

HISTORY

On January 6, 2003, Plaintiffs A. Groh Schneider, Jr. and Bonnie Schneider (herein collectively Schneider), filed with the Board of Property (Board) an Action in Ejectment for Possession of Real Property against the Pennsylvania Game Commission (PGC) seeking title and possession to 30 acres of disputed land in Sullivan County. On February 20, 2003, PGC filed an answer denying that Plaintiffs held legal title to the above land.

On July 31, 2003, notice of pre hearing conference was issued. In accordance with the pre hearing conference, Plaintiffs filed and served interrogatories to which answers were filed on August 31, 2003. On March 16, and May 26, 2004, Schneider requested a hearing. On June 26, 2004, the Board issued a Notice of Hearing for October 7, 2004.

A hearing was held on the date, time and place scheduled. Presiding at the hearing were: Andrew Sislo, Esquire, Chief of Staff, designee of Pedro A. Cortès, Chairman of the Board, and Secretary of the Commonwealth; Tanya Leshko, Assistant General Counsel, designee of Leslie Ann Miller, then General Counsel; and Jill Busch, Deputy Chief Counsel, designee of Dennis Yablonsky, Secretary of Community and Economic Development. The Plaintiffs were present and represented by Linus E. Finicle, Esquire. Bradley C. Bechtel, Esquire, represented the Commonwealth.

Following the hearing, the Board directed simultaneous filing of briefs and reply briefs. Each party filed post-hearing briefs on December 7, 2004 and reply briefs on December 22, 2004. The matter is now before the Board for adjudication.

FINDINGS OF FACT

1. Plaintiffs A. Groh Schneider, Jr. and his wife Bonnie Schneider, husband and wife, are record owners of a certain tract of land in Colley Township, Sullivan County. (Exhibit P-1)

2. Defendant Pennsylvania Game Commission is the owner of certain lands in Colley Township, Sullivan County which are a part of State Gamelands No. 66. and share three common boundary lines with the Schneider property. (Exhibit P-2)

Schneider Chain of Title

3. The Schneiders acquired the land in 1978 from the Estate of Harold R. Krasley, Sr., by a deed dated December 7, 1978, recorded December 17, 1978 in Sullivan County Deed Book 91, Page 778. (*Id.*)

4. The deed describes the metes and bounds of the property in the following language:

All that certain piece, or parcel or lot of land lying and being situate in Colley Township, Sullivan County, Pennsylvania, bounded and described as follows:

BEGINNING at a birch tree on line of James Waters; thence by said Waters North fifty degrees east (N 58° E) one hundred fifty-six and seven tenths (156.7) perches to a beech on line intended for John Santee; thence South forty degrees east (S 40° E) eighty-four and eighty-tenth (84.8) perches to a beech; thence south fifty degrees west (S 50°W) one hundred and fifty-six and seven tenths (156.7) perches to a hemlock; thence by the lands of William Waters eighty-four and eighty-tenth (84.8) perches to the place of the beginning.

CONTAINING fifty (50) acres of land more or less.¹ (*Id.*)

5. The original grantors of the lands described in Plaintiff's deed were Hugh Bellas, Joseph B. Anthony and George A. Frick (Bellas, Anthony and Frick) who conveyed the above

¹ A "perch" is a unit for measuring distance equal to 16 and one half feet. Black's Law Dictionary.

described parcel to Taper Hunsinger on September 16, 1846, out of a larger tract known as the Edmund Burke² Warrant. The deed recorded on September 25, 1855 in Sullivan County Deed Book Vol. 3, page 557. (Exhibit P-1 –A)

6. The stated consideration in the Hunsinger deed was \$50. (Exhibit P-1)

7. From 1870 to 1878, Thomas Stubb was the record owner of the Schneider property. (Exhibit P-1, D and E)

8. Charles McCarroll acquired the Schneider property; members of the McCarroll family were record owners until 1966 when Harold R. and Marion Krasley purchased the property. (Exhibit P-1, G, H)

9. Krasley family members held title to the property until 1979 when the Estate of Harold Krasley sold it to Schneider. (Exhibit P-1)

PGC Chain of Title

10. PGC acquired property bordering the Schneider tract on October 6, 1931 by virtue of a deed from Central Pennsylvania Lumber Company granting approximately 780 acres of lands in Sullivan County and a small part of Wyoming County to PGC. The deed was recorded on December 17, 1931 in Sullivan County Deed Book 47, page 577. (Exhibit C-14)

11. The Fourth Tract in the deed contains 390.4 acres being parts of the Edmund Burke, John Welsh and David Shaw Warrants. The deed describes a line around the land of H. McCarroll by courses and distances of 1394.3 feet (or 84.5 rods) and 1653.3 feet (or (100 rods). (Exhibit C-1, pp. 5, 6)

² In various instruments and maps, Burke is identified as Burk. To avoid confusion, Burke will be used throughout.

12. The original grantors of the lands described in PGC's deed were Bellas, Anthony and Frick; the first deed of record in the PGC chain of title is from William Waters and Harriet Waters, his wife, to Henry Chambers dated September 24, 1849 and recorded on May 19, 1865 in Sullivan County Deed Book 7, Page 311. (Exhibits Exhibit C-1. p. 52, C-4)

13. There is no title of record to James or William Waters, nor has a deed been found to either Waters. (Exhibit C-1, p. 52, N.T. 58)

14. The deed from Waters to Chambers describes the metes and bounds of the property in the following language:

Beginning at a Hemlock corner of James Waters; thence by same North 50° East 56.7 perches to a Birch; thence by the tract of which this is a part, South 40° East 150 perches to a Beech; thence by the land of Solomon Housework, South 50° West, 56.7 perches to an Ironwood, thence by the tract of which this is a part North 40° West 150 perches to the Hemlock at the place of the beginning.

Containing 50 acres and 25 perches and allowance of 6%.

(Exhibit C-4)

15. The stated consideration for the property was \$50. (*Id.*)

16. Edwin M. Dunham subsequently acquired the William Waters property in an unrecorded conveyance. (Exhibit C-1, p. 53)

17. On July 12, 1882, the William Waters property was subsequently conveyed as part of a 313 acre tract from Edwin M. Dunham, and wife, to Sherwood Davidge, dated recorded on November 28, 1882 in Sullivan County Deed Book Vol. 14, Page 69. (*Id.* at 116)

18. The deed described a course

...to the North corner of the Stubbs lot...; thence along line of the same, South 54° West 100 perches to the West corner of said Stubbs lot, being also a corner of lot of late William Waters, South 36° East 84.8 perches to a hemlock the South corner of said Stubbs lot in line of lot of late William

Waters; thence along another line of said Stubbs lot, North 54° East 100 perches to the east line of the same....(*Id.*)

19. Title to the Davidge lands were subsequently conveyed to PGC from Central Pennsylvania Lumber Company. (*Id.* at 222)

20. In connection with the sale of the property an abstract of title was prepared by John E. Potter, examiner of land titles for the Board of Game Commissioners.

21. In the report Mr. Potter commented on the Taper Hunsinger deed: "I note deed from Hugh Bellas and others to Taper Hunsinger, dated September 16, 1846, recorded in Deed Book Volume 3, page 557, conveying tract of fifty (50) acres in the Edmund Burk Warrant which would include tract marked H. McCarroll in the middle of the Edmund Burk Warrant as shown by draft of recent survey, but would also extend Southwesterly 156 rods while the McCarroll Warrant shown on draft of survey extends from Northeast to Southwest only about 100 rods. Proof should be furnished whether any adverse claims of title have been made on this deed beyond line of the H. McCarroll tract as shown on draft of recent survey." (Exhibit C-1, p. 229)

22. An affidavit from C.A. Derr, chief engineer of the Central Pennsylvania Lumber Company, stated that "to the best of his knowledge and belief there have not been during the period between the year 1903 and the present day any adverse claims of title to the Edmund Burk and David Shaw Warrants situate in the Township of Coley, County of Sullivan now owned or claimed ...by the Pennsylvania Lumber Company." (Exhibit C-1, p. 253)

23. Schneider had a survey made of the property on January 4, 1979 by Steven Ranson (Ranson), P.E., which was recorded with the Plaintiffs deed on June 10, 1985. (Exhibit P-3)

24. At the time of the survey, Ranson used blue flags and trees sprayed with blue paint marked the boundary lines. (N.T. 24)

25. Schneider had a second survey made of the property on September 1, 1986 by Glenn R. Yasharian (Yasharian), P.L.S.³ (N.T. 35-36)

26. Yasharian used orange paint and orange flags to mark the boundary lines of his survey. (N.T. 26)

27. The Ranson survey indicated the property was comprised of 83.22 acres and the Yasharian survey indicated the property was comprised of 83.78 acres, as compared with the calculated record acreage of 83.05 acres. (Exhibits P-2, P-3, N.T. 41-42)

28. The deed descriptions of the Plaintiffs and of the PGC create an overlap of 56.7 perches or approximately 30 acres at the western boundary line. (Exhibits P-2, C-4, C-13)

³ Yasharian has been licensed land surveyor in Pennsylvania since 1984 when separate licensure became a requirement for land surveying.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter under Section 1207 of The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 337.

2. Plaintiffs have established by a preponderance of the evidence that they have superior title to the disputed 30 acres on the grounds that the original deed in their chain of title is senior to the first deed of record in the PGC chain of title.

DISCUSSION

This is an ejectment action to determine a boundary line. At issue is the ownership of approximately 30 acres of land claimed by virtue of descriptions in the deeds of Plaintiffs and PGC. The parties offered the chain of title for each of their properties. Each party stipulated as to the chain of title of the other. (N.T.8)

The land in dispute is part of the Edmund Burke Warrant created in 1793. By 1832, through various conveyances, Hugh Bellas, Joseph B. Anthony and George A. Frick had acquired all the lands of the Warrant. Bellas, Anthony and Frick had a survey prepared and through the 1840s sold various parcels of land from the Warrant.

The Schneider chain of title for the property originated with a deed from Bellas, Anthony and Frick dated September 16, 1846 to Taper Hunsinger and recorded on September 25, 1855.

The Hunsinger deed described the property in three ways: 1) by metes and bounds and natural monuments; 2) by reference to adjoining land owners property William and James Waters and land intended for John Santee; and 3) by total acreage of 50 acres "more or less." (Exhibit C-3)

The metes and bounds of the deed describe a rectangle beginning at the northwest corner of the lot. The northern and southern lines are 156.7 perches; the eastern and western lines are 84.8 perches. James Waters is identified as the landowner on the northern line of the lot, John Santee as the intended landowner on the eastern line, and William Waters as the landowner on the western line. The land of John Santee is presently owned by the Buckeye Rod and Gun Club. The location of the western line adjoining the property of William Waters is at issue in this case.

A plot map prepared by Stephen Ranson, P.E., shows that the Schneider lot is located off Legislative Route 56026. Access to the property is on a gravel road through the Gun Club's land. The Schneider cabin is located on the eastern third of the property. The disputed third of the lot on the western side is described as wooded land. Schneider has not attempted to use any part of the disputed land.

From 1870 to 1878, a Thomas Stubb was the record owner of the lot. After a sheriff's sale, the lot was conveyed to Harry McCarroll on April 21, 1882, and recorded September 26, 1882. McCarroll conveyed the lot to Harold R. Krasley in 1966. It is from Krasley's Estate that the Plaintiffs acquired the lot. With a slight deviation, the deed is the mirror image of Hunsinger's.⁴ (Exhibit P-1)

PGC received title to its property adjoining Plaintiffs land by a 1931 deed from Central Pennsylvania Lumber Company conveying five tracts of approximately 780 acres in Sullivan County and a small part of Wyoming County. The fourth tract of 390.4 acres located in Colley Township, Sullivan County, is part of three larger tracts originally surveyed in the names of Edmund Burke, John Welsh and David Shaw, all dated February 26, 1793. There is no title of record from Bellas, Anthony and Frick to William Waters. The first recorded conveyance from William and Harriet Waters is dated September 24, 1849 and recorded on May 19, 1865 in Vol. 7, Page 311. It describes the metes and bounds of Waters' lot as 56.7 perches by 150 perches and natural monuments, containing 50 acres, being part of a larger tract of 400 acres surveyed in 1793 known as the Edmund Burke Warrant. By 1882, E.M. Dunham, through various conveyances, acquired the Edmund Burke lands, including those of William and James Waters. These lands were conveyed to Sherwood

⁴ The Hunsinger deed describes the first course as beginning at a birch tree on line of James Waters, thence North fifty degrees east (N 50° E) whereas the Plaintiffs deed states North fifty-eight degrees east (N 58° E).

Davidge on June 12, 1882. In that conveyance, the Plaintiffs lot then owned by Thomas Stubbs was described as 100 perches by 84.8 perches. (Exhibit C1, p. 117)

Thus, reading of the descriptions of two deeds together results in both parties claiming the same 30 acres of land.

Schneider presented testimonial and documentary evidence. Groh Schneider testified that after he purchased the property in 1979, two surveys were made of his property. Ranson Engineering Services did the first survey which was prepared on January 4, 1979. Its survey indicated the property to encompass 83.22 acres. The second survey was done by Glenn R. Yasharian on September 1, 1986. It shows 82.78 acres. As the surveys were plotted on the ground, blue (by Ranson) and orange (by Yasharian) was painted on trees and blue or orange flags were used to mark the boundary lines.

Yasharian also testified as follows regarding the survey he made. He testified that he began his survey at the southeast corner at a pin set by PGC. (N.T. 36) He observed no beech tree called for in the deed. At 100 rods (perches) he encountered a second PGC pin, but no hemlock as called for in the deed. He ran his line 156 rods and set pin to the southwest corner. He also found no hemlock at this location. Returning to the southeast corner, Yasharian ran a line in a northwesterly direction to 84.8 perches, as stated in the deed, and discovered a found pin similar to a PGC survey marker. No beech tree mentioned in the deed was found. Proceeding in a southwesterly direction, Yasharian encountered a PGC pin at 100 rods/perches which the deed called for a birch tree. There was no birch tree in this location. Yasharian extended his line to 156.7 perches. Again, no birch tree was found. He then closed the survey by running a line from the northwest corner to the southwest corner. Yasharian calculated the area of his survey to consist of 82.78 acres. (N.T. 41)

The Commonwealth presented the testimony of Donald Shirk, a PGC real estate specialist and a cartographer. In connection with the Schneider claim Shirk examined the Schneider and PGC chains of title. He testified that the Commonwealth derives its title from a deed dated July 12, 1882, from E.M. Dunham and wife to Sherwood Davidage. (Commonwealth Exhibit C-13) This deed describes the north and south lines of the Plaintiffs' property as being 100 perches, as opposed to the 156.7 perches set forth in Plaintiffs' deed. Through Mr. Shirk, PGC also offered a deed of partition and a survey maps from 1850 between Bellas, Anthony and Frick. The map shows that the Schneider property as a square rather as a rectangle. (N.T. 60, Exhibits C-6, C-7)

The Complaint and Answer and post hearing briefs of the parties raise three issues for the Board: (1) whether Schneider has established that it has senior title to possession of the disputed 30 acres; (2) whether PGC has established that it has acquired title to the disputed 30 acres by adverse possession; or (3) whether PGC has established title by a consentable boundary. The Board's resolution of each claim is discussed below.

A. Senior Title

Both parties rely on *Merlino v. Eannotti*, 177 Pa. Super. 307, 110 A.2d 783 (1955), for the proposition that where there is a clash of boundaries in two conveyances from the same grantor, title of the grantee in the conveyance first executed is, to the extent of the conflict, superior. *Merlino* was also an action for ejectment to determine the boundary between two adjoining lands where the two deed descriptions created an overlap. In that case, both parties received deeds from their common grantor within six months of each other. Eannotti, the first grantee had constructed a building on the property. Also, the courses and distances in the second conveyance to Merlino could not be

reconciled with monuments on the ground. (The court characterized the Merlino deed as a “blunder throughout.” *Id.* at 315, 110 A.2d at 787 (citation omitted).

The Hunsinger deed is the first recorded deed out of the common grantors Bellas, Anthony and Frick. However, PGC relies upon the Hunsinger deed’s reference to adjoining land of William Waters as evidence of an earlier conveyance to him. Although the deed to Waters was not found, PGC argues that later deeds in its chain of title, in particular the deed from Waters to Chambers in 1849 and the 1882 deed from Dunham to Davidge support its position that its title was senior (earlier in time) to that of Schneider. PGC relies on the 1849 deed from William Waters to Chambers and 1850 survey maps that Bellas, Anthony and Frick had prepared in connection with the partition of their land which show the Schneider property as a “square.”

Not surprisingly many cases involve conflicting descriptions in deeds, some from a common grantor. However, the parties have not cited, nor has the Board found, a reported case in which the deed has not been found.

Proof of the existence and contents of a lost deed must be shown by evidence which is direct, positive, expressly unambiguous and expressly defining all terms and conditions of contract and leaving nothing to guess-work or subject to misinterpretation. *Graham v. Lyons*, 377 Pa.Super.4, 546 A.2d 1129 (1988).

The difficulty with the PGC position is that without the Waters deed in evidence, it is impossible to say by what description Bellas, Anthony and Frick conveyed lands to Waters. That being so, it is impossible to say that the description in the 1849 deed repeated in the 1882 deed should prevail over the 1846 Hunsinger deed. The 1850 survey maps of the grantors are some evidence that the grantors thought they had conveyed a lot roughly the shape of a square to

Hunsinger, especially when the Hunsinger property is shown adjoining what would become the William Waters to Chambers deed description of the land as a narrowly configured rectangle. This evidence would be corroborative of a deed from Bellas, Anthony and Frick to William Waters. However, it is not of the same quality as the direct evidence presented by the Hunsinger deed.

Alternatively, PGC urges the Board to find that Schneider has failed to meet its burden of proof because the description of Hunsinger/Schneider deed is intrinsically ambiguous. It argues that the quantity—"50 acres, more or less"—should prevail over the description by courses and distances and metes and bounds because "50 acres more or less" coincides with quantity achieved by applying the courses of 100 perches for the north and south boundary lines, roughly the distance achieved by adopting the description of the Chambers deed.

Schneider contends that the deed is not ambiguous because the general description of 50 acres, more or less, should not prevail over specific distances recited in the deed. Schneider further argues that the ambiguity or inconsistency found by PGC is created only by reference to adjacent calls of adjoiners.

The inconsistency in the Hunsinger deed is between the metes and bounds description and the quantity conveyed. Plotting a course on the ground results in a quantity of 83 acres, a significant difference from 50 acres, more or less.

The primary function of the Board in resolving an ambiguity in deed is to determine the intent of the grantor. Rules of construction have been employed by the courts to achieve that intent. In the order of preference monuments on the ground are of the highest value. However, in this case the monuments referred to in the deeds from Bellas establishing corners were no longer available at the time of surveys by the Plaintiffs and the PGC.

In *Dawson v. Coulter*, 262 Pa. 566, 106 A. 187, 188 (1919), our Supreme Court stated:

Evidence of the acreage of land, especially where the number of acres is followed by the words more or less has little weight as against specific boundaries and is in the nature of an uncertain method of description and often a mere estimate. Where, however, a doubt exists as to the actual location of the boundary and the writing contain no words to definitely fix the line by either metes and bounds or monuments on the ground, evidence of acreage becomes a material factor....

Thus, specific courses and distances, which by their nature are a certain method of description, are given preference over an estimated acreage. See *Pencil v. Buchart*, 380 Pa. Super. 205, 551 A.2d 302 (1988).

In the Schneider/Hunsinger deeds the metes and bounds are specifically fixed at a rectangle 156.7 by 84.8 perches. PGC's position that the later 1849 Chambers deed from Waters would result in redrawing the metes and bounds of the Schneider/Hunsinger deeds to a 100 by 84.8 perches to reach a preference for "50 acres more or less." Given the language of the Schneider/Hunsinger deeds the Board finds little weight should be given to the general number of acres.

In summary, to prevail in an action to quiet title, Schneider must establish title by a fair preponderance of the evidence. *Commonwealth, Pennsylvania Game Commission v. Ulrich*, 565 A.2d 859 (Pa. Cmwlth. 1990). This "places upon the plaintiff the burden of proving a prima facie title, which proof is sufficient until a better title is shown in the adverse party." *Hallman v. Turns*, 334 Pa. Super., 189, 184, 482 A.2d 1284, 1287 (1984). The Board concludes that the Plaintiffs have met their burden of proof and that PGC's evidence does not establish that it has a better title in the disputed 30 acres.

B. Adverse Possession

In its answer, PGC also contended that it has occupied the disputed land for more than 21 years and hence acquired title under adverse possession. At the hearing, John Orlandini, a licensed land surveyor previously employed by PGC, testified that he was on the disputed tract in 1979 and observed PGC pins and markings positioned at a distance 100 perches from the northwest and southwest corners. (N.T. 91-92) Both Mr. Orlandini and Mr. Shirk testified that the PGC markings were at that position when they were at the property in 2003. (N.T. 92) PGC also introduced letters between Schneider and PGC officials in 1979 concerning the location of the west line culminating in advice from its Chief Counsel that Schneider file a claim to the Board of Property. (Exhibit C-112)

In reply Schneider contends that at the time PGC purchased the property in 1931 it knew of the cloud on its title and took no legal action to obtain clear title.

One who relies on the defense of adverse possession in an action of ejectment must establish: (1) open, notorious, and exclusive possession; (2) continuity for 21 years and (3) hostility and adversity. *Burns v. Mitchell*, 252 Pa. Super. 257, 381 A.2d 487(1977), *Ewing v. Dauphin County Tax Claim Bureau*, 375 A.2d 1373 (Pa. Cmwlth. 1977). Neither sporadic entry onto the land nor actually occupied nor sporadic use of that land will support a claim for adverse possession. *Parks v. Pennsylvania Railroad Co.*, 301 Pa. 475, 152 A. 682 (1930).

In *Pocono Pines Corp. v. Commonwealth, Board of Property*, 310 A.2d 710 (Pa. Cmwlth. 1973), the PGC acquired lands from the United States who had acquired lands by condemnation. Conceding the condemnation was flawed, PGC argued that it acquired the land by adverse possession. The sole evidence of adverse possession was that the PGC surveyed the property and marked by boundaries, but made no improvements. The Court held this evidence was insufficient to

meet the requirements for acquisition by adverse possession. *Pocono Pines* would appear to control the outcome in this matter.⁵

C. Consentable Boundary

PGC argues that notwithstanding the language of the Schneider deed, the Schneider's predecessors had consented by recognition or acquiescence in the PGC line. The finding of a consentable boundary requires evidence of three elements: "(1) a dispute with regard to the location of a common boundary line, (2) the establishment of a line in compromise of the dispute and (3) the consent of both parties to that line and the giving up of their respective claims which are inconsistent therewith." *Inn Le'Daerda, Inc. v. Davis*, 241 Pa. Super.150, 360 A.2d 209 (1976), citing *Newton v. Smith*, 40 Pa. Super. 615, 616 (1909).

A finding of a consentable boundary requires the pre-existence of a dispute over the location of a common boundary, establishment of a line in compromise of the dispute and the consent of the parties to the line and waiving their claim.

The chain of the title of Schneider shows that the property was conveyed seven times after it was acquired by Hunsinger. The Waters property was conveyed five times before it was sold to PGC. The report of John E. Potter to the Game Commissioners in 1931 is the first record of knowledge on the part of any owner that Bellas, Anthony and Frick had conveyed the same 30 acres twice. PGC predecessor, the Board of Game Commissioners at that time relied on an affidavit from

⁵ Schneider argues that PGC, as an agency of the Commonwealth, possessing the power of eminent domain, may not acquire property by adverse possession. In *Pocono Pines*, the Court case expressly declined to decide the question of whether or not the Commonwealth or the United States, possessing the power of condemnation, had the further power to acquire lands for public use by adverse possession. *Id.* at 473. Having found that the facts do not establish adverse possession by the Commonwealth, the Board finds it unnecessary to address this issue. Schneider cites *Sayer Land Co. v. Sayre*, 384 Pa. 534, 121 A.2d 579 (1956). The Board notes that in that case, the Court held evidence insufficient to find in favor of the borough as a holder of a title by adverse possession, even assuming that the borough though it possessed the power of eminent domain, may acquire title by adverse possession. 121 A.2d at 582.

the seller that there were no known adverse claims. In 1931 the McCarroll family had owned the Stubbs lot for almost 50 years. This might have been an apropos time to determine whether there was an adverse claim and if so whether the parties could consent to a line. The record here is devoid of any adverse claim other than that of Schneider. PGC's own evidence shows that it was Schneider that established the existence of a dispute, and PGC that was unwilling to consent to a compromise. (Exhibits C-10-C-12) Therefore, the elements of a consentable boundary between the Schneider and PGC have not been proved.

Therefore, the following order is entered.

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Date of Mailing: August 19, 2005