

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DANIEL STREEVY,)
)
Plaintiff,)
)
v.) C.A. No. 04C-12-196 MMJ
)
KEVIN M. ROBERTS, KEVIN T.)
BAKER, KEVIN P. BAKER, DANIEL)
ROBERTS, AND JASON ROBERTS,)
)
Defendants.)
)

Submitted: August 11, 2008
Decided: September 10, 2008

On Defendants Kevin T. Baker and Kevin P. Baker's
Motion for Reargument

DENIED

ORDER

Cynthia H. Pruitt, Esquire, Doroshow, Pasquale, Krawitz & Bhaya, Wilmington,
Delaware, Attorneys for Plaintiff

Robert K. Pearce, Esquire, Ferry, Joseph & Pearce, P.A., Wilmington, Delaware,
Attorneys for Defendants Kevin T. Baker and Kevin P. Baker

Robert D. Goldberg, Esquire, Biggs and Battaglia, Wilmington, Delaware,
Attorneys for Defendants Kevin M. Roberts, Daniel Roberts and Jason Roberts

JOHNSTON, J.

1. On May 8, 2008, following a *Daubert* hearing, the Court issued its decision on various pre-trial motions. The Court ruled that certain expert testimony could not be offered at trial. During oral argument on March 3, 2008, the Court also denied plaintiff's motion for summary judgment on the issues of a duty to properly secure the weapon and the reasonable foreseeability of use of the weapon.

2. Plaintiff filed a Motion for Reargument Pursuant to Rule 59(e). The Court granted the Motion for Reargument in part and clarified the May 8, 2008 Opinion. The Court ruled as a matter of law that all owners and possessors of firearms have a duty to take reasonable precautions to prevent misuse of the weapon. However, the parameters of that duty must be defined in the context of a factual determination. The Court denied plaintiff's Motion for Reargument on the issue of admissibility of expert testimony.

3. Defendants have filed another motion for reargument on the grounds that the Court misapplied or misapprehended the law. Defendants argue that the proper standard should be that a gun owner is negligent only if the weapon is stored in a way likely to be misused by someone. Defendants contend that there is no duty if the gun owner has no reason to believe that the gun is likely to be misused.

4. Defendants' instant motion is denied for two reasons. First, the procedural rules do not contemplate multiple motions for reargument. Second, even if the substance of defendants' motion were to be considered, defendants' position is not contrary to the Court's previous ruling. Obviously, a gun owner who has no reasonable basis to believe that the firearm is likely to be misused, is held to a different standard of proper storage than an owner who knows or should know that the weapon may be misused. In this case, the issues of the duty to properly secure the weapon and the reasonable foreseeability of use of the weapon are fact-driven. The Court cannot determine the precise parameters as a matter of law. It is up to the jury to decide whether the gun owner or possessor had a reason to believe that the gun was likely to be misused.

THEREFORE, Defendants Kevin T. Baker and Kevin P. Baker's Motion for Reargument is hereby **DENIED**.

IT IS SO ORDERED.

/s/ *Mary M Johnston*

The Honorable Mary M. Johnston