

Summary of SC95013, 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

Appeal from the Lafayette County circuit court, Judge Dennis A. Rolf
Argued and submitted December 9, 2015; opinion issued April 5, 2016

Attorneys: Delana was represented by Jonathan E. Lowy and Alla Lefkowitz of the Brady Center to Prevent Gun Violence in Washington, D.C., (202) 370-8105; L. Annette Griggs and David L. McCollum of McCollum & Griggs LLC in North Kansas City, (816) 474-0202; and Jane Francis of the Law Office of Jane Francis LLC in Kansas City, (816) 436-3100. The pawn shop, its owner and its manager were represented by Derek H. Mackay and David R. Buchanan of Brown & James PC in Kansas City, (816) 472-0800; Patrick A. Bousquet of Brown & James PC in St. Louis, (314) 421-3400; and Kevin L. Jamison of Kevin L. Jamison Law in Gladstone, (816) 455-2669. The United States of America, which intervened in the case, was represented by Charles M. Thomas of the United States attorney's office in Kansas City.

A number of organizations filed briefs as friends of the Court. The National Coalition Against Domestic Violence, The National Domestic Violence Hotline, The National Indigenous Women's Resource Center and the National Latina@Network: Casa de Esperanza were represented by Daniel L. Allen of Bautista Allen LLC in Kansas City, (816) 221-0382. The Major City Chiefs Association was represented by David R. Borantz of Shambert, Johnson & Bergman CHTD in Kansas City, (816) 474-0004; and Thomas H. Zellerbach and Alexis Yee-Garcia of Orrick, Herrington & Sutcliffe LLP in Menlo Park, California, (650) 614-7400. The National Shooting Sports Foundation Inc. was represented by Peter B. Hoffman of Baker Sterchi Cowden & Rice LLC in St. Louis, (314) 231-2925; and Craig A. Livingston and Crystal L. Van Der Putten of the Livingston Law Firm PC in Walnut Creek, California, (925) 952-9880.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A woman appeals the circuit court's grant of summary judgment (judgment on the court filings, without a trial) to a pawn store she had sued that, despite her warnings not to, sold a gun to her daughter, who shortly thereafter shot and killed her father. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the judgment in part, reverses it in part and remands it (sends it back) to the circuit court. While the circuit court correctly held the federal act is constitutional and prevents the woman from filing her common law negligence claim against the store, it incorrectly determined Missouri law did not permit the woman to bring a negligent entrustment claim against the store because it was a "seller" of the gun. The judgment is reversed to the extent it precludes the woman from proceeding with her negligent entrustment claims.

Facts: Janet Delana telephoned Odessa Gun & Pawn in June 2012 and asked the store manager, Derrick Dady, not to sell a gun to her daughter, Colby Weathers. Delana told Dady that Weathers was severely mentally ill, had attempted suicide after buying a gun there the previous month, and likely would try to buy another gun after receiving her social security disability payment. Delana

provided Dady with Weathers' full name, social security number and birthdate. She begged him not to sell Weathers a gun. Two days later, Dady sold Weathers a gun and ammunition. Within an hour of the sale, Weathers used the gun to shoot and kill her father. The state charged Weathers with murder, and the circuit court accepted her plea of not guilty by reason of mental disease or defect and committed her to the custody of the department of mental health. Delana then filed a wrongful death action against Odessa Gun & Pawn, Dady, and a principal of the store (collectively, the store). The store moved for summary judgment (judgment on the court filings, without a trial), arguing that the federal protection of lawful commerce in arms act preempted all of Delana's state law claims. Delana argued, in part, that the federal act is unconstitutional. The circuit court granted summary judgment to the store, holding that the federal act is constitutional, that it preempts Delana's negligence claims and that, although the federal act provides an exception for negligent entrustment actions, state law does not recognize such an action against sellers. Delana appeals.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) The circuit court did not err in holding the federal act preempts Delana's state law negligence claim. The substantive provisions of the federal act expressly prohibit any "qualified civil liability action" from being brought in any federal or state court. It defines such an action as a civil action brought by any person against a seller of a qualified product for damages resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. The act further defines a "qualified product" to include firearms and ammunition. Although the act makes specific exceptions for negligent entrustment and negligence per se claims, a common law state tort action like Delana's negligence claim – that her husband's death resulted from the store's negligence – is a "qualified civil liability action" subject to immediate dismissal under the federal act. Delana's arguments that her daughter was not convicted of a crime and that she seeks damages not from Weathers' misuse of the gun but from the store's negligent sale of the gun to Weathers both fail; the federal act does not require a criminal conviction, and Delana's claim is premised on damages that resulted from Weathers' use of the gun the store sold her. Congress expressly and unambiguously exercised its constitutionally delegated authority to preempt state law negligence actions against sellers of firearms.

(2) Delana has not established that the federal act is unconstitutional. It does not violate the Tenth Amendment to the United States Constitution, which prohibits Congress from enacting a federal law that commandeers a state's executive officials or legislative processes. The federal act at issue here does neither. It requires only that Missouri courts, consistent with the federal constitution's supremacy clause, immediately dismiss any preempted action for civil liability. The federal act also does not violate federal due process rights. Although the act limits Delana's remedies, it does not eliminate all remedies, as discussed below in paragraph 3.

(3) The federal act does not preempt Delana's action for negligent entrustment. Although it does not preempt such actions, it also does not establish a cause of action for negligent entrustment. If any such claim is to be asserted, then, it must be asserted under state law. Under the federal act's definition, negligent entrustment includes an action against a seller who supplies a firearm for use by another person when the seller knows or reasonably should know the person to whom the

firearm is supplied is likely to – and does – use the firearm in a manner involving unreasonable risk of physical injury to the person or others. Delana’s claim fits this definition – she alleges the store sold a gun and ammunition to Weathers with knowledge that Weathers’ possession of them posed an unreasonable risk of physical harm to herself or others. That the store supplied the gun and ammunition through a sale does not preclude Delana’s negligent entrustment claims. Under Missouri common law, negligent entrustment is premised not on the legal status of a transaction but on the supply of the dangerous item. The comment to the law on which Missouri law is based provides that negligent entrustment liability attaches to any supplier, including a seller. Further, because the circuit court granted judgment in favor of the individuals in part on its determination that Delana’s negligent entrustment claim was not viable, this portion of the judgment also is in error. The judgment is reversed to the extent it precludes Delana from proceeding with her negligent entrustment claims.