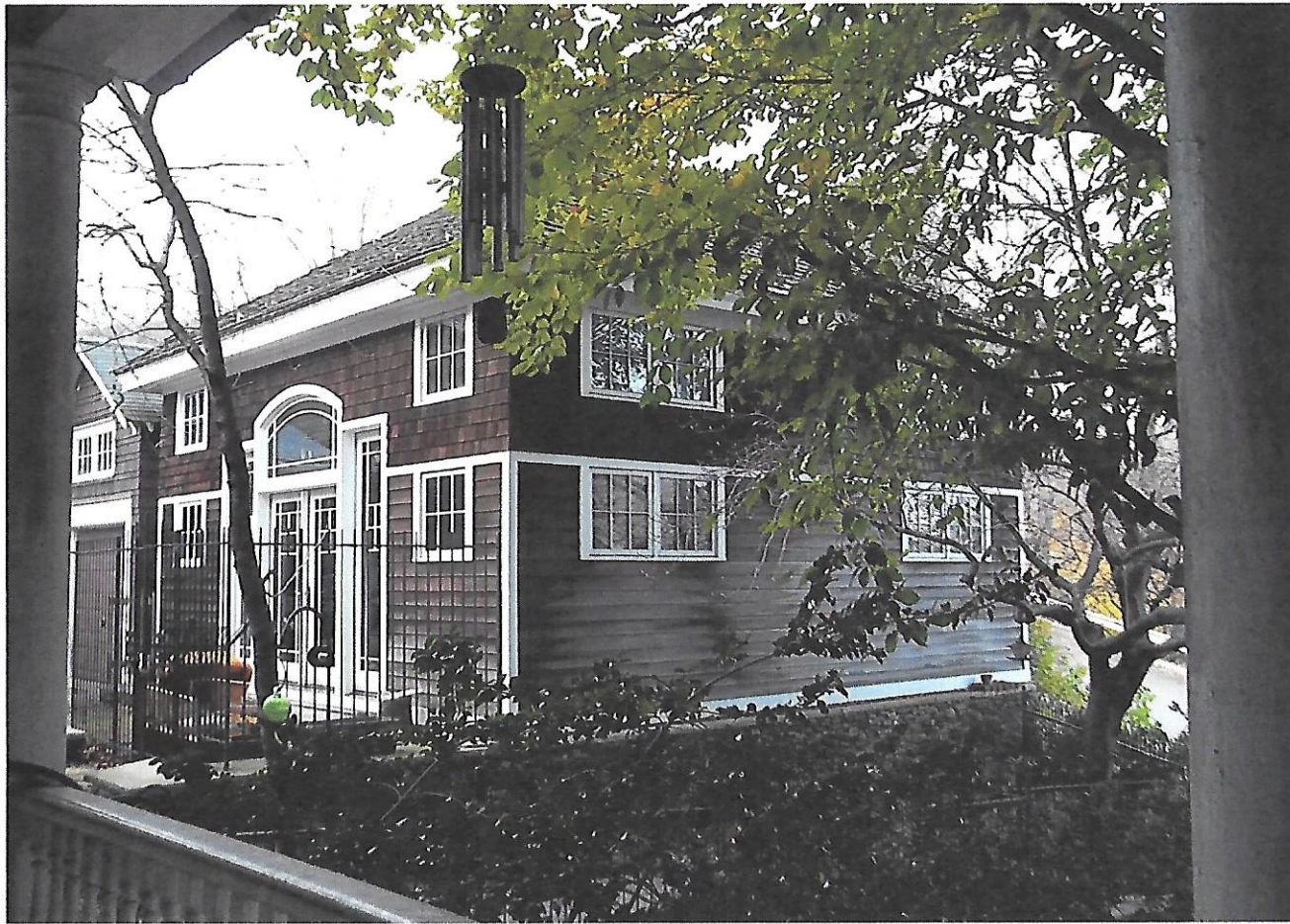
Attorney for Plaintiff:
Francis J. Hoegen, Esquire
Hoegen & Associates, P.C.
152 South Franklin Street
Wilkes-Barre, PA 18703-0346

Vincent & Colleen Noble, Pro Se
8 West Butler Street
Shickshinny, PA 18655

C-2023-3038237- Francene Tearpock-Martini v. Frontier Communications PA, LLC

Exhibit A

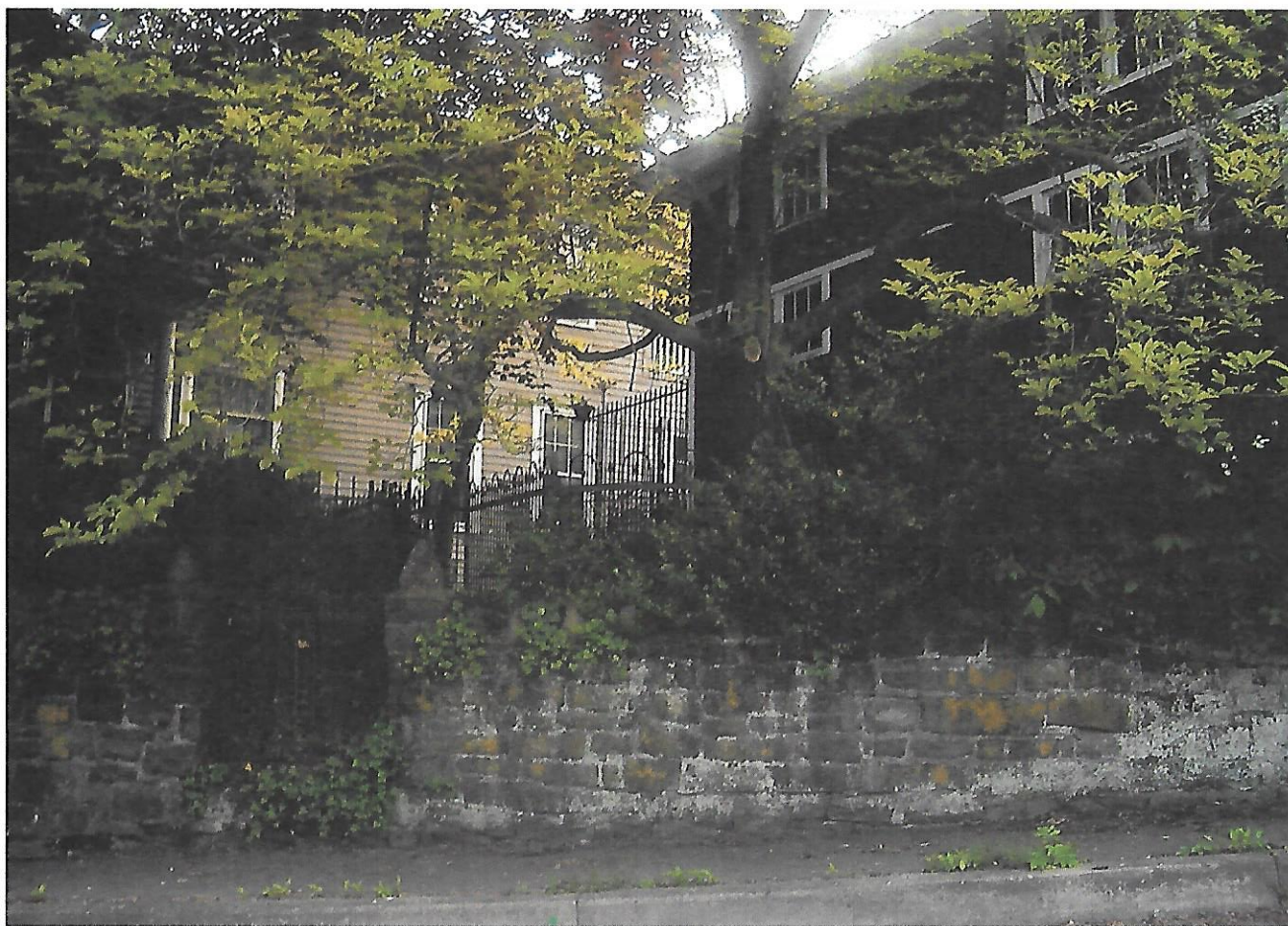
3. Photograph - Magnolia Tree



C-2023-3038237- Francene Tearpock-Martini v. Frontier Communications PA, LLC

Exhibit A

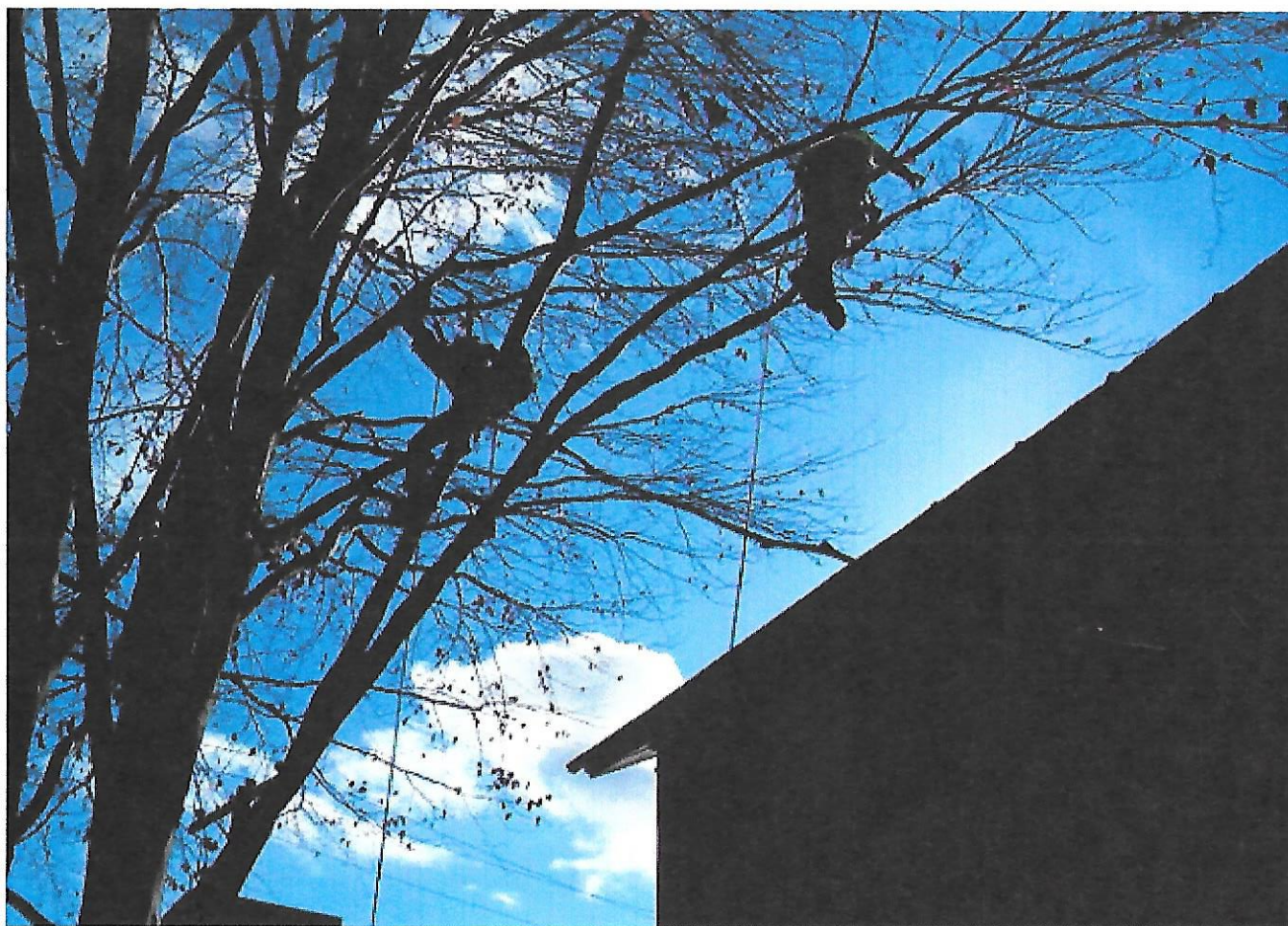
4. Photograph - Magnolia Tree - 2023



C-2023-3038237- Francene Tearpock-Martini v. Frontier Communications PA, LLC

Exhibit A

5. (a) Photograph - Pruning by Arborist Dincher



C-2023-3038237- Francene Tearpock-Martini v. Frontier Communications PA, LLC

Exhibit A

5. (b) Photograph - Pruning by Arborist Dincher



C-2023-3038237- Francene Tearpock-Martini v. Frontier Communications PA, LLC

Exhibit A

6. Photograph - 3 Pole view - South Main/Furnace Streets



C-2023-3038237- Francene Tearpock-Martini v. Frontier Communications PA, LLC

Exhibit A

7. Photograph - Overview of Complainant's Property
 - Corner Furnace & South Main Streets



Commonwealth of Pennsylvania
Before the Pennsylvania Public Utility Commission

In the Matter of:

Francene Tearpock-Martini
Complainant

Docket No. C-2023-3038237

v.

Frontier Communications of Pennsylvania, LLC
Respondent

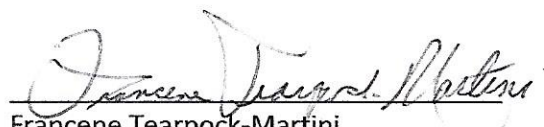
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Matter upon the parties listed below, in accordance with the requirements of 52 PA Code relating to service by a Participant.

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Date: May 19, 2023