



IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF  
PENNSYLVANIA - FRANKLIN COUNTY BRANCH

PROthonotary  
FRANKLIN COUNTY PA  
2010 JUL 23 P 12:51  
LINDA L. BEARD  
PROthonotary  
DEPUTY  
*ly*

David Hornbaker and Bryan Yingst, : Civil Action - Law  
Executors of the Estate of : (Survival Action)  
Donald H. Berkebile, Deceased, :  
Plaintiffs :  
vs. : No. 2010 - 3128  
Bryan Kendall, : Assigned to Judge \_\_\_\_\_  
Defendant : JURY TRIAL DEMANDED

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may also lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER [OR CANNOT AFFORD ONE], GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW [TO FIND OUT WHERE YOU CAN GET LEGAL HELP].

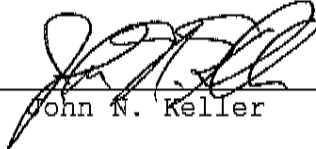
Pennsylvania Bar Association Lawyer Referral Service  
Tel. 1-800-692-7375 (PA only)  
Tel. 717-238-6715 (outside PA)

THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO  
PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES  
TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

KELLER, KELLER AND BECK, LLC

By



John N. Keller

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COMPLAINT

NOW come David Hornbaker and Bryan Yingst, Executors of the estate of Donald H. Berkebile, Deceased, and for causes of action against the defendant, Bryan Kendall, say:

1.

Plaintiff, David Hornbaker, is an adult individual residing at 12081 Punch Bowl Road, Mercersburg, Franklin County, Pennsylvania.

2.

Plaintiff, Bryan Yingst, is an adult individual residing at 269 Lamparter Road, Quarryville, Lancaster County, Pennsylvania.

3.

The Plaintiffs bring this action as Executors of the estate of Donald H. Berkebile, having been issued Letters Testamentary with regard to the said estate by the Register of Wills of Franklin County, Pennsylvania.

4.

The Plaintiffs' Decedent, Donald H. Berkebile, date of birth November 21, 1926, was killed on July 28, 2008, at his farm located at 9399 Blue Spring Road, Mercersburg, Franklin County, Pennsylvania.

5.

The Defendant is Bryan Kendall, an adult individual whose last address known to the Plaintiffs is 9397 Blue Spring Road, Mercersburg, Franklin County, Pennsylvania.

6.

The Plaintiffs bring this survival action pursuant to 42 Pa. C.S. Section 8302.

7.

On July 28, 2008, a gravel road extended from the property at 9397 Blue Spring Road where the Defendant then resided over the farm at 9399 Blue Spring Road which the Plaintiffs' Decedent, Donald H. Berkebile, owned and which was where he lived.

8.

During the months prior to July 28, 2008, the Plaintiffs' Decedent expressed his belief that the Defendant had committed acts of mischief on the Decedent's property and noted his fear of the Defendant.

9.

On July 28, 2008, at about 7:30 a.m., the Plaintiffs' Decedent was at his said farm burning brush at a burn pile located adjacent to and several feet from the north edge of the said gravel road.

10.

At the said time, the Defendant, who was driving in his truck eastbound over the Decedent's property on the gravel road, stopped the truck near the Decedent, got out and confronted the Decedent.

11.

When the Defendant got out of his truck and confronted the Decedent he was unaware that the Decedent, who was an experienced gun collector and

shooter, was wearing a holster and carrying a handgun loaded with five .410 gauge shells containing birdshot.

12.

The Plaintiffs believe that the Defendant approached the Decedent in a manner which caused the Decedent to believe that the Defendant intended to kill or seriously injure him, and that the Defendant may have commenced an assault and battery of the Decedent.

13.

The Decedent, acting in self defense, drew his handgun and fired one shot, striking the Defendant with birdshot pellets in the arm and chest.

14.

The Defendant threw the 81 year old Decedent to the ground and disarmed him, tossing the Decedent's holster and handgun into the Decedent's yard.

15.

After he had thrown the Decedent down and disarmed him, the Defendant continued to beat the Decedent and stood over him, repeatedly kicking and stomping him in the head after the Decedent became unable to resist or avoid the blows.

16.

In the course of beating, kicking and stomping the Plaintiffs' Decedent, the Defendant inflicted the following injuries which resulted in the Decedent's death as he lay on the ground:

A. Blunt force trauma to the head, including:

1. Multiple facial fractures;
2. Multiple nasal fractures;
3. Multiple calvarial skull fractures;
4. Multiple basilar skull fractures;

5. Multiple abrasions, contusions and lacerations of the face and scalp;

6. Multiple lacerations and contusions of the ears;

7. Multiple cerebral contusions;

8. Subdural hemorrhage, bilateral;

9. Subarachnoid hemorrhage, diffuse;

10. Intraventricular hemorrhage, diffuse;

11. Hemorrhage into right conjunctivae and sclerae;

12. Contusions and lacerations of oral mucosa;

13. Hemoaspiration; and

14. Blood within proximal esophagus.

B. Blunt force trauma to neck, including:

1. Bilateral fractures of hyoid bone with hemorrhage;

2. Fracture of midline thyroid cartilage;

3. Fracture of right thyroid cartilage;

4. Abrasions of right lower neck and upper chest;

5. Contusion overlying midline thyroid cartilage; and

6. Contusion of inferior right sternocleidomastoid muscle.

C. Miscellaneous blunt force trauma, including:

1. Contusion of the left breast;

2. Contusions of the right lower abdominal quadrant;

3. Contusion of the right inguinal region;

4. Contusions of the left thigh and knee; and

5. Multiple contusions and abrasions of the upper extremities.

The conduct of the Defendant in intentionally beating, kicking and stomping the Plaintiffs' Decedent, Donald H. Berkebile, to death, was

without justification or, in the alternative, far exceeded the scope of any justifiable action which the Defendant may have taken.

18.

As a direct result of the conduct of the Defendant in intentionally beating, kicking and stomping the Plaintiffs' Decedent, Donald H. Berkebile, to death, the Decedent suffered excruciating pain and intense fear and distress until his death.

19.

As a direct result of the conduct of the Defendant in intentionally beating, kicking and stomping the Plaintiffs' Decedent, Donald H. Berkebile, to death, the estate of the Plaintiffs' Decedent has lost the earnings which Donald H. Berkebile would have realized over the remainder of his life had he not been killed.

COUNT I - CRIMINAL HOMICIDE, ASSAULT AND BATTERY

20.

The content of paragraphs 1 through 19, supra, is incorporated herein by reference.

21.

The conduct of the Defendant in intentionally beating, kicking and stomping the Plaintiffs' Decedent, Donald H. Berkebile, to death, amounted to Criminal Homicide and lesser offenses in violation of the Pennsylvania Crimes Code.

22.

The conduct of the Defendant in intentionally beating, kicking and stomping the Plaintiffs' Decedent, Donald H. Berkebile, to death, was an unlawful and actionable Assault and Battery.



WHEREFORE, the Plaintiffs demand judgment against the Defendant, Bryan Kendall, in an amount in excess of the jurisdictional limit for compulsory arbitration, together with costs.

COUNT II - PUNITIVE DAMAGES

23.

The content of paragraphs 1 through 22, supra, is incorporated herein by reference.

24.

The Defendant's conduct was malicious, willful and wanton, and reflected the Defendant's reckless indifference and disregard to the interest of others.

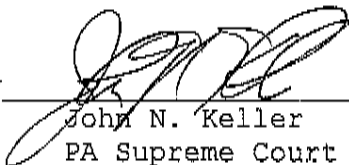
25.

The Defendant's conduct was outrageous and supports an award of punitive damages in favor of the Plaintiffs and against the Defendant so as to deter others from committing similar acts.

WHEREFORE, the Plaintiffs demand judgment against Defendant Bryan Kendall for punitive damages in addition to compensatory damages in an amount in excess of the limit for referral to compulsory arbitration, together with costs.

KELLER, KELLER AND BECK, LLC

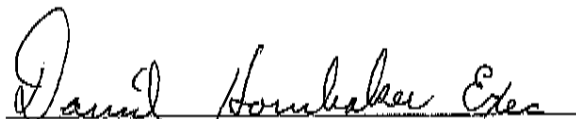
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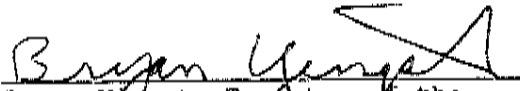
PA Supreme Court I.D. #25577  
343-B South Potomac Street  
Waynesboro, PA 17268  
(717) 762-3331  
Attorney for the Plaintiffs

I verify that the facts set forth in the foregoing complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: July 23, 2010

  
David Hornbaker, Executor of the  
Estate of Donald H. Berkebile

I verify that the facts set forth in the foregoing complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

  
Bryan Yungst, Executor of the  
Estate of Donald W. Berkebile

Date: July 22, 2010