

The Herald-Mail

<http://www.herald-mail.com/>

03/17/2009

Response filed to lawsuit against estate of slain Mercersburg man

By JENNIFER FITCH
waynesboro@herald-mail.com

CHAMBERSBURG, Pa. — Lawyers representing the estate of a Mercersburg, Pa., man who was beaten to death last year in a fight with his neighbor have responded to a lawsuit, saying the plaintiffs should not be permitted to testify because their claims cannot be refuted by a dead man.

Attorney John Keller, on behalf of Donald Berkebile's estate, cited Pennsylvania's so-called Dead Man's Act, a statute that says any person with interests adverse to the deceased's interests shall not be a competent witness to any matter before the death.

Berkebile, of 9399 Blue Spring Road, died during a July 2008 fight with his neighbor Bryan Kendall, who claims he acted in self-defense after being shot with birdshot. Kendall and his wife, Susan, sued Berkebile's estate in mid-February, asking for \$350,000 in damages for medical expenses, lost wages, and humiliation and embarrassment.

The response filed March 5 by Keller, with co-executors David Hornbaker of Mercersburg and Bryan Yingst of Quarryville, Pa., asks that a judge preclude the Kendalls' testimony regarding the events that preceded Berkebile's death.

Berkebile, who was 81 at the time of his death, was a widower who lived alone. His property shared a driveway with the Kendalls' property in Montgomery Township.

The Franklin County District Attorney's Office will decide whether to file charges in the case, but it continues to wait for forensics results from the Pennsylvania State Police Crime Lab, Assistant District Attorney Jeremiah Zook said.

"They told us the earliest we can expect results would be in April," he said.

A Franklin County Prothonotary's Office official said the court administrator would typically be responsible for assigning a judge for the lawsuit. However, because of the possible criminal case pending for the courts, an outside judge would be brought in for the civil suit, she said.

Reader Comments:

Please note: The Herald-Mail does not review every comment posted by our visitors, and we are not responsible for the content of the messages. The postings are the sole responsibility of the poster. We reserve the right to review, edit and/or delete any message for any reason, including but not limited to postings that are commercial in nature, contain profanity, off-topic or offensive. We reserve the right to revoke the posting privileges of any person who violates these rules at any time.

From: anika200 I think this is just sad. Since when can you kill a man and then take all his money. This is greed to the max.

**Tue 17 Mar 2009
09:07:48 PM EDT**

From: oldgriz "Since when can you kill a man and then take all his money. This is greed to the max." ~ How about the fact that the person killed shot the man and he was acting in self defense... was injured, lost time from work and now wants to be compensated for his injuries and lost salary... Amazing that you forget he was shot by the man who was killed...

**Wed 18 Mar 2009
10:49:39 AM EDT**

From: Compensation for lost wages..... The guy probably missed a few weeks of work.
BankerMan25 Give him Five grand and tell him to be happy about it. The lawsuit is about somebody looking to cash in on an unfortunate incident.

**Wed 18 Mar 2009
11:19:04 AM EDT**

Copyright The Herald-Mail