

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

MORGAN T. ZURN
MASTER IN CHANCERY

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Final Report: November 30, 2017
Date Submitted: November 30, 2017

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The Brady Law Firm, P.A.
240 North James Street, Suite 106
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Mr. Gabe Wood
Mrs. Lorean Wood
111 Schaffer Boulevard
New Castle, DE 19720

Via U.S. Mail & FSX

Re: *Phillips v. Wood*
C.A. No. 2017-0525-MTZ

Dear Counsel and Litigants:

This real property dispute concerns the placement of a fence built by homeowners Gabe and Lorean Wood (“Defendants”) that their neighbors, Donald and Janet Phillips (“Plaintiffs”), assert is on Plaintiffs’ property. On July 21, 2017, Plaintiffs filed a complaint seeking removal of the fence and damages. Plaintiffs filed a motion for default judgment on September 7, 2017. Defendants, proceeding *pro se*, sought and received an extension of time to file an answer. Mr. Wood filed a document he called “Ans to the Plain” on October 27, 2017, which was signed only by him and not by Mrs. Wood. That filing alleged the fence is on

Defendants' property, that Defendants have had their property surveyed and have supporting documentary evidence, and that copies of that documentation were "[b]ehind this Document." No copies were attached.

On October 31, 2017, Plaintiffs filed a motion to strike Mr. Wood's responsive pleading, asserting it was not formatted according to Court of Chancery Rule 10(b), insufficient under Rule 12(f), and not hand delivered to Plaintiffs' counsel as the certificate of service indicated. Defendants have not responded.

Under Chancery Court Rule 12(f), "the Court may order stricken from any pleading any insufficient defense."

Motions to strike focus on the form of the pleading and not the substance of the pleadings. It is said that these motions are not favored. They are granted sparingly and only when clearly warranted with all doubt being resolved in the nonmoving party's favor. "The test employed in determining a motion to strike is: (1) whether the challenged averments are relevant to an issue in the case and (2) whether they are unduly prejudicial."¹

Mr. Wood's *pro se* filing "may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers."² "Delaware courts, at their

¹ *Salem Church (Delaware) Assocs. v. New Castle County*, 2004 WL 1087341, at *2 (Del. Ch. May 6, 2004) (internal citations and quotations omitted).

² *See Vick v. Haller*, 1987 WL 36716, at *1 (Del. Mar. 2, 1987).

discretion, look to the underlying substance of a *pro se* litigant's filings rather than rejecting filings for formal defects.”³

Mr. Wood's *pro se* filing substantively denies the allegations that the fence is on Plaintiffs' property, alleges the fence is on Defendants' property, and specifically identifies several documents in support of his denials and allegations. In this discrete and relatively simple dispute, it would be unjust to elevate form over substance: it is clear from the filings that the parties disagree as to whether the fence is on Defendants' property. I accept Mr. Wood's filing as his Answer in this matter. The motion to strike is denied.

By December 15, 2017, Mrs. Wood shall either sign and notarize Mr. Wood's Answer or shall submit her own, and Defendants shall serve copies of their Answer(s) on counsel for Plaintiffs via first class mail. By January 31, 2017, each party shall provide to the other copies of any and all surveys pertaining to the location of the fence. By February 28, 2017, the parties shall submit a status update indicating whether mediation would be useful in helping to resolve this dispute between neighbors; if the parties do not agree to mediation, they shall submit a proposed case scheduling order.

³ *Sloan v. Segal*, 2008 WL 81513, at *8 (Del. Ch. Jan. 3, 2008).

This is a final report pursuant to Court of Chancery Rule 144.

Respectfully,

/s/ Morgan T. Zurn

Master in Chancery