

The Herald-Mail

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02/18/2009

Man sues estate of neighbor who died after fight

By JENNIFER FITCH
waynesboro@herald-mail.com

CHAMBERSBURG, Pa. — A Mercersburg, Pa., man who claims he was acting in self-defense when his 81-year-old neighbor died after a fight, has filed a lawsuit seeking in excess of \$350,000 in damages from the victim's estate.

Bryan Kendall, of 9377 Blue Spring Road, cites medical expenses, lost wages, and humiliation and embarrassment in the lawsuit filed Wednesday in Franklin County (Pa.) Court.

The suit states Donald Berkebile confronted him on the morning of July 28, 2008, as Kendall drove on a shared driveway. Berkebile allegedly used a revolver to shoot birdshot into Kendall's chest, starting a struggle that left the one-time Smithsonian Institute curator dead from head and neck injuries.

In the lawsuit, Kendall and his wife, Susan, describe it as a fight in which Kendall "fought for his life." He describes throwing Berkebile's gun aside and crawling into his truck to call 911 as he bled from the birdshot wounds.

No charges have been filed against Kendall, who requested a jury trial in the civil suit.

The decision regarding charges will come from the Franklin County (Pa.) District Attorney's Office, Assistant District Attorney Jeremiah Zook said.

"We're still waiting on some forensic results, some testing," Zook said. Those firearms testing results from the Pennsylvania State Police Crime Lab are expected by the end of April, he said.

In the lawsuit, Bryan Kendall claims Berkebile had a history of erratic behavior, although he also says he did not talk to his neighbor in the last eight years. The 7:30 a.m. incident happened as Kendall left his farm on his way to a landscaping job.

Kendall, who was 40 when the fight occurred, alleges his neighbor had started a fire on one side of the lane and driven stakes into the other side. He says he encountered Berkebile standing in the middle of the driveway, yelling and pointing a finger at the approaching pickup truck.

Berkebile's cursing and screaming was nonsensical when Kendall stopped the truck, the plaintiffs state in the lawsuit.

"Mr. Kendall then put his hands up in the air and said, 'Don, what are you talking about?' ... (Berkebile responded) 'I saw you hit those rocks, you (expletive),' " the lawsuit states.

Kendall fell and tried to "play dead" after being shot with .45/410 revolver, claiming he feared as he lay there that Berkebile would drag him into the fire. When Berkebile, who collected antiques such as coins and firearms, kicked Kendall's foot, Kendall said he grabbed and wrestled the older man.

Kendall was treated at Altoona (Pa.) Regional Health System for chest, forearm and liver injuries. He claims \$40,000 in medical expenses in the lawsuit.

The co-executors of Berkebile's will are listed as David Hornbaker of Mercersburg and Bryan Yingst of Quarryville, Pa. Berkebile was a widower who lived alone.

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