

SUPREME COURT OF MISSOURI

Janet S. Delana, Individually, and as the Wife of Decedent Tex C. Delana v. CED Sales, Inc. d/b/a Odessa Gun & Pawn, Charles Doleshal, and Derrick Dady

486 S.W.3d 316 (Mo. banc 2016) · No. SC95013 · Decided April 5, 2016

SUMMARY

The Supreme Court of Missouri held that the Protection of Lawful Commerce in Arms Act (PLCAA) preempts the plaintiff's ordinary negligence claim arising from the criminal or unlawful misuse of a firearm. The court held that the PLCAA does not preempt a negligent entrustment claim, including one against a firearm seller, when the seller allegedly knew or should have known that the purchaser was likely to use the firearm in a manner posing an unreasonable risk of physical injury. The court rejected constitutional challenges to the PLCAA, reversed the judgment insofar as it barred the negligent entrustment claims, affirmed otherwise, and remanded.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Richard B. Teitelman
JURISDICTION	Missouri
DECIDED	April 5, 2016
DOCKET	SC95013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from summary judgment entered for firearms seller, owner, and manager in a wrongful-death action asserting negligence, negligent entrustment, and negligence per se. The United States intervened to defend the constitutionality of the Protection of Lawful Commerce in Arms Act.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The record is viewed in the light most favorable to the nonmoving party, who receives the benefit of all reasonable inferences. Constitutional issues are also reviewed de novo.
PRECEDENTIAL VALUE	published Missouri Supreme Court en banc opinion; precedential

PARTIES

Janet S. Delana, individually and as the wife of decedent Tex C.
Delana v. CED Sales, Inc. d/b/a Odessa Gun & Pawn, Charles
Doleshal, Derrick Dady

TOPICS

negligence preemption summary judgment civil procedure

PRACTICE AREAS

torts constitutional law federal preemption civil procedure firearms liability

QUESTIONS PRESENTED

1. Whether the Protection of Lawful Commerce in Arms Act preempts Delana's common-law negligence claim against the firearms seller and its representatives.
2. Whether the PLCAA is unconstitutional under the Tenth Amendment or the Due Process Clause of the Fifth Amendment.
3. Whether the PLCAA's negligent-entrustment exception permits Delana to pursue a state-law claim against a firearms seller.
4. Whether Missouri law recognizes negligent entrustment when the chattel is supplied through a sale.
5. Whether the individual claims against the store manager and corporate principal were moot after the circuit court rejected the underlying negligent-entrustment claim.

HOLDINGS

1. The PLCAA expressly preempts Delana's general negligence claim because it is a qualified civil liability action seeking damages resulting from the criminal or unlawful misuse of a firearm by a third party.
2. The PLCAA does not violate the Tenth Amendment because it does not commandeer Missouri's executive officials or legislative processes; it merely requires state courts to dismiss actions preempted by federal law.
3. The PLCAA does not violate the Due Process Clause of the Fifth Amendment because it limits, but does not eliminate, Delana's remedies; her negligent-entrustment claim remains available.
4. Missouri law recognizes a negligent-entrustment claim against a seller when the seller supplies a chattel to a person whom the seller knows or reasonably should know is likely to use it in a manner involving an unreasonable risk of physical harm.
5. Delana's negligent-entrustment claim was not preempted and was viable under Missouri law; consequently, the individual claims against Doleshal and Dady were not moot.

KEY QUOTATIONS

“The judgment is reversed to the extent it precludes Appellant from proceeding with her negligent entrustment claim. The judgment is affirmed in all other respects, and the case is remanded.” (at 319)

“The net result of the foregoing provisions is that the PLCAA expressly preempts all civil actions seeking damages against sellers resulting from the criminal or unlawful misuse of a firearm.” (at 320)

“The PLCAA defines non-preempted negligent entrustment actions as involving:” (at 328)

“As section 390 establishes, negligent entrustment liability is not premised on the legal status of the transaction as a lease, sale, bailment or otherwise.” (at 329)

“Irrespective of what the claim is called, Missouri law authorizes claims that fit within the PLCAA’s definition of a non-preempted claim for “negligent entrustment.”” (at 331)

FACTUAL BACKGROUND

Janet Delana warned the manager of Odessa Gun & Pawn that her daughter, Colby Weathers, was severely mentally ill, had recently attempted suicide with a firearm, and should not be sold another gun. Two days later, the manager sold Weathers a gun and ammunition after recognizing her and despite her apparently nervous and hurried demeanor. Within an hour, Weathers used the firearm to kill Delana's husband; the State later determined that Weathers was not guilty by reason of mental disease or defect.

PROCEDURAL HISTORY

Janet Delana sued CED Sales, Charles Doleshal, and Derrick Dady after her mentally ill daughter purchased a firearm from Odessa Gun & Pawn and used it to kill Delana's husband. The circuit court granted respondents summary judgment, holding that the negligence claim was preempted by the PLCAA and that Missouri law did not recognize negligent entrustment against a seller; it also treated the individual claims against Doleshal and Dady as moot. The Supreme Court of Missouri reversed insofar as the judgment barred the negligent-entrustment claim, affirmed in all other respects, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case is remanded for further proceedings on Delana's negligent-entrustment claims, including the individual claims against Doleshal and Dady. The judgment remains affirmed as to the negligence claim and the constitutionality of the PLCAA.

CASES CITED

- ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 376, 380 (Mo. banc 1993)
- Labrayere v. Bohr Farms, LLC, 458 S.W.3d 319, 327 (Mo. banc 2015)
- Noble v. Shawnee Gun Shop, Inc., 409 S.W.3d 476, 479-81 (Mo. App. 2013)
- Estate of Kim ex rel. Alexander v. Coxe, 295 P.3d 380, 386-90, 394-95 (Alaska 2013)
- Phillips v. Lucky Gunner, LLC, 84 F. Supp. 3d 1216, 1226 (D. Colo. 2015)
- Jefferies v. District of Columbia, 916 F. Supp. 2d 42, 47 (D.D.C. 2013)

- *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1135, 1140-44 (9th Cir. 2009)
- *Adams v. Sheahan*, 909 N.E.2d 742 (Ill. 2009)
- *Greeno v. State*, 59 S.W.3d 500, 504 (Mo. banc 2001)
- *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 245 (1989)
- *Arizona v. United States*, 132 S. Ct. 2492, 2500-01 (2012)
- *California Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 280 (1987)
- *Gregory v. Ashcroft*, 501 U.S. 452, 455, 460 (1991)
- *Bond v. United States*, 134 S. Ct. 2077, 2083, 2088, 2091-92 (2014)
- *United States v. Lopez*, 514 U.S. 549, 561-62 (1995)
- *Printz v. United States*, 521 U.S. 898, 933 (1997)
- *New York v. United States*, 505 U.S. 144, 161-66 (1992)
- *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 396-97 (2d Cir. 2008)
- *Fowler v. Park Corp.*, 673 S.W.2d 749, 753 (Mo. banc 1984)
- *Trow v. Worley*, 40 S.W.3d 417, 424 (Mo. App. 2001)
- *LeCave v. Hardy*, 73 S.W.3d 637, 640 (Mo. App. 2002)
- *Hays v. Royer*, 384 S.W.3d 330, 335-36 (Mo. App. 2012)
- *Sansonetti v. City of St. Joseph*, 976 S.W.2d 572, 578-79 (Mo. App. 1998)
- *Fluker v. Lynch*, 938 S.W.2d 659, 662 (Mo. App. 1997)
- *Rains v. Bend of the River*, 124 S.W.3d 580, 596-97 (Tenn. Ct. App. 2003)
- *Morin v. Moore*, 309 F.3d 316, 324 (5th Cir. 2002)
- *Ireland v. Jefferson Cnty. Sheriff's Dep't*, 193 F. Supp. 2d 1201, 1229 (D. Colo. 2002)
- *Hamilton v. Beretta U.S.A. Corp.*, 750 N.E.2d 1055, 1064 (N.Y. 2001)
- *Kitchen v. Kmart Corp.*, 697 So. 2d 1200, 1202-08 (Fla. 1997)
- *Knight v. Wal-Mart Stores, Inc.*, 889 F. Supp. 1532, 1539 (S.D. Ga. 1995)
- *First Trust Co. of North Dakota v. Scheels Hardware & Sports Shop, Inc.*, 429 N.W.2d 5, 8 (N.D. 1988)
- *Bernethy v. Walt Failor's, Inc.*, 653 P.2d 280, 283 (Wash. 1982)