

Webber v. Armslist, LLC (7th Cir.)

Topics Covered: Public Health

Issue

The issue in this case is whether a website that facilitates sales of firearms to persons who were legally unqualified to possess them should be held liable when an individual uses one of those firearms to kill his estranged wife and then himself.

AMA Interest

The AMA recognizes that uncontrolled ownership and use of firearms, especially handguns, is a serious threat to the public's health.

Case Summary

Sara Schmidt's husband allegedly abused her, and he was placed under arrest. On January 5, 2018, he was released from jail, and on that same day, a court restraining order was imposed against him. Among other things, the restraining order forbade him from owning or possessing firearms. In addition, federal and state statutes prohibited such ownership or possession.

On January 8, 2018, the husband purchased a gun unlawfully, through an Armslist advertisement. On January 9, 2018, he shot and killed Sara and then himself.

Richard Webber, the Special Administrator of Sara's Estate, sued Armslist and its owner, Jonathan Gibbon, in the United States District Court for the Eastern District of Wisconsin. The complaint alleged several causes of action, including common law negligence.

The defendants moved to dismiss under Federal Rule 12(b)(6). The court first noted that the Federal Communications Decency Act, 47 U.S.C. § 230 (CDA), which is commonly invoked as a defense in cases of this nature, did not apply. The district court interpreted Seventh Circuit cases (the controlling precedent for this court) as holding that the CDA could only be invoked when a website owner took certain affirmative steps to protect the public against illegal postings on the website. There were no such affirmative steps alleged in this case, and so the CDA would not apply. Thus, liability would be decided under Wisconsin common law.

The first common law claim was negligence, which required an allegation of "proximate cause." The court held that proximate cause was not properly alleged. On this issue, it held that (1) the defendants' breach of duty was not a "substantial factor" in causing the murder; and (2) Wisconsin public policy barred the lawsuit, as "the injury was too remote from and out of proportion to the conduct and because allowing recovery would place an unreasonable burden on Armslist." The court therefore dismissed the case.

The plaintiff appealed to the Seventh Circuit.

Litigation Center Involvement

The Litigation Center and the Wisconsin Medical Society filed an *amicus* brief in support of the plaintiff.

Seventh Circuit Court of Appeals Brief