



Lawsuit dropped in '08 death

By JIM TUTTLE Staff writer -----

A lawsuit against the estate of a Mercersburg man filed by the man who killed him in 2008 and a countersuit alleging wrongful death have been discontinued.

The initial civil suit was filed Oct. 8, 2008 by Bryan and Susan Kendall against the estate of Don Berkebile, 81, who died July 28, 2008 in a fight with Bryan Kendall on his Blue Spring Road farm.

In their suit, the couple alleged that they suffered "great humiliation and embarrassment" as a result of the fight. They also sought to recover the cost of medical expenses and lost earnings, since Berkebile shot Kendall in the chest and arm with a load of bird shot pellets during the fight.

The suit asked for \$350,000 in damages; \$200,000 for Bryan and \$150,000 for his wife.

According to court records, a document was filed March 29 by their attorney, Joseph Melillo, requesting that the case be "discontinued with prejudice."

When contacted by phone Friday, Kendall told Public Opinion that his and the other suit had been discontinued pursuant to an agreement between the two parties, which included a non-disclosure agreement. As such, he said, he was not permitted to discuss any aspect of the matter.

"Both sides agreed to it, so that's the way we're standing," he said.

A police investigation into the deadly fight

determined that Kendall killed Berkebile through blunt-force trauma. The neighbors had been arguing about a damaged stone property marker, according to details of the investigation

released in January by Franklin County District Attorney Matt Fogal.

During the argument, Berkebile unholstered a Taurus double-action revolver loaded with bird shot and fired at Kendall, who fell to the ground.

Kendall, then 40, told Public Opinion during a phone interview from his hospital bed that he pretended to be dead until Berkebile approached him, then jumped up and struggled with the older man.

He hit and kicked Berkebile an undetermined number of times, inflicting fatal injuries. After the older man was unconscious, Kendall called 911 from a cell phone.

After an investigation that lasted about 18 months, Fogal announced in January 2010 that Kendall would not be charged. He said his office would have difficulty proving to a jury that the killing was not a justified act of self defense.

On July 23, David Hornbaker and Bryan Yingst, the executors of Berkebile's estate, filed their

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own lawsuit against Kendall. Their suit alleged that Kendall approached Berkebile in an intimidating manner, causing him to fear for his life and fire a shot in self defense.

The suit describes an ensuing attack on Berkebile, and alleges that Kendall "threw the 81-year-old (man) to the ground," disarming him, then brutally beating and stomping on him.

A long list of Berkebile's injuries is included in the civil complaint. They included multiple facial and skull fractures, brain hemorrhaging, neck fractures and bruises all over his body.

As a result of Kendall's actions, Berkebile "suffered excruciating pain and intense fear and distress until his death," the complaint stated.

The suit was requesting that Kendall be ordered to pay both compensatory and punitive damages for his actions. A copy of the initial complaint filed with the Franklin County Prothonotary did not include a suggested dollar amount.

According to court records, the suit was discontinued March 31 in accordance with a letter from Hornbaker and Yingst's attorney, John Keller.

Phone calls to Keller, Hornbaker and Yingst were not returned Friday.

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