



Berkebile survivor surprised by lawsuit against his estate

By ROSCOE BARNES III Staff writer
Nancy Smith, a relative of the late Donald Berkebile of Mercersburg, said she was stunned to learn that Bryan Kendall -- the man involved in Berkebile's death -- is suing his estate.

"Oh goodness! I can't believe it," said Smith, who lives near Orlando, Fla.

Berkebile, 81, died from injuries sustained during a fight with Kendall, a neighbor, on July 28, near 9399 Blue Spring Road, Mercersburg. Kendall told police that Berkebile shot him during an argument. The two then struggled and Berkebile died of the injuries caused during the fight. Police are still investigating.

Kendall and his wife, Susan Kendall, filed a civil lawsuit Wednesday against two co-executors of Berkebile's estate: David Hornbaker of Mercersburg and Bryan Yingst of Quarryville.

In the suit, Kendall claims he incurred more than \$40,000 in medical expenses for injuries caused by Berkebile. Further, he argues that the value of the case is in excess of \$50,000.

The lawsuit claims Kendall has been subject to "great humiliation and embarrassment," and that he has "sustained a loss of earnings by reason of

not being able to fulfill his employment."

David S. Wisneski of Navitsky, Olson and Wisneski, Harrisburg, who is representing the Kendalls in the civil suit, said Kendall did nothing wrong and was just going about his business when the incident occurred.

Kendall's local attorney, who would represent him in any eventual criminal case, is Waynesboro attorney Steve Kulla. He has maintained that Kendall acted in self-defense.

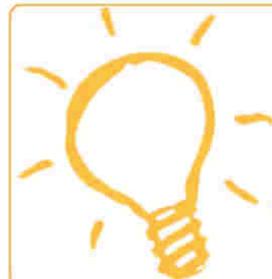
Franklin County Coroner Jeffrey R. Conner ruled that Berkebile's death was caused by "blunt force trauma to the head and neck." He called the case a homicide, which he described as "death at the hands of another person."

Criminal charges haven't been filed against Kendall. Assistant District Attorney Jeremiah Zook said Thursday his office is still waiting on forensic testing from a Pennsylvania State Police lab. A decision on whether to charge Kendall could be reached by the end of April, Zook said.

Zook said he had only recently learned about the Kendalls' lawsuit. He said the civil suit is separate from any criminal case and has no bearing on the decision on whether to file criminal charges.

Berkebile's cousin, Ginette Isenberg of Manheim, said she was aware of the lawsuit but did not know the details: "He has a right to file it. We don't really know what happened. I don't know how far it's going to go until the state police are

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done with their investigation."

At the time of Berkebile's death, state police reported the two men "had been involved in ongoing disputes."

However in his civil suit, Kendall claims that prior to July 28, he had avoided Berkebile and had not spoken to him in eight years. He also claims that "Berkebile had exhibited signs of erratic behavior."

Kendall, who was 40 at the time, lived on a farm at 9397 Blue Spring Road. The suit claims he was leaving the farm with his landscaping equipment when he approached Berkebile's residence on the one-lane gravel road off of Blue Spring Road. Whenever Kendall entered or exited the area, he had to pass Berkebile's property.

"As Mr. Kendall approached the Berkebile residence, Mr. Berkebile was standing in the middle of the lane yelling and pointing his finger at Mr. Kendall," the lawsuit stated. "On the left side of the road, Mr. Berkebile had started a fire. The fire prevented Mr. Kendall from simply going around Mr. Berkebile on the left shoulder of the road."

Kendall also was not able to go around on the right side because of some stakes Berkebile had driven into the ground. According to the lawsuit, Kendall slowed his vehicle so he could avoid hitting Berkebile.

Kendall said he stopped his truck to ask Berkebile what he was talking about. He said he

could hear Berkebile "cursing and screaming, but could not understand what he was saying."

Kendall got out of his truck and asked, "Don, what are you talking about?"

The lawsuit claims: "Mr. Berkebile, who had angled his body so that his left side was facing toward Mr. Kendall and his right side facing away from him, pointed his left index finger at Mr. Kendall and said, 'I saw you hit those rocks, you SOB,' and, without warning or provocation, immediately shot Mr. Kendall in the chest with a handgun that had been concealed in his right hand."

In the lawsuit, Kendall said he fell and it appeared that Berkebile was going to drag his body into the fire. He said Berkebile placed the gun in his holster and kicked him to see if he were still alive; Kendall grabbed Berkebile and the two began fighting.

"At some point during the struggle, Mr. Berkebile became unresponsive," the lawsuit claims, adding that Kendall assumed he was unconscious or playing dead. After taking the holster from Berkebile, Kendall said he tossed it aside and crawled to his truck to call 911 on his cell phone.

Kendall was flown to Altoona Regional Hospital.

The lawsuit claims that Berkebile used a .45/410 revolver, loaded with either cartridges or shotgun shells, to shoot Kendall.

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Kendall suffered a "multiple shotgun injury" to his chest, abdomen, forearm, liver and spleen, according to the lawsuit.

Berkebile lived alone after his wife Winifred died May 15, 1997. He was known for his work with the Smithsonian Institution in Washington, D.C., from which he retired as a carriage curator. He was the author of several books, including "The Smithsonian Collection of Automobiles and Motorcycles" in 1968 and "Carriage Terminology: An Historical Dictionary" in 1978.

In 2003 Berkebile claimed that biosolids, or treated human waste, spread on the neighboring Grove farm field contaminated his spring. Grove farm is owned by Kendall's mother-in-law, Julia Grove, a former council member for the Borough of Mercersburg.

Berkebile's farmhouse plumbing was connected to the spring. He accused the Department of Environmental Protection of failing to enforce its regulations.

Berkebile sent long, typewritten letters about his concerns with the DEP to Public Opinion five years ago. In one letter he suggested he might be in personal danger.

In December, the last of Donald Berkebile's possessions went on the auction block. A Philadelphia buyer submitted the high bid on Berkebile's 3.2-acre Montgomery Township farm with its restored 1700s stone farm house, according to auctioneer Matt Hurley of Hurley Auctions.

-- Senior writer Jim Hook contributed to this report.

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