# NORTON • WASSERMAN • JONES • KELLY LLC

FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES***
NORMAN R. KELLY
ROBERT A . MARTIN
JASON L. REED
BRENDAN J. BURKE
THOMAS M. NIDAY

Attorneys at Law

*Of Counsel

**Admitted in Kansas and Nebraska

***Fellow American Academy of Matrimonial Lawyers

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538
E-Mail: ram@nwjklaw.com


March 7, 2011

Scott Ostermann
415 Brice Court
Abilene, Kansas 67410

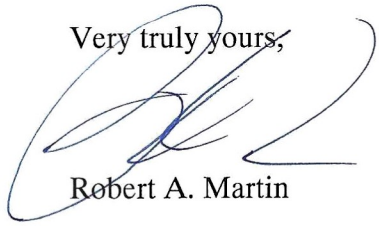
RE: City of Abilene Matter

Dear Scott:

I am in receipt of your letter that you sent to the Disciplinary Administrator's office within the past couple of months and then another letter that you sent to us more recently. In that recent letter, you indicated that you are interested in suing the City of Abilene for the past problems of various different natures. I have reviewed this matter with my partner, Ken Wasserman. In reviewing the history of it, as well as the current situation, our firm is not interested in representing you in a case of this type. The amount of time and expense that you would incur versus your chance of recovery are not something that we are interested in being involved with.

Hence, I would recommend that you contact other counsel regarding representation involving a claim against the City of Abilene or otherwise as set forth in your recent letter.

Very truly yours,



Robert A. Martin

RAM/slb

# NORTON • WASSERMAN • JONES • KELLY LLC


FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES***
NORMAN R. KELLY
ROBERT A. MARTIN
JASON L. REED
BRENDAN J. BURKE
THOMAS M. NIDAY

Attorneys at Law

*Of Counsel
**Admitted in Kansas and Nebraska
***Fellow American Academy of Matrimonial Lawyers

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538
E-Mail: ram@nwjklaw.com


March 11, 2011

Larry L. Livengood
277 N. Santa Fe, Suite 302D
Salina, Kansas 67401

Mike Montoya
Michael A. Montoya, P.A.
256 S. Santa Fe
P.O. Box 1220
Salina, Kansas 67401

Kennedy Berkley, Yarnevich & Williamson, Chtd.
119 West Iron Avenue, 7th Floor
P.O. Box 2567
Salina, Kansas 67402-2567

Wm. Rex Lorson
Law Office of Wm. Rex Lorson
114 E. Iron Avenue
Salina, Kansas 67401

Russ Prophet
Hampton & Royce, L.C.
119 West Iron, 9th Floor
P.O. Box 1247
Salina, Kansas 67402-1247

Mark Guilfoyle
306 N.W. 2nd Street
P.O. Box 548
Abilene, Kansas 67410-0548

RE: Scott Ostermann.

Dear Gentlemen:

Please be advised that neither my firm nor I represent Mr. Ostermann in any current or pending matters. It is further my understanding that any past litigation is complete, and hence, we are not representing him in those matters either.

Very truly yours,

Robert A. Martin

RAM/slb

cc: Scott Ostermann

**NORTON • WASSERMAN • JONES • KELLY LLC**

FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES***
NORMAN R. KELLY
ROBERT A . MARTIN
JASON L. REED
BRENDAN J. BURKE
THOMAS M. NIDAY

Attorneys at Law

*Of Counsel

**Admitted in Kansas and Nebraska

***Fellow American Academy of Matrimonial Lawyers

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538

E-Mail: ram@nwjklaw.com

March 29, 2011

Scott Ostermann
415 Brice Court
Abilene, Kansas 67410

RE: Scott and Christine Ostermann v. Lisa M. Weaver;
District Court of Dickinson County, Kansas, Case No. 07 CV 131.

Dear Scott:

Enclosed please find two pleadings that I received from the United States Bankruptcy Court for Ms. Weaver's bankruptcy matter. These copies are for your information, records, and consideration. You may want to discuss these with an attorney who practices bankruptcy work.

Very truly yours,

Robert A. Martin

RAM/slb
Enclosure(s)

# NORTON • WASSERMAN • JONES • KELLY LLC

FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES***
NORMAN R. KELLY
ROBERT A. MARTIN
JASON L. REED
BRENDAN J. BURKE
THOMAS M. NIDAY

Attorneys at Law

*Of Counsel

**Admitted in Kansas and Nebraska

***Fellow American Academy of Matrimonial Lawyers

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538

E-Mail: ram@nwjklaw.com


August 31, 2011

Scott Ostermann
415 Brice Court
Abilene, Kansas 67410

RE: City of Abilene Matters.

Dear Scott:

Thank you for meeting with me on August 16, 2011. Since that time, I have also received additional documents from you and a subsequent phone call on August 19, 2011. I have also taken the opportunity to take a look back at the file, including the prior pleadings and Mediation Agreement.

As far as your claims against Kansas Gas Service, I am at a loss to think of a claim given the lack of duty owed by it to you. You could file an action for judgment to have it determined that they did not have any right to go across your property for an easement, but it is my understanding that line has now been removed from where it was outside of the easement. As it has been remedied, I am not sure what would be gained except expending additional attorney fees that you could not recover from it. I do not believe that any damages that you would recover from them would cover the attorney fee amount.

With regard to any claims against Vicki Faulkner, to the extent that they existed on June 24, 2010, those items were settled in the Mediation Agreement. At that time we were also settling claims in that lawsuit as they involved Mandy Faulkner-Dohe. Have there been any subsequent actions by either of them creating new causes of action? I do not believe that we discussed any new incidents in my office.

With regard to Lisa Weaver, as you are aware her bankruptcy case has now been dismissed. Do you want to look at proceeding against her to try to collect any of the prior judgment? I assume that she will try to argue that it was satisfied by others, but again that judgment is still of record. It is my assumption that she is still a "deadbeat," so would this be money well spent for attorney's fees when we will in all likelihood not able to collect anything? If you are looking to have her cited in contempt again, that situation has actually been remedied by others, as you are aware. Other than that, I am not sure what other tort would be available.

One of the people that you are most interested in litigating matters with is Mr. Teasley. Again, I attempted to think of potential causes of action involving him, but cannot come up with any either. If he is in a conspiracy with these individuals, there would still need to be an underlying tort. Typically, torts fall into two different areas: intentional and negligent. Intentional torts include assault, battery, false arrest, malicious prosecution, invasion of right to privacy, tort of outrage, defamation, and fraud. My assumption is that fraud is the tort that you are looking at.

With regard to the elements of fraud, they are as follows:

1. That a false or untrue representation was made as a statement of existing or material fact;

2. That the representations were known to be false or untrue by the party making them, or recklessly made with knowledge concerning them;

3. That the representations were intentionally made for the purpose of inducing another party to act upon them;

4. That the other party reasonably relied upon and acted upon the representations made; and

5. The other party sustained damage by relying upon them.

It should be noted that a representation is material when it is in relation to some matter that is so substantial as to influence a party to whom it was made. While, obviously, fraudulent behavior went on here, I am not sure that we have any representations that Mr. Teasley directly made or that can be linked to him. Are there any?

As I also mentioned, there is an issue of negligence. Generally, negligence requires the lack of reasonable care. For negligence to exist, a person must not only fail to do what a reasonable person would do or do something that a reasonable person would not do, but must also exist a duty to the person injured with a breach of that duty. I am not sure how that would apply to the facts before us.

We had discussed, on more than one occasion, Mark Guilfoyle's involvement on multiple levels. However, as we discussed in my office, he would have owed no duty whatsoever to you and would have only owed a duty to his clients. While it appears that there may have been a conflict between some of his clients, or at least an unintentional one, that would not be actionable on your part.

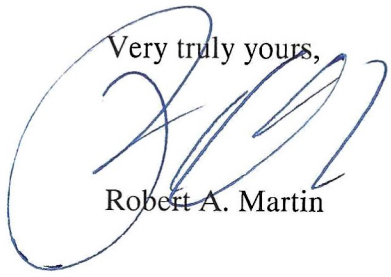
As it involves Mr. Ackerman and Mr. Blasi, I again cannot link the facts as you relay them to any claim without an underlying tort. Do you think any of the torts above apply?

I enclose herewith the jury instructions for the above referenced potential causes of action. Again, in reviewing the facts as I understand them, it does not appear that any of them would apply. However, please take a look at them on your own and let me know what you think.

In addition, if there are others that you are looking at possibly going after, please provide their names and/or applicable facts to me.

Please let me know if you have any questions.

Very truly yours,



Robert A. Martin

RAM/slb
Enclosure(s)

P.S. I am sure you are going to continue to watch the Register of Deeds' office and/or stay in contact with them regarding the filing of any new deeds dividing the property and will not need us to do that.

# NORTON • WASSERMAN • JONES • KELLY LLC

FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES***
NORMAN R. KELLY
ROBERT A . MARTIN
JASON L. REED
BRENDAN J. BURKE
THOMAS M. NIDAY

Attorneys at Law

*Of Counsel

**Admitted in Kansas and Nebraska

***Fellow American Academy of Matrimonial Lawyers

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538


October 25, 2011

Scott Ostermann
415 Brice Court
Abilene, Kansas 67410

Dear Scott:

Enclosed please find the original photos that we have found in your file that we recently closed. We are returning them back to you for your records.

Very truly yours,

Robert A. Martin

RAM/cs

# NORTON • WASSERMAN • JONES • KELLY LLC


FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES***
NORMAN R. KELLY
ROBERT A . MARTIN
JASON L. REED
BRENDAN J. BURKE
THOMAS M. NIDAY

Attorneys at Law

*Of Counsel

**Admitted in Kansas and Nebraska

***Fellow American Academy of Matrimonial Lawyers

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538

E-Mail: ram@nwjklaw.com


November 1, 2011

Mr. and Mrs. Scott Ostermann
415 Brice Court
Abilene, KS 67410

RE: Account No. RAM-4835.002

Dear Mr. and Mrs. Ostermann:

Enclosed is your most recent statement. We did not receive payment last month and the balance due is now $747.08. I know it is not your intention to neglect this account but if the balance is not paid monthly it will likely get out of hand and be much less manageable. Please send your check for the balance due upon receipt of this statement.

Very truly yours,

Robert A. Martin

RAM/ls
Enclosure(s)

**NORTON • WASSERMAN • JONES • KELLY LLC**

FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES***
NORMAN R. KELLY
ROBERT A. MARTIN
JASON L. REED
BRENDAN J. BURKE
THOMAS M. NIDAY

Attorneys at Law

*Of Counsel

**Admitted in Kansas and Nebraska

***Fellow American Academy of Matrimonial Lawyers

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538

E-Mail: ram@nwjklaw.com

December 12, 2011

Mr. and Mrs. Scott Ostermann
415 Brice Court
Abilene, KS 67410

RE: Account #RAM - 4835.002

Dear Mr. and Mrs. Ostermann:

Enclosed is your most recent statement. We did not receive payment last month and the balance due is now $747.08. I know it is not your intention to neglect this account but if the balance is not paid monthly it will likely get out of hand and be much less manageable. Please send your check for the balance due upon receipt of this statement.

Very truly yours,

Robert A. Martin

RAM/ls
Enclosure(s)

# NORTON • WASSERMAN • JONES • KELLY LLC

FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES***
NORMAN R. KELLY
ROBERT A. MARTIN
JASON L. REED
BRENDAN J. BURKE

Attorneys at Law

*Of Counsel

**Admitted in Kansas and Nebraska

***Fellow American Academy of Matrimonial Lawyers

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538

ram@nwjklaw.com


December 22, 2011

Scott Ostermann
415 Brice Court
Abilene, Kansas 67410

RE: Previous Letters.

Dear Scott:

I am in receipt of two (2) letters from you this week. If you will recall, the last time that we met in person, you indicated that you had no problem with the work that was completed by my firm. In fact, you were pleased with it. The tone of your most recent letters is not consistent with that prior discussion. I again do not think that anything inappropriate occurred with regard to work completed by my office.

In light of the contents of your letters and the tone of them, I would recommend that you have your questions answered by a separate attorney. It does not appear that we will be able to assist you further.

It is unfortunate, given our past representation of you, but it certainly appears that we are at a crossroads in representing you.

Very truly yours,

Robert A. Martin

RAM/mdk

# NORTON • WASSERMAN • JONES • KELLY LLC


FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES***
NORMAN R. KELLY
ROBERT A . MARTIN
JASON L. REED
BRENDAN J. BURKE
THOMAS M. NIDAY

Attorneys at Law

*Of Counsel

**Admitted in Kansas and Nebraska

***Fellow American Academy of Matrimonial Lawyers

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538

ram@nwjklaw.com


February 29, 2012

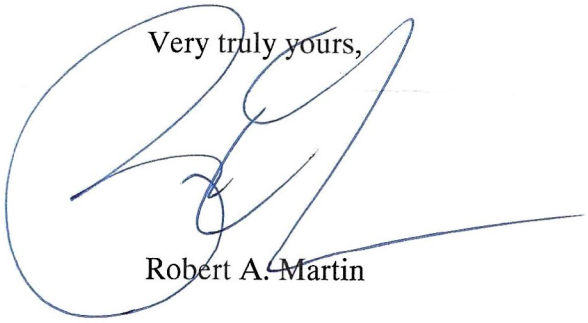
Scott Ostermann
415 Brice Court
Abilene, Kansas 67410

RE: Letter dated February 21, 2012.

Dear Scott:

I reviewed your letter with my partner, Ken Wasserman. As I set forth in my prior letter, I do not think that we are in a position to continue to assist you. Your recent letter to me does not change the position stated in my prior letter regarding representation.

Very truly yours,



Robert A. Martin

RAM/kad

**NORTON • WASSERMAN • JONES • KELLY LLC**

FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES***
NORMAN R. KELLY
ROBERT A. MARTIN
JASON L. REED
BRENDAN J. BURKE

Attorneys at Law

*Of Counsel
**Admitted in Kansas and Nebraska
***Fellow American Academy of Matrimonial Lawyers

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538

ram@nwjklaw.com

April 24, 2013

Scott Ostermann
415 Brice Court
Abilene, Kansas 67410

RE: Scott L. And Christine C. Osterman v. Lisa M. Weaver, Vickie Faulkner, Michael Teasley, Amanda Dohe, Dickinson County Case No. 12 CV 140.

Dear Scott:

I am in receipt of the extensive set of documents that you sent to my office in my absence. I also received a check from you for $750.00. However, your outstanding balance was only $747.08. Hence, I am enclosing a check in the amount of $2.92 for the overpayment.

As it involves additional work to be completed, I am not sure exactly what you wish for me to do involving the case. My review of your letter did not make that entirely clear. I did contact Russ Prophet involving the status and he stated that you had an upcoming hearing on some discovery problem.

In light of your prior letters to my firm, as well as my uncertainty regarding your current letter, we really are not looking at taking another stab by entering this case and re-entering this mess. I would highly recommend that you obtain counsel to help you through it given the positions taken by the Defendants.

I am sorry, but this appears to be the most that I can do for you at this time.

Very truly yours,

Robert A. Martin

RAM/slb

# NORTON, WASSERMAN, JONES & KELLY, L.L.C.

213 S. Santa Fe, P.O. Box 2388, Salina, KS 67402-2388
(785) 827-3646 - Federal ID # 20-0823101
Attorneys at Law

MR AND MRS SCOTT OSTERMANN
415 BRICE COURT
ABILENE, KS 67410

Statement Date: February 23, 2009
Account No. KWW 4835.000
Page: 1

ADMINISTRATIVE LAW

| | | |
|---|---|---|
| | Previous Balance | $257.92 |
| | **Fees** | |
| 01/26/2009 | Telephone call from Mark Guilfoyle<br>Letter to Mark Guilfoyle | 50.00 |
| 01/28/2009 | Telephone call from Scott<br>Work on resolution of cases | 100.00 |
| 01/29/2009 | Telephone conf. with Scott<br>Conference with Scott and Chris | 75.00 |
| 01/30/2009 | Work on summary of case | 50.00 |
| 02/06/2009 | Review of file<br>Letter to Scott | 75.00 |
| 02/13/2009 | Work on letter to Scott | 62.50 |
| | For Current Services Rendered | 412.50 |
| | **Expenses** | |
| 01/28/2009 | Postage | 0.42 |
| 02/17/2009 | Postage | 0.42 |
| | Total Expenses | 0.84 |
| | Total Current Work | 413.34 |
| | **TOTAL BALANCE:** | $671.26 |
| | Please Remit | $671.26 |

#3148

# NORTON, WASSERMAN, JONES & KELLY, L.L.C.

213 S. Santa Fe, P.O. Box 2388, Salina, KS 67402-2388
(785) 827-3646 - Federal ID # 20-0823101
Attorneys at Law

MR AND MRS SCOTT OSTERMANN
415 BRICE COURT
ABILENE, KS 67410

Statement Date: June 23, 2009
Account No. KWW 4835.000
Page: 1

ADMINISTRATIVE LAW

| | | |
|---|---|---|
| | Previous Balance | $215.18 |
| | **Fees** | |
| 05/28/2009 | Telephone call from Scott<br>Telephone conference with Scott | 37.50 |
| 06/03/2009 | Telephone conference with Scott | 25.00 |
| 06/08/2009 | Telephone call from Mark Guilfoyle<br>Telephone call from Scott<br>Review of fax from Scott | 50.00 |
| 06/09/2009 | Telephone conference with Mark Guilfoyle<br>Telephone conference with Scott (x2)<br>Review of possible cause of action<br>Review of William Peterson case for contempt issues<br>Review of bar case for contempt issues | 225.00 |
| 06/15/2009 | Telephone conference with Scott (x2)<br>Conference with Scott | 125.00 |
| 06/16/2009 | Work on case management | 25.00 |
| 06/17/2009 | Telephone call from Scott | 12.50 |
| | For Current Services Rendered | 500.00 |
| | **Expenses** | |
| 06/08/2009 | Incoming fax | 3.50 |
| | Total Expenses | 3.50 |
| | Total Current Work | 503.50 |

DVL

NORTON · WASSERMAN · JONES · KELLY LLC

FRANK C. NORTON
KENNETH W. WASSERMAN
ROBERT S. JONES
NORMAN R. KELLY
ROBERT A. MARTIN
JASON L. REED
LAWRENCE E. NORDLING
BRENDAN J. BURKE
LAUREN M. BRISTOW

Attorneys at Law

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538

lmb@nwjklaw.com

September 26, 2007

**VIA CERTIFIED MAIL**
Lisa M. Weaver
308 NE Ninth St
Abilene, KS 67410-2224

RE: DownSouth Tavern

Dear Ms. Weaver:

I represent Scott Ostermann, a land owner adjoining your property which houses the DownSouth Tavern in Abilene, Kansas, and am assisting him in this matter. If you are represented by an attorney, please forward this letter to such.

Having spoken with the representatives of both Kansas Gas Service and Westar Energy, it has been determined that the meters for both services for the DownSouth Tavern are placed outside of the utility easement granted by my client, Mr. Ostermann. Having conceded this point, both utilities are ready to make the disconnect of their services.

However, as owner of the building housing the DownSouth Tavern, you are required to move the entry point of said services. This movement requires the employ of licensed professionals, and it is your responsibility to obtain and pay for the services of these professionals. Both meters for Westar Energy and Kansas Gas Service would need to be removed from the side of your building adjacent to Mr. Ostermann's property and relocated to an area that does not encroach on Mr. Ostermann's property.

This letter is to serve as a formal demand for the removal of said meters off of Mr. Ostermann's property. Please respond to this request within 10 days.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Lauren M. Bristow

LMB/kmw
cc: Scott Ostermann ✓

FILED

2007 DEC 27 AM 10: 05

CLERK OF DISTRICT COURT
DICKINSON COUNTY, KANSAS

COPY

IN THE DISTRICT COURT OF DICKINSON COUNTY, KANSAS

| | | |
|---|---|---|
| **SCOTT L. OSTERMANN AND CHRISTINE C. OSTERMANN** | ) | |
| **and** | ) | **Case No. 07 CV 131** |
| **LISA M. WEAVER** | ) | |

**PETITION PURSUANT TO K.S.A. CHAPTER 60**

COME NOW the Plaintiffs Scott L. Ostermann and Christine C. Ostermann (hereinafter collectively referred to as "Plaintiffs") and for their cause of action against Defendant Lisa M. Weaver (hereinafter referred to as Defendant) state and allege as follows:

1. Plaintiffs Scott and Chris Ostermann are residents of Dickinson County, Kansas.

2. Defendant Lisa M. Weaver is a Kansas resident and service may be obtained upon her at 308 NE Ninth St., Abilene, Kansas 67410.

3. Plaintiffs are the owners of real property, located in Dickinson County, Kansas, commonly known as 101 N. Cedar, Abilene, Kansas, 67410.

4. Defendant is the owner of real property, located in Dickinson County, Kansas, commonly known as 210 W. 1st St., Abilene, Kansas 67410.

4. Venue is proper with this Court.

6. The Court has personal jurisdiction over the parties hereto.

7. The Court has subject matter jurisdiction in this action.

8. Defendant has trespassed on and to the above-described real property of Plaintiffs' and Defendant continues to do so.

9. An electric meter affixed to the side of Defendant's property extends onto and trespasses onto Plaintiffs' property.

10. A gas meter for the Defendant's property is located on Plaintiffs' property.

11. An air conditioning unit affixed to the side of Defendant's property extends onto and trespasses onto Plaintiffs' property.

12. An overhang of the roof affixed to Defendant's property extends onto and trespasses onto Plaintiffs' property.

13. Plaintiffs have made a number of attempts to contact Defendant in regard to Defendant's ongoing trespass, and Defendant has failed and/or refused to respond to Plaintiffs.

14. Plaintiffs own a construction contracting business with its office located at 101 N. Cedar, Abilene, Kansas, 67410.

15. These trespasses by Defendant have damaged and continue to damage Plaintiffs such that Plaintiffs cannot park a construction trailer on their property nor store construction materials on said property with adequate access to the same, and generally inhibit Plaintiffs full and complete use and enjoyment of Plaintiffs' property.

WHEREFORE, Plaintiffs pray the Court will enter an Order against Defendant which: (1) requires Defendant to remove trespassing utility meters, air conditioning unit and other objects, and remedy the roof overhang; (2) enjoins and restrains Defendant from any further encroachments and trespasses upon Plaintiff's property; (3) for any and all damages caused by these above-described trespasses; (4) for judgment for the costs of this action; and (5) for any and all such other and further legal and/or equitable relief as the Court deems just.

NORTON, WASSERMAN, JONES & KELLY, L.L.C.
213 S. Santa Fe
P.O. Box 2388
Salina, KS 67402-2388
(785) 827-3646
Fax: (785) 827-0538
E-Mail:

By: _____
Lawrence E. Nordling
SC# 19299
Attorneys for Plaintiff

FILED
2008 MAY 21 AM 10: 30
CLERK OF DISTRICT COURT
DICKINSON COUNTY, KANSAS

KENNEDY BERKLEY YARNEVICH
& WILLIAMSON, CHARTERED
119 West Iron Avenue, 7th Floor
P.O. Box 2567
Salina, Kansas 67402-2567
(785) 825-4674 [Telephone]
(785) 825-5936 [Fax]

IN THE DISTRICT COURT OF DICKINSON COUNTY, KANSAS

| | | |
|---|---|---|
| SCOTT L. OSTERMANN and CHRISTINE C. OSTERMANN, Plaintiffs, | ) | |
| vs. | ) | Case No. 07 CV 131 |
| LISA M. WEAVER, Defendant. | ) | |

(Proceedings Pursuant to K.S.A. Chapter 60)

**AFFIDAVIT**

STATE OF KANSAS, COUNTY OF SALINE, ss:

After first being duly sworn and upon her oath, come Lisa M. Weaver, of lawful age, and makes the following affidavit:

1. I am the Defendant in the above action. I am intimately familiar with the facts of this case, and have review the contents of the Motion to Set Aside Default Judgment as well as the Memorandum Brief in Support of Defendant's Motion to Set Aside Default Judgment, and the contents of those documents are true and correct to the best of my knowledge.

2. I am not an expert in the legal process, and am not sophisticated in that area.

3. I inadvertently failed to respond to the Petition and Motion for Judgment by Default, filed on March 3, 2008, because I was under the impression that I could not be required to

move the electric or gas meter or to change the structure of the roof of the building, because I believed that an easement existed for those items.

4. My family has owned the real property that is the subject of this suit for more than the past fifty years.

5. The gas meter, electric meter, and the roof have always occupied their present locations.

6. Until the Plaintiffs complained about the gas meter, electric meter, and the roof, there had been no complaints or discussions about the location of those items.

7. I, as well as my family, understood the gas meter, electric meter, and the roof to be located on my property.

8. I, nor the previous owners, have covered or otherwise concealed the position of the gas meter, electric meter, or the roof.

FURTHER AFFIANT SAITH NAUGHT.

Lisa M. Weaver, Defendant

SUBSCRIBED AND SWORN to before me this 19th day of May, 2008.

Notary Public

JANET EMIG
Notary Public - State of Kansas
My Appt. Expires 3/2/09

FILED

2008 MAY 21 AM 10: 29

CLERK OF DISTRICT COURT
DICKINSON COUNTY, KANSAS

KENNEDY BERKLEY YARNEVICH
& WILLIAMSON, CHARTERED
119 West Iron Avenue, 7th Floor
P.O. Box 2567
Salina, Kansas 67402-2567
(785) 825-4674 [Telephone]
(785) 825-5936 [Fax]

IN THE DISTRICT COURT OF DICKINSON COUNTY, KANSAS

| | | |
|---|---|---|
| SCOTT L. OSTERMANN and CHRISTINE C. OSTERMANN, Plaintiffs, | ) | |
| vs. | ) | Case No. 07 CV 131 |
| LISA M. WEAVER, Defendant. | ) | |

(Proceedings Pursuant to K.S.A. Chapter 60)

**MEMORANDUM BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO SET ASIDE DEFAULT JUDGMENT**

COMES NOW, Defendant, Lisa M. Weaver, and in support of her Motion to Set Aside Default Judgment, provides the following brief in accordance with Supreme Court Rule 133.

For the sake of judicial economy, Defendant incorporates by this reference, its Motion to Set Aside Default Judgment, as though the same were fully set forth herein. In addition, Defendant notes that she has supplied an affidavit, attesting to the content of the instant Motion and Brief.

It is the preference of the Courts to try matters as opposed to dispose of them by default judgment. *Sharp v. Sharp*, 196 Kan. 38, Syl. ¶ 2 (1966). And, in order to set aside a default judgment, Defendant must demonstrate three elements, which are: 1) lack of prejudice to

Plaintiffs; 2) excusable neglect on the part of Defendant; and 3) a meritorious defense to the action. As demonstrated below, all three of these elements are present here.

Plaintiffs will not be prejudiced by litigating this issue on its merits. There is no evidence of missing evidence or witnesses that would prejudice Plaintiff's presentation of the case. Further, Plaintiffs have already conducted significant pre-suit investigation and most of their evidence is already in place.

Defendant is not sophisticated and does not understand the legal process. She inadvertently failed to respond to the Petition and Motion for Judgment by Default, filed on March 3, 2008, because she was under the impression that she could not be required to move the electric or gas meter or to change the structure of the roof of the building, **because she believed that an easement existed for those items.** Further, this motion was not filed for the purposes of delay, but rather to make sure that this matter is heard on the merits. Defendant's actions herein constitute excusable neglect.

Also, undersigned counsel was not contacted until after the hearing was held on Plaintiffs' Motion for Judgment by default. Since the order of default was entered, undersigned counsel has been diligently researching the case, becoming familiar with the facts thereof, preparing the appropriate documents to set aside the judgment.

**As a meritorious defense, Defendant asserts that she has a prescriptive easement for the gas and electric meters and the roof.**

**A prescriptive easement can be acquired by demonstrating: 1) exclusive use of the land to the extent the nature of the use will permit; 2) the use was continuous and uninterrupted; 3) the use was adverse and under a claim of right with the knowledge of the landowner, but without the landowner's consent; and 4) the land was used for a period of fifteen**

years. *Fiest v. Steere*, 175 Kan. 1, 5-7 (1953). Defendant's use of the land in this case meets all of these requirements. A party may include her ownership as well the ownership of her predecessors for the purpose of establishing continuous 15 year possession and use of the land in question. *Allingham v. Nelson*, 6 Kan. App. 2d 294 (1981)

First, as stated in her affidavit, the roof of the building, and the gas and electric meters have been in the same location since her family acquired the property more than fifty years ago. Therefore, those items addressed in the default judgment have exclusively occupied those positions on Plaintiffs' property since they were installed long ago.

Second, because the gas and electric meters and roof have been in the same position for the past fifty years, the use of the land they occupy or encroach upon has been continuous. There can be no serious argument to contrary.

Third, because the building has been owned by Defendant's family for the past fifty years, she is in a position to represent that no one prior to these Plaintiffs has ever complained about the position of the meters or the roof during her family's ownership. Defendant and her family never attempted to conceal the position of roof or the meters. Their location and size have always been readily visible from Plaintiffs' property. Furthermore, Defendant always understood the meters to be on her property and the roof over it. In fact, it was not until Plaintiffs performed a boundary survey, in anticipation of litigation, was it never known that the electric and gas meters and the roof were not located exclusively on Defendant's property. Therefore, it can be determined that the use was adverse and under a claim of right with the knowledge of the landowner, but without the landowner's consent.

Fourth, because Defendant and her family have owned the property for more than fifty years, and the meters and roof have occupied their same positions that whole time, it is clear

the 15 year time period can be established as well.

**As an alternative defense, Defendant would assert title to the occupied property by adverse possession, which uses substantially the same elements as a prescriptive easement.**

WHEREFORE, Defendant prays that her motion be sustained and the default judgment herein be set aside and further proceedings be scheduled accordingly; and for such other and further relief as the Court deems just and equitable.

RESPECTFULLY SUBMITTED:

Larry G. Michel, #14067
Chris J. Kellogg, #21651
KENNEDY BERKLEY YARNEVICH
& WILLIAMSON, CHARTERED
119 W. Iron, 7th Floor
P.O. Box 2567
Salina, Kansas 67402-2567
(785) 825-4674 [Phone]
(785) 825-5936 [Fax]
ATTORNEYS FOR DEFENDANT

Law Offices | 119 West Iron Avenue, 7th Floor
P.O. Box 2567
Salina, KS 67402-2567

Phone: 785.825.4674
Fax: 785.825.5936

KENNEDY BERKLEY YARNEVICH & WILLIAMSON
CHARTERED

George W. Yarnevich
Tom A. Williamson
† Larry G. Michel
James R. Angell
‡ Lance H. Cochran
Chris J. Kellogg
Karen M. Quintelier
Gary D. Denning
*Of Counsel*
Rodney G. Nitz
*Of Counsel*

July 14, 2008

Lisa M. Weaver
308 N.E. 9th Street
Abilene, KS 67410

Re: Ostermann v. Weaver Dickinson County District Court Case No. 07 CV 131

Dear Lisa:

On Friday July 11, 2008, I met with Larry Nordling and Lauren Bristow, attorneys for Scott Ostermann. Based on that conversation, I have a very attractive settlement offer regarding Mr. Ostermann's lawsuit against you.

Enclosed with this letter is a fence permit, and various diagrams of your property, as well as that of the Ostermann's. As you can see, what Mr. Ostermann proposes is changing the fencing configuration slightly to prevent bar patrons from entering his property, as well as to provide you access to your utility meters. In addition to the fence, Mr. Ostermann would make the following proposal. Number one, should the utility meters ever require replacement, that they be moved to a different location at that time. Number two, if the roof on the building is replaced, or rots off, that it will not be rebuilt with an overhang over Mr. Ostermann's property, but rather with some sort of guttering system that would not protrude very far from the building.

This agreement would be put in writing, and would be recorded at the Register of Deeds Office so that it would be applicable to future purchasers to this land. In exchange for this agreement, Mr. Ostermann would drop his lawsuit against you, as well as dismiss the Judgment that he currently has.

I really see this situation as a win-win for both of you. It does not require any additional expense on your part, and it will essentially leave everything in its current position, while still allowing you to sell the property, should you wish to do so.

Thomas J. Kennedy
(1929-2005)

Robert B. Berkley
(1926-1996)

also licensed to practice in Colorado
also licensed to practice in Missouri

Upon your receipt of this letter, please contact me so that we might discuss whether this proposal is acceptable. In any of event, I need to hear from you no later than Thursday, as we have court on this matter on July 18, which is Friday.

I look forward to hearing back from you.

Sincerely,

KENNEDY BERKLEY YARNEVICH
& WILLIAMSON, CHARTERED

By:

Chris J. Kellogg
ckellogg@kenberk.com

CJK/jlb
Enclosure

FILED
2008 JUL 18 PM 2:30
CLERK OF DISTRICT COURT
DICKINSON COUNTY, KANSAS

**IN THE DISTRICT COURT OF DICKINSON COUNTY, KANSAS**

| | | |
|---|---|---|
| **SCOTT L. OSTERMANN AND CHRISTINE C. OSTERMANN** | ) | |
| **v.** | ) | **Case No. 07 CV 131** |
| **LISA M. WEAVER** | ) | |

**AGREED ORDER OF CONTINUANCE**

**NOW** on this 18 day of July, 2008, the above-captioned matter comes before the Court on the joint motion of counsel to continue the hearing currently scheduled for July 18, 2008. The Plaintiffs appear by and through counsel Lawrence E. Nordling of Norton, Wasserman, Jones & Kelly, L.L.C. The Defendant appears by and through counsel Chris J. Kellogg of Kennedy, Berkley, Yarnevich & Williamson, Chtd. There are no other appearances.

**WHEREUPON**, the Court is advised that the parties are in the process of negotiating a resolution of the entire case. However, counsel for Defendant needs additional time to discuss such potential resolution with Defendant. Both counsel request the hearing on Defendant's Motion to Set Aside Default Judgment currently set for July 18, 2008 be continued to August 29, 2008.

WHEREFORE, after hearing the statements of counsel and being duly advised in the premises, the Court enters the following Orders:

1. The hearing on Defendant's Motion to Set Aside Default Judgment currently scheduled for July 18, 2008, is hereby continued to 9:00 o'clock a.m. on August 29, 2008.

IT IS SO ORDERED.

DAVID R. PLATT
DISTRICT COURT JUDGE

SUBMITTED BY:

NORTON, WASSERMAN, JONES & KELLY, L.L.C.
213 S. Santa Fe
P.O. Box 2388
Salina, KS 67402-2388
(785) 827-3646
Fax: (785) 827-0538
E-Mail: len@nwjklaw.com

By:
Lawrence E. Nordling
SC #19299
Attorneys for Plaintiffs



Received Time Jul. 16. 2008 4:49PM No. 9217

Cedar Street

Ostermann | Peterson

51'

X = gas meters

C.B.D. - B5

Scott/Chris Ostermann

Easement to Peterson

William H. Peterson
Pat Sweeney

sewer

Texas Street

80' Ostermann

Gas line

Easement to Ostermann

Lisa Weaver

20'

First Street

60'

Butcher Estate

20'

Don Ackerman

Unknown

Don Nebelsick

2-28-08

FILED

2007 DEC 27 AM 10: 01

CLERK OF DISTRICT COURT
DICKINSON COUNTY, KANSAS

**IN THE DISTRICT COURT OF DICKINSON COUNTY, KANSAS**

| | | |
|---|---|---|
| **SCOTT L. OSTERMANN AND CHRISTINE C. OSTERMANN** | ) | |
| **and** | ) | **Case No. 07 CV** 132 |
| **PETERSON FARMS, INC.** | ) | |

**PETITION PURSUANT TO K.S.A. CHAPTER 60**

COME NOW the Plaintiffs Scott L. Ostermann and Christine C. Ostermann (hereinafter collectively referred to as "Plaintiffs") and for their cause of action against Defendant Peterson Farms, Inc. (hereinafter referred to as Defendant) state and allege as follows:

1. Plaintiffs Scott and Chris Ostermann are residents of Dickinson County, Kansas.

2. Defendant Peterson Farms, Inc is a Kansas corporation and service may be obtained upon its registered agent, William H. Peterson at its registered office 901 N. Buckeye, Abilene, Kansas 67410.

3. Plaintiffs are the owners of real property, located in Dickinson County, Kansas, commonly known as 101 N. Cedar, Abilene, Kansas, 67410.

4. Defendant is the owner of real property, located in Dickinson County, Kansas, commonly known as 105 N. Cedar, Abilene, Kansas, 67410.

4. Venue is proper with this Court.

6. The Court has personal jurisdiction over the parties hereto.

7. The Court has subject matter jurisdiction in this action.

8. Defendant has trespassed on and to the above-described real property and continues to do so.

9. A water downspout located on the south side of Defendant's property funnels all of water runoff from a building located on Defendant's property onto the property of the Plaintiffs.

10. Plaintiffs have made a number of attempts to contact Defendant in regard to Defendant's ongoing trespass, and Defendant has failed and/or refused to respond to Plaintiffs.

11. These trespasses by Defendant have damaged Plaintiffs such that extensive damage has been done to concrete work located on Plaintiffs' property and such damage endangers Plaintiff's sewer line which runs directly under Defendant's property.

WHEREFORE, Plaintiffs pray the Court will enter an Order against Defendant which: (1) requires Defendant to remove the trespassing downspout; (2) enjoins and restrains Defendant from any further encroachment and trespass upon Plaintiffs' property; (3) for any

and all damages caused by the above-described trespass; (4) for judgment for the costs of this action; and (5) for any and all such other and further legal and/or equitable relief as the Court deems just.

NORTON, WASSERMAN, JONES & KELLY, L.L.C.
213 S. Santa Fe
P.O. Box 2388
Salina, KS 67402-2388
(785) 827-3646
Fax: (785) 827-0538
E-Mail:

By: _____
Lawrence E. Nordling
SC # 19299
Attorney for Plaintiffs

**NORTON • WASSERMAN • JONES • KELLY LLC**

COPY

FRANK C. NORTON *
KENNETH W. WASSERMAN **
ROBERT S. JONES
NORMAN R. KELLY
ROBERT A. MARTIN
JASON L. REED
LAWRENCE E. NORDLING
BRENDAN J. BURKE
LAUREN M. BRISTOW

Attorneys at Law

*Of Counsel

**Admitted in Kansas and Nebraska

All other attorneys admitted in Kansas only

MAILING ADDRESS:
P.O. Box 2388
Salina, KS 67402-2388

LAW OFFICES AT:
213 S. Santa Fe
Salina, KS 67401

Telephone 785-827-3646
Fax 785-827-0538

len@nwjklaw.com

November 7, 2008

Amanda Dohe
1114 NW 3rd St.
Abilene, KS 67410

RE: 210 West 1st Street, Abilene, KS 67410

Dear Ms. Dohe:

This letter is to serve as a demand for you to remedy those issues on your property located at 210 West 1st Street in Abilene, Kansas, as ordered by the Journal Entry of Judgment by Default in Case No. 07 CV 131 which was heard in the District Court of Dickinson County, Kansas. Said Journal Entry was filed with the District Court on April 21, 2008, and required that the defendant remove trespassing utility meters, air conditioning unit and other objects encroaching on my client Scott Ostermann's property, as well as remedy the roof overhang which also encroaches on my client's property. Ms. Lisa M. Weaver, the previous owner of the property, was a party to this law suit.

It is my understanding that Ms. Weaver transferred said property to you on July 24, 2008. At that time, the judgment was entered and valid, and therefore the property was transferred to you subject to the judgment and therefore you are now responsible to remedy these issues.

Please contact Westar Energy and Kansas Gas Service immediately to have the offending meters removed. Also, please remove the offending roof overhang and air conditioning unit immediately.

If the offending objects are not removed in fourteen (14) business days, my client will contact Westar Energy and Kansas Gas Service and have the meters removed, the roof overhang connected and the air conditioning unit removed at your expense, as the judgment provides.

Very truly yours,

for Lawrence E. Nordling

LEN/jr
cc: Scott Ostermann

FILED
2009 NOV 19 AM 10: 43
CLERK OF DISTRICT COURT
DICKINSON COUNTY, KANSAS

COPY

**IN THE DISTRICT COURT OF DICKINSON COUNTY, KANSAS**

| | | |
|---|---|---|
| **SCOTT OSTERMANN and CHRISTINE C. OSTERMANN** | ) | |
| **Plaintiff,** | ) | |
| **v.** | ) | **Case No. 09 CV** 150 |
| **AMANDA DOHE,** | ) | |
| **Defendant.** | ) | |

**PETITION PURSUANT TO CHAPTER 60**

COME NOW the Plaintiffs and for their cause of action, state and allege as follows:

1. The Plaintiffs are residents of Dickinson County, Kansas.

2. The Defendant is a resident of Lincoln County, Kansas and service may be obtained upon her at 124 South Illinois, Sylvan Grove, Kansas, 67481.

3. The cause of action arises in Dickinson County, Kansas.

4. That the Plaintiffs own the following described real estate for all times pertinent:

   The South Fifty-One (51) Feet of Lots Twenty-seven (27), and Twenty-nine (29), on First Street, Thompson and McCoy's Addition to the City of Abilene, Dickinson County, Kansas.

5. That Defendant purchased, pursuant to the warranty deed, real estate adjoining that owned by the Plaintiff, more particularly described in attached Exhibit A.

6. That at the time of the purchase of real estate by Defendant was encumbered by a judgment with certain mandatory requirements thereon as set forth in attached Exhibit B, namely a Journal Entry in 07 CV 131, District Court of Dickinson County, Kansas.

7. That the decision was entered in the aforementioned case on April 21, 2008.

8. That the Defendant had either actual or constructive knowledge of the said encumbrance and mandatory requirements issued in that case upon the prior owner of the real estate.

9. That the sale to the Defendant was subject to the aforementioned judgment.

WHEREFORE, Plaintiffs pray for judgment herein against Defendant, enforcing the terms of the judgment on 07 CV 131 against the Defendant; for an order requiring the Defendant to comply to the Court's prior order as it involves the real estate in question; and for such other and further relief as the Court deems fair, just and equitable.

NORTON, WASSERMAN, JONES & KELLY, L.L.C.
213 S. Santa Fe
P.O. Box 2388
Salina, KS 67402-2388
(785) 827-3646
Fax: (785) 827-0538
E-Mail: ram@nwjklaw.com

By: _____
Robert A. Martin
SC #16546
Attorneys for Plaintiffs