

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM T. GILES and SHARON R. GILES,	:	
Plaintiffs,	:	DOCKET NO. 12-01,143
vs.	:	
	:	CIVIL ACTION
RONALD E. READ,	:	
Defendant.	:	

ORDER

AND NOW, this **23nd** January, 2014, following argument on plaintiffs’ motion in limine to allow a witness to testify by telephone held on January 21, 2014, plaintiffs’ motion is GRANTED. It is **ORDERED** and **DIRECTED** that plaintiffs’ witness, Mr. James Brooke, is permitted to testify by telephone. In making this determination, the Court considered that Mr. Brooke is in South Carolina, it would be expensive to require live testimony, his testimony will be relatively brief, and the testimony would be of significant importance. Further, since this is a non-jury trial, the Court believes it can appropriately weigh the credibility based upon the oral testimony.

The Court also preliminarily finds that the testimony concerning permission is a statement with direct legal significance, whether or not it is true (similar to an offer, acceptance or promise, or guarantee) so that the statement would not fall within the definition of hearsay. See Comment, Pa.R.E. 801 (c).¹ The court reserves final ruling on admissibility until the time of trial after the full context of the proffered evidence has been more fully developed.

¹ It is anticipated that the testimony would be admissible following cross-examination of Mr. Giles to rehabilitate Mr. Giles with his prior consistent statement pursuant to Pa.R.E. 613(c).

Lastly, the Court finds that the testimony is not barred by the Dead Man's Act, 42 Pa.C.S.A. § 5930, as the proposed witness does not have an adverse interest to the decedent's estate. *See, e.g., Gibbs v. Herman*, 714 A.2d 432, 436 (Pa. Super. Ct. 1998)("In order to be adverse the interest must be one from which the witness will either gain or lose as the direct legal operation and effect of the judgment."(citations omitted)).

BY THE COURT,

January 23, 2014
Date

Richard A. Gray, J.

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