

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

SUZANNA Z. VAUGHN,

Plaintiff

vs.

WOODS CAMPGROUND, INC.,  
JOHN A. PARR,  
PATRICK GREMLING,  
SCOTT HEFFELFINGER,  
TOWAMENSING TOWNSHIP,  
TOWAMENSING TOWNSHIP ZONING  
HEARING BOARD,

Defendants

No. 11-1085

William L. Byrne, Esquire

Counsel for Plaintiff

Jill Kelly McComsey, Esquire

Counsel for Defendants  
Woods Campground, Inc.,  
Parr, Gremling,  
Heffelfinger

John J. Mahoney, Esquire

Counsel for Defendant  
Towamensing Township

Towamensing Township Zoning  
Hearing Board

Unrepresented

**MEMORANDUM OPINION**

Matika, J. - May 6, 2013

Before the Court are two sets of preliminary objections filed by Defendant Towamensing Township (hereinafter "Township") and Defendants Woods Campground, Inc., John A. Parr, Patrick Gremling, and Scott Heffelfinger (hereinafter collectively "Woods Campground") respectively to Plaintiff's complaint in a

zoning ordinance violation and enforcement action. For the reasons stated within this opinion, the Township's preliminary objection is **SUSTAINED**, and the preliminary objections of Woods Campground are **SUSTAINED in part and OVERRULED in part**.

### **FACTUAL AND PROCEDURAL BACKGROUND**

This instant action centers around a parcel of land (hereinafter "premises") consisting of approximately 101.126 acres. The premises are located in Towamensing Township, Carbon County.

On May 17, 2003, Plaintiff, Suzanna Z. Vaughn (hereinafter "Plaintiff") entered into an agreement of sale with Defendants, Parr, Gremling, and Heffelfinger (hereinafter collectively "Three Defendants") to sell and convey the premises to said Three Defendants.<sup>1</sup> The agreement of sale was consummated on August 8, 2003, by way of a deed issued to the Three Defendants. Ancillary to conveying the deed, Plaintiff also granted a right-of-way, by means of an express easement, to the Three Defendants consisting of a forty (40) foot wide access strip that runs through Plaintiff's property. The purpose of said easement was to allow the Three Defendants to gain access to the premises.

After the conveyance, the Three Defendants decided to

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<sup>1</sup> The Three Defendants are the principal owners of Defendant, Woods Campground, Inc.

continue operating a campground upon the premises.<sup>2</sup> On May 2, 2008, Defendants, Woods Campground filed a preliminary plan, as required by the Township to expand the number of campsites from fifty-three (53) to eighty-one (81). The preliminary plan was approved by the Township. However, Plaintiff alleges that Defendants, Woods Campground never obtained final approval as required by the Subdivision Land Use Ordinances of Towamensing Township. Thus, Plaintiff declares in her complaint that Defendants, Woods Campground are operating the expanded campground on the premises illegally.

Plaintiff reaches such conclusion by arguing that in order for Defendants, Woods Campground to expand the number of campsites from fifty-three (53) to eighty-one (81), they needed to apply for zoning permits with Defendant, Towamensing Township Zoning Hearing Board.<sup>3</sup> Furthermore, Plaintiff asserts that in order for Woods Campground to comply with the Township's zoning regulations, Defendants Woods Campground needs to pave the right of way to accommodate the greater volume of vehicular traffic, that being RV's and ATV's, that will be traveling to the premises.

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<sup>2</sup> Prior to the conveyance, Plaintiff operated a campground site as well upon the premises. Plaintiff, while operating the campground had a total of fifty-three (53) campsites.

<sup>3</sup> Plaintiff also alleges in her complaint that Defendants, Woods Campground seek to expand the campground operations upon the premises to one hundred and eighty (180) campsites.

Plaintiff, an adjacent landowner to the premises, instituted this action on May 3, 2011, by filing a praecipe for writ of summons along with a pre-complaint request for production of documents in aid of drafting the complaint. Upon agreement between counsel for the respective parties, counsel for Township provided the necessary documents to Plaintiff in order to address Plaintiff's pre-complaint request for production of documents.<sup>4</sup> Plaintiff eventually filed her complaint on October 19, 2012.

In her complaint, Plaintiff has one count against Defendants, Woods Campground and the Township.<sup>5</sup> Plaintiff alleges that Defendants, Woods Campground have made no application to expand the number of campground sites on the premises nor have Defendants Woods Campground been granted a variance or special exception to operate the campground with eighty-one (81) campsites. As a result of Woods Campground operating a campground with the number of sites in excess of what was previously permitted, the increased activity has resulted in waste upon the premises, which as Plaintiff claims

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<sup>4</sup> As a byproduct of such agreement Defendants Woods Campground withdrew its motion for protective order via a praecipe, and Plaintiff withdrew her motion for production of documents.

<sup>5</sup> Although Plaintiff lists Towamensing Township Zoning Hearing Board as a defendant, there are no counts against said Defendant, nor any record that Towamensing Township Zoning Hearing Board was ever served with the complaint. Plaintiff, in her prayer for relief does seek, in essence, a mandamus action against the Zoning Hearing Board.

is harmful and offensive to the adjacent property owners, and has made living in such immediate areas dangerous and contrary to the public welfare of those residents. Moreover, neither the Township nor Defendant, Zoning Hearing Board have inspected or approved any of the additional twenty-eight (28) campsites located on the premises in order to determine if such sites are in conformity of the requirements of the Township's zoning ordinances.

Plaintiff, in instituting this suit seeks mandamus relief against Defendants Township and Towamensing Township Zoning Hearing Board in requiring said Defendants to investigate, review, address, and if necessary and appropriate, enjoin Defendants Woods Campground from violating various zoning ordinances. Furthermore, Plaintiff seeks a court order compelling Defendants Woods Campground to discontinue their commercial operations upon the premises as well as ordering the removal of what Plaintiff describes as "offending structures and/or sites and related equipment and fixtures forthwith."

In response to the complaint, Defendants, Woods Campground and the Township filed preliminary objections respectively. Although both sets of objections mirror each other, the applicable law does not and thus the Court will address each Defendant's preliminary objections separately.

## **DISCUSSION**

Pursuant to Pennsylvania Rule of Civil Procedure 1028 any party may file preliminary objections to any pleading for "inclusion of scandalous or impertinent matter" and "legal insufficiency of a pleading (demurrer)." Pa.R.C.P. 1028(a)(2),(4). "Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint." *Haun v. Community Health Systems, Inc.*, 14 A.3d 120, 123 (Pa. Super. Ct. 2011). As such, a court, when deliberating upon preliminary objections, must consider all material facts set forth in the challenged pleadings as true. *Turner v. Medical Center, Beaver, PA, Inc.*, 686 A.2d 831 (Pa. Super. Ct. 1996). "Preliminary Objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief." *Feingold v. Hendrzak*, 15 A.3d 937, 941 (Pa. Super. Ct. 2011).

### **I. Township's Preliminary Objections**

Defendant, Township filed a preliminary objection to the sole count in Plaintiff's complaint in the nature of a demurrer for legal insufficiency. The basis for Defendant Township's preliminary objection is two-fold, a procedural aspect along with a substantive component. For the reasons stated below,

Defendant Township's preliminary objection is **sustained**.

The Township files this preliminary objection asserting that Plaintiff was required, but failed to, give the Township thirty (30) days notice that she will be instituting this action. More specifically Defendant Township states Plaintiff has violated Pennsylvania Municipalities Planning Code (hereinafter "MPC"), Article VI, Section 617 that reads in relevant part:

Any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the municipality at least 30 days prior to the time the action is begun by serving a copy of the complaint on the governing body of the municipality. No such action may be maintained until such notice has been given.

53 P.S. § 10617.

Defendant Township thus concludes it should be dismissed from this action because the complaint was filed on October 19, 2012, which obligated Plaintiff to provide Defendant with advance notice of the action on or before September 19, 2012, by serving a copy of the complaint upon Defendant. However, as the Township avers it was not provided a copy of the complaint until October 18, 2012.

Plaintiff, in response, cites to 53 P.S. § 10617 of the MPC in claiming she has a right to bring a cause of action against the Township.<sup>6</sup> In support of this argument, Plaintiff relies upon the case of *Peden v. Gambone Brothers Development Co.*, 798 A.2d 305 (Pa. Cmwlth. Ct. 2002), which is predicated upon the Pennsylvania Supreme Court case of *Frye Construction, Inc. v. City of Monongahela*, 584 A.2d 946 (Pa. 1991).

Both *Frye* and *Peden* stand for the proposition that where there is an alleged violation of a zoning ordinances that infringes upon the use, enjoyment, and rights of a neighbor, the aggrieved neighbor is entitled to seek redress in a court of equity. *Frye*, 584 A.2d at 948; *Peden*, 798 A.2d at 312. Neither case deals with the issue of whether a plaintiff complied with the advance notice requirements of 53 P.S. § 10617 and a municipality's motion to be dismissed from the action for plaintiff's failure to comply with notice requirement. See, *Frye*, 584 A.2d at 947; *Peden*, 798 A.2d at 311-12.<sup>7</sup> As such, Plaintiff's reliance upon these two cases as substitution for not giving Defendant Township advance notice is misguided and incorrect. Further, both these cases revolve around private

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<sup>6</sup> The Court notes that Plaintiff in quoting section 10617 of the MPC, excludes the language that informs a private landowner that he or she needs to give advance notice to the municipality.

<sup>7</sup> The *Frye* Court explicitly states that the dismissal of the City and its officers by the lower court is not currently before the Court. See, *Frye*, 584 A.2d at 947.



equity actions and not mandamus actions against a municipality.

Moreover, Plaintiff's argument runs afoul of the rules of statutory construction. The Court, guided by the dictates of the Statutory Construction Act, must interpret and construct all statutes so as to "ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S.A. § 1921(a).

When a statute is not ambiguous and the wording clear, then the letter of the statute may not be circumvented on the pretext of pursuing its spirit. 1 Pa.C.S.A. § 1921(b); *City of Pittsburgh v. Royston Service, Inc.*, 390 A.2d 896, 898 (Pa. Cmwlth. Ct. 1978). Thus, the Court is required by the rules of construction to give effect to all provisions of a statute except where to do so would yield an absurd or unconstitutional result. 1 Pa.C.S.A. § 1921(a).

In reading 53 P.S. § 10617, and determining that the language of the statute is clear and unambiguous, the Court must give effect to all of the statute's provisions. As such, a plaintiff seeking to bring a cause against a municipality for a violation of the municipality's local ordinance may do so, however plaintiff needs to comply with the advance notice requirement and serve a copy of the complaint no later than thirty days prior to filing the complaint. Here Plaintiff did not do that as she presented a copy of the complaint upon the Township a day prior to filing the complaint. Consequently,

Plaintiff's action as it relates to the Township must be dismissed. *See, Karpiak v. Russo*, 676 A.2d 270, 275 (Pa. Super. Ct. 1996).

Plaintiff, in the alternative, argues that based upon facts, circumstances, and procedural history, the notice requirement is inapplicable to this case. In support of this argument, Plaintiff points to the fact that this case was commenced by way of the filing of a Praecipe for Writ of Summons on May 3, 2011. As such, Plaintiff argues that since an action can be commenced with a filing of a praecipe for writ of summons, *see*, Pennsylvania Rule of Civil Procedure 1007, Defendant had twenty days from May 3, 2011 to file preliminary objections. Pa.R.C.P. 1026(a). Therefore, Plaintiff concludes that since Defendant Township did not file preliminary objections within twenty days of her filing a praecipe for writ of summons, such preliminary objections are deemed waived.

Plaintiff's argument however runs contrary to the relevant civil procedure rules and the comments to those rules. Pennsylvania Rule of Civil Procedure 1028 states preliminary objections may only be filed to a pleading, while Pennsylvania Rule of Civil Procedure 1017 states pleadings are limited to:

- (1) A complaint and an answer thereto;
- (2) A reply if the answer contains new matter, a counterclaim or a cross-claim;

(3) A counter-reply if the reply to a counterclaim or cross-claim contains new matter; or

(4) A preliminary objection and a response thereto.

Pa.R.C.P. 1017; *Gervel v. L & J Talent*, 805 F. Supp. 308 (E.D. Pa. 1992) (Court stated that a writ of summons is not an initial pleading but rather only informs a party that an action has been initiated against him or her by the plaintiff and the court such action was initiated in.).

Additionally, the explanatory comment to Pennsylvania Rule of Civil Procedure 1028 is dispositive of the issue of whether a writ of summons is considered a pleading pursuant to Pennsylvania Rule of Civil Procedure 1017. Said explanatory comment states in pertinent part:

Rule 1028(a)(1) provides for a preliminary objection to the form and service of a writ of summons. However, the preliminary objection may not be filed to the writ of summons if no complaint has been filed. A writ is not a pleading and any objection to it must await the filing of the complaint.

See, Pa.R.C.P. 1017 explanatory cmt.; *Fox v. Thompson*, 546 A.2d 1146, 1147 (Pa. Super. Ct. 1988) (The Superior Court held that until a complaint is filed the defendant may not challenge a defect in a writ of summons or its service.)

Furthermore, the Superior Court stated that a writ of summons is only a simple notice to the defendant that the plaintiff has instituted suit against him and "imposes no duty whatever upon the defendant until the plaintiff files and serves

his complaint, to which the defendant will be required to plead, if it is properly endorsed." *Clymire v. McKivitz*, 504 A.2d 937, 939 (Pa. Super. Ct. 1986) (quoting 1 Goodrich-Amram 2d § 1007:4).

For these reasons, the Court rejects Plaintiff's arguments and sustains the preliminary objection filed by Defendant Township.<sup>8</sup>

## **II. Woods Campground Preliminary Objections**

Defendants, Woods Campground assert three preliminary objections against Plaintiff's complaint. The first preliminary objection mirrors that of the Township's preliminary objection, while the second and third preliminary objections are based upon the affirmative defense of estoppel and the inclusion of

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<sup>8</sup> Defendant Township also raised a substantive objection to Plaintiff's complaint. The Township objects to the relief Plaintiff seeks, that being mandamus relief, and argues that is not an appropriate remedy for a landowner to request in order to obtain an injunction against a neighboring landowner for potential zoning law violations. Defendant Township argues the MPC specifically provides the procedure Plaintiff must follow in order to obtain the relief she desires. See, section 617 of the MPC, 53 P.S. § 10617. Although the Court's grant of Defendant Township's preliminary objection on the basis of procedural defects renders this issue moot, notwithstanding that, the Court would also grant Defendant Township's preliminary objection based upon the legal insufficiency aspect of the relief Plaintiff seeks.

The Commonwealth Court, examining similar facts as the ones before this Court in *Hanson v. Lower Frederick Township Board of Supervisors*, 667 A.2d 1221 (Pa. Cmwlth. Ct. 1995), ruled that section 617 of the MPC "provides for a more direct and orderly procedure than an action in mandamus, which would at most order the Township to enforce ordinances and probably precipitate more litigation directly involving [defendants]." *Id.* at 1223. The *Hanson* Court concluded that section 617 provides an aggrieved landowner with a remedy, and mandamus under the circumstances is not appropriate. *Id.* Furthermore, the Commonwealth Court notes that the relief in the form of mandamus will compel the performance of a mandatory act and is appropriate where the right to relief is clear and no other adequate and appropriate remedy exists. *Hellertown Manufacturing Co. v. Scheiner*, 506 A.2d 487 (Pa. Cmwlth. Ct. 1986).

scandalous and impertinent material respectively. For the reasons stated below, Woods Campground's preliminary objections are **sustained in part** and **overruled in part**.

Woods Campground's first preliminary objection is identical to that of the Township's preliminary objection. Woods Campground claims that Plaintiff has failed to comply with the MPC insofar as providing thirty (30) day notice to the Township before instituting this action. Defendant Woods Campground also raises the issue that the relief Plaintiff is seeking, that being a mandamus action, is inappropriate. For these reasons Defendants Woods Campground requests the Court to dismiss this action as it pertains to them.

The Court however does not agree with Defendant Woods Campground. Unlike the Township's preliminary objection, the Plaintiff is correct in citing to *Frye* and *Peden* in support of her position opposing said preliminary objection. The Pennsylvania Supreme Court in *Frye* held that an aggrieved adjacent neighbor has an "independent right to seek relief from a zoning violation next door and that right could be asserted in an equity action." *Frye*, 584 A.2d at 948. The Pennsylvania Supreme Court further stated that:

Even though the primary duty of enforcing zoning regulations rests upon the zoning authorities,  
{ "pageset": "S32" the right to enforce them by injunction, where their violation has resulted or will result in

deprivation of the enjoyment of one's own property, first exists in the one injured. It is not dependent upon the injured party having requested the appropriate public authorities to enforce the ordinance against its violator and their refusal or failure to perform this duty with all the delays that that would entail. [REDACTED] If one suffers an injury special and peculiar to one's property, or a direct disturbance in the quiet enjoyment thereof, that person is entitled to maintain an injunction action against the continuance of the encroachment without application to the relevant authorities. Where deliberate violations of a zoning ordinance have the effect of wrongfully infringing on the property rights of a neighbor, that neighbor is entitled to prompt vindication in a court of equity without regard to alternate administrative remedies that might be available. We have always so held and we continue to do so.

*Id.* at 948.

In addition, the *Frye* Court determined that an aggrieved property owner is not obligated to exhaust all administrative remedies before instituting a private cause of action. *Id.* "The availability of an administrative remedy does not deprive a court of the power to entertain claims challenging the agency's failure to afford the required remedy; and the availability of the administrative remedy bears only on the appropriateness of granting the relief requested." *Id.* at 949 (citing *Commonwealth, Department of Public Welfare v. Eisenberg*, 454 A.2d 513 (Pa. 1982)). Further there is nothing in the MPC that suggests that the failure of an aggrieved party in not providing advance notice to a municipality bars such party from bringing a private

cause of action against a third party. As such this Court does not find credence in Defendants Woods Campground's assertion that Plaintiff is barred from bringing a private cause of action against them because Plaintiff did not provide the Township notice thirty (30) days prior to instituting the action.

Defendants Woods Campground also claims its preliminary objection should be granted because the relief Plaintiff seeks is not proper. However, when reading the prayer for relief, Plaintiff in essence is seeking injunctive relief against Defendants Woods Campground to discontinue their expanded commercial operations on the premises. The Commonwealth Court held in *Peden*, while relying on *Frye*, that an aggrieved property owner seeking an injunction against a neighboring property owner pursuant to section 617 of the MPC to enforce an ordinance is proper. *Peden*, 798 A.2d at 312. We too believe this to be so and therefore will find as such in this instant action. Accordingly, Defendant Woods Campground's preliminary objection that Plaintiff has failed to comply with 53 P.S. § 10617 of the MPC and the relief Plaintiff requests is improper, is **overruled**.

Defendant Woods Campground's second preliminary objection is based upon the affirmative defense of estoppel. Woods Campground argues that since Plaintiff herself operated a campground upon the premises while she was the owner of the premises and Plaintiff knew it was Woods Campground's intent to

continue to operate the campground when the parties entered into the agreement of sale, Plaintiff is estopped from objecting to the use of the premises as a campground.

Notwithstanding the merits of this preliminary objection, the Court must dismiss such objection based upon the applicable rule and case law. Pursuant to Pennsylvania Rule of Civil Procedure 1030 all affirmative defenses, which includes the defense of estoppel, shall be pleaded in a responsive pleading under the heading "New Matter." Pa.R.C.P. 1030(a); *see also, March v. Paradise Mutual Insurance Co.*, 646 A.2d 1254, 1255 (Pa. Super. Ct. 1994) (Appellant Court held that the defense of estoppel is an affirmative defense that must be pleaded as a new matter.) Thus, Woods Campground's preliminary objection based upon the affirmative defense of estoppel must be **overruled** and **dismissed** as such defense is properly raised within an answer under the heading of new matter and not as a preliminary objection.

The final preliminary objection Woods Campground has filed in response to Plaintiff's complaint is pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2) for inclusion of scandalous and impertinent material. Specifically, Woods Campground asserts that the averment in paragraph 10 of the complaint which in relevant part alleges that the Three Defendants operate Defendant, Woods Campground Inc. for "clientele practicing a



nudist and/or optional lifestyle upon the premises." Defendants Woods Campground claims that such statement regarding its clientele and the lifestyle such clientele chooses is irrelevant to the ultimate decision as to whether Defendant Woods Campground has violated any zoning ordinance. Consequently, Woods Campground requests that such language be stricken.

For an allegation to be "scandalous and impertinent," and thus subject to be stricken, allegation must be immaterial and inappropriate to the proof of the cause of action. *Common Cause/Pennsylvania v. Commonwealth*, 210 A.2d 108 (Pa. Cmwlth. Ct. 1998); *Romy v. Burke*, 2003 WL 21205975 (Pa. Com. Pl. May 2, 2003) (Court ruled that plaintiff's references to defendants' "Enron style looting" of the plaintiff and a particular defendant having illicit sexual relations on the premises were neither material nor appropriate proof of the breach of fiduciary duty claim against defendants and as such the statements were deemed scandalous and impertinent and stricken.)

Although the Court does not necessarily find such statement to be prejudicial to Woods Campground's defense of this action, the Court does find such statement irrelevant and immaterial to Plaintiff proving that Defendants Woods Campground has violated the local zoning ordinance. The crux of Plaintiff's case revolves around Defendants Woods Campground operating the premises with a number of campsites in excess of that which is

permitted by the zoning permit. Plaintiff in her complaint makes no allegation that the clientele Defendants Woods Campground permits on the premises is a nuisance. Consequently, the language in paragraph 10 of the complaint that states "which caters to a clientele practicing a nudist and/or optional lifestyle upon the premises" is stricken from the complaint.

Accordingly, the Court enters the following order:

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

SUZANNA Z. VAUGHN,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 11-1085
	:	
WOODS CAMPGROUND, INC.,	:	
JOHN A. PARR,	:	
PATRICK GREMLING,	:	
SCOTT HEFFELFINGER,	:	
TOWAMENSING TOWNSHIP,	:	
TOWAMENSING TOWNSHIP ZONING	:	
HEARING BOARD,	:	
	:	
Defendants	:	

William L. Byrne, Esquire	Counsel for Plaintiff
Jill Kelly McComsey, Esquire	Counsel for Defendants Woods Campground, Inc., Parr, Gremling, Heffelfinger
John J. Mahoney, Esquire	Counsel for Defendant Towamensing Township
Towamensing Township Zoning	Unrepresented

**ORDER OF COURT**

AND NOW, to wit, this 6<sup>th</sup> day of May, 2013, upon consideration of the Preliminary Objections filed by Defendants Towamensing Township and Woods Campground, Inc., John A. Parr, Patrick Gremling, and Scott Heffelfinger to Plaintiff's

Complaint, Plaintiff's Answer and brief in response thereto, and following oral argument thereon, it is hereby

**ORDERED and DECREED** that said Preliminary Objections are **SUSTAINED IN PART and OVERRULED IN PART AS FOLLOWS:**

- 1) Defendant Towamensing Township's preliminary objection to the Complaint is **SUSTAINED** and the Complaint is dismissed as against Defendant Towamensing Township;
- 2) The preliminary objection of Defendants Woods Campground, Inc., John A. Parr, Patrick Gremling, and Scott Heffelfinger to the inclusion of "which caters to a clientele practicing a nudist and/or optional lifestyle upon the Premises" in paragraph ten of the complaint is **SUSTAINED** and **STRICKEN** from the Complaint; and
- 3) All other preliminary objections of Defendants Woods Campground, Inc., John A. Parr, Patrick Gremling, and Scott Heffelfinger are **DENIED and DISMISSED**.

It is **FURTHER ORDERED and DECREED** that Defendants Woods Campground, Inc., John A. Parr, Patrick Gremling, and Scott Heffelfinger shall file a responsive pleading to the Complaint within twenty (20) days of the date of this Court order.

**BY THE COURT:**

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Joseph J. Matika, Judge