

PAUL W. VOLLMAN and	:	IN THE COURT OF COMMON PLEAS OF
PAULINE M. VOLLMAN, his wife,	:	LYCOMING COUNTY, PENNSYLVANIA
and PAUL W. VOLLMAN, JR. and	:	
BETTY A. VOLLMAN, his wife,	:	
Plaintiffs	:	
	:	
vs.	:	NO. 00-00,630
	:	
CHRISTOPHER W. BARLETT	:	
and NONNIE JO PEARSON,	:	
Defendants	:	MOTION FOR SUMMARY JUDGMENT

*Date: July 22, 2002*

**MEMORANDUM OPINION and ORDER**

This Order is entered after argument on the Motion for Summary Judgment filed by Defendants on June 6, 2002.

At argument defense counsel made clear that Defendants were not seeking a summary judgment that would dispose of all matters in the case. Defendants' counsel asserted at argument that they sought partial summary judgment as to two parts of Plaintiffs' claims, first as would relate to claims of Plaintiffs Paul W. Vollman, Jr. and Betty A. Vollman, his wife and secondly as would relate to Plaintiffs' claims to the extent they were based upon the right of passage being interfered with by trees on Defendants' property.

The summary judgment motion will be denied.

Briefly stated Plaintiffs are correct in that the theory for dismissal of the claims of Plaintiffs Paul W. Vollman, Jr. and Betty A. Vollman, his wife, on the basis that their deed does not properly include reference to the rights of tacking, cannot be considered by the Court based upon the summary judgment motion that has been filed. Such matters are not raised in the summary judgment motion and are not proper before the Court for determination.

The assertion of Defendants that Plaintiffs cannot pursue a claim to adverse use where they acknowledge trees are interfering with their use can also not be sustained. To sustain this argument on Defendants' part would require the Court to rely upon the self-serving affidavit of Defendants which is attached to the Brief. To do so would be improper because the self-supporting statement of a party may not be used to grant a summary judgment motion and also because such supporting documents must be filed in connection with the summary judgment motion itself and are not properly brought before the Court by attaching the same to a brief. Furthermore, it is clear even after considering this affidavit that there are many contested issues of fact relating to the location, size and origination of the trees and the adverse use in the area where the trees are asserted to be growing.

Accordingly, the following Order will be entered.

**ORDER**

Defendants' Motion for Summary Judgment filed June 6, 2002, is DENIED.

BY THE COURT,

William S. Kieser, Judge

cc: J. Howard Langdon, Esquire  
Scott T. Williams, Esquire  
Judges  
Paul J. Petcavage, Law Clerk  
Gary L. Weber, Esquire (Lycoming Reporter)