

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JENNIFER BEAMER, Individually :  
and as Parent and Natural :  
Guardian of CHEYENNE DANIELS, :  
a minor, and MICHELLE R. :  
KALMBACH, :  
Plaintiffs :  
vs. : NO. 02-00,257  
: :  
: CIVIL ACTION  
TODD LAUER, Individually and :  
as Parent and Natural Guardian :  
of CHAD LAUER, and :  
LEWIS R. AUMILLER, : Defendants' Motions for  
Defendants : Summary Judgment

ORDER

AND NOW, this \_\_\_\_day of December 2003, after oral argument and review of the answer to the motions and the briefs and their attachments, it is ORDERED and DIRECTED as follows:

I. The Court DENIES the Motion for Summary Judgment filed by Defendant Lauer. The Court feels there is a factual issue, which precludes summary judgment. Although Plaintiff's case is circumstantial, the Court cannot say, after examination of the record in a light most favorable to the Plaintiff, that it is clear and free from doubt that the moving party is entitled to judgment as a matter of law. See Sebelin v. Yamaha Motor Corp., USA, 705 A.2d 904, 907 (Pa. Super. 1998). The Court has read the deposition testimony of the parties and the affidavits of Jennifer Beamer and Michelle

Kalmbach. While there are clearly factual differences in the information conveyed and Mr. Lauer denies his son was shooting in the direction of Plaintiff's automobile, Plaintiff's information (primarily in their affidavits) may allow a fact finder to conclude that a bullet traveled through the windows of the vehicle and that Mr. Lauer and his son were firing a rifle at that time. See averments 4 and 5 of Plaintiff's affidavits which infer that some object or projectile consistent with a bullet came from the direction of Defendant Lauer's property and entered the driver's side rear window and exited the passenger's side rear window. Plaintiffs' affidavits further indicate in averment 7 that no other vehicle was present in either lane of Route 220 in a position to launch a projectile that could have caused the windows to shatter. Nor was any person visible at or around the shoulder of route 220 who could have discharged a projectile into the vehicle. Plaintiffs' affidavits, averment 8. Plaintiffs' affidavits allege that their vehicle quickly stopped along the southern shoulder of Route 220 after the projectile struck the windows (averment 11) and that upon exiting the vehicle Plaintiffs heard gunfire coming from a residential area immediately north of Route 220 (averment 12). The Plaintiffs further state that this gunfire continued until the state police arrived, and the state police followed the gunfire to the residence of Defendant Lauer, who admitted his son Chad

was taking target practice under his supervision. Plaintiffs' affidavits, averments 12-16.

Although Defendant Lauer denies Plaintiffs' allegations in his deposition testimony, this will raise an issue of credulity for the fact finder. While Defendant Lauer argues there could be other possible causes for an object smashing the windows in Plaintiffs' car, Plaintiffs' evidence if accepted by the fact finder could support Plaintiffs' theory of the case even though their case is comprised of circumstantial evidence. The Court cannot deprive Plaintiffs of their day in court or conclude that the result of this case is free from doubt.

II. The Court GRANTS the Motion for Summary Judgment filed by Defendant Aumiller. The Court does not believe there is sufficient evidence to allow Plaintiffs to proceed against Defendant Aumiller. While Defendant Aumiller was the landlord of Defendant Lauer and his son, and he lived in the other side of the double home rented by Defendant Lauer, no evidence places Defendant Aumiller at the home on October 9, 2001, when the incident occurred. While Defendant Aumiller may have been aware that Defendant Lauer fired a rifle outside the home for target practice, because he often did this, the Court saw no evidence that Defendant Aumiller had awareness of Defendant Lauer or his son previously firing a rifle in a negligent manner. In fact, Defendant Lauer

testified at his deposition that Defendant Aumiller once told him not to discharge a firearm on the property, but Defendant Lauer disregarded his request. Dep. at 29. Moreover, Plaintiffs does not identify any law or ordinance that was being violated by the use of a rifle at this location. In conclusion, the Court sees no actionable theory of negligence against Defendant Lewis Aumiller. Accordingly, his motion for summary judgment is granted.

By The Court,

---

Kenneth D. Brown, Judge

cc: Joseph Musto, Esquire  
Michael Zicollelo, Esquire  
Christian Lovecchio, Esquire  
Work File