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WEEKLY

Judge rejects deputy's effort to recover damages for injury



Steven P. Kuenzel Sr.



Steven P. Kuenzel Jr.

BY ALAN SCHER ZAGIER
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A Jefferson County judge has rejected a deputy sheriff's bid to recover civil damages for a shoulder injury he sustained while trying to arrest a drug suspect, granting a defense request for a directed verdict just before jury deliberations.

Thirty-five-year-old Deputy Jason O'Barr of Herculaneum sued property owners David Ray Cobble Sr. and his wife, Debra, of Fenton, along with their two children, in December 2010.

That was 18 months after O'Barr suffered a dislocated shoulder while chasing David Cobble Jr. through the basement of the suspect's home. The younger Cobble had an outstanding warrant for attempted possession of a controlled substance.

According to the lawsuit, O'Barr discovered five counterfeit \$100 bills and a stolen motorcycle during his initial search of the home David Cobble Sr. and his wife owned, but the search failed to turn up the younger Cobble. The suit alleges that he was hiding in the bushes outside and ran into the basement as a suspicious O'Barr and other officers returned after watching the house through binoculars from a parallel street.

The suit says O'Barr tripped over debris on the floor while reaching toward Cobble, who was hiding behind his bedroom door. The plaintiff decided in December 2011 to dismiss Cobble's parents and sister as defendants. His final pre-trial demand of \$300,000 was countered with a final offer of \$15,000.

Defense attorney Steven Paul Kuenzel Sr., who second-chaired the case tried

by his son, Steven Jr., said O'Barr's premises liability claim fell short on two fronts: the plaintiff was neither an invitee nor a licensee, having never received consent to be on the property; and there was no evidence that Cobble Jr. — who was imprisoned when the hearing took place — knew of the alleged dangerous condition.

"The police officer didn't really fit into any one of those niches," Kuenzel said.

Circuit Judge Gary P. Kremer apparently agreed, ruling that O'Barr "failed to prove a submissible case" against Cobble. He issued his judgment on the second day of the trial.

Plaintiff's attorney Kevin Dolley said the ruling is under appeal. He suggested that rather than hinge on premises liability, the claim instead boiled down to simple negligence.

"Premises liability theories do not apply where a person is physically present and has an ability to warn [about a hazardous condition]," he said. "When a person is that close, the applicable principle is not premises liability, it's basic negligence."

Further, Dolley said, the case points to flaws in what he called an "outdated" premises liability standard that possibly warrants a broader overhaul of the legal definition.

"This is a case where if it's this confusing, in a seemingly clear case of negligence, maybe there's a bigger, underlying problem." **MO**

Defense Verdict

PREMISES LIABILITY

■ **Venue:** Jefferson County Circuit Court

■ **Case Number/Date:** 10JE-CC01103/Oct. 7, 2013

■ **Judge:** Circuit Judge Gary P. Kramer

■ **Plaintiff's Expert:** Dr. Michael Milne, Chesterfield (surgical specialties)

■ **Special Damages:** \$30,000 gross medical costs; \$15,000 paid medical costs; \$10,000 wage losses

■ **Last Pretrial Demand:** \$300,000

■ **Last Pretrial Offer:** \$15,000

■ **Insurer:** American Family Insurance

■ **Caption:** Jason W. O'Barr v. David Cobble Sr., Debra Cobble, Cheryl Beeson and David Cobble Jr.

■ **Plaintiff's Attorney:** Kevin Dolley, The Law Offices of Kevin J. Dolley, St. Louis

■ **Defendant's Attorneys:** Steven P. Kuenzel Sr. and Steven P. Kuenzel Jr., Eckelkamp Kuenzel, Washington, Mo.