

STATE OF NEW MEXICO
COUNTY OF RIO ARRIBA
FIRST JUDICIAL DISTRICT COURT

ERIC ARMSTRONG and
LUKE ARMSTRONG,

Plaintiffs,

v.

CASE NO.: D-117-CV-2017-00089

EXPRESS RANCHES, LLC,
a Foreign Corporation, JAMES W.
ROCKENFIELD, individually, JAMES
D. WILSON, individually, and
MICHAEL D. NORMAN, individually,

Defendants.

PRETRIAL ORDER

This Pretrial Order was prepared pursuant to the Rule 1-016 Scheduling Order. No change shall be made in this Order without consent of counsel and a showing of good cause.

1. JURISDICTION

The Court has jurisdiction over the subject matter of the case and the parties.

2. GENERAL NATURE OF THE CASE

A. Plaintiffs' Version:

On October 7, 2014, the Atmore Ranch Hunting Guide, James W. Rockenfield, was responsible for guiding two hunters. Mr. Rockenfield saw a herd of elk and had the hunters set up for a shot. Mr. Rockenfield told the hunters which elk to shoot and the distance that the elk were from the hunters. Mr. Rockenfield then counted down 3 – 2 – 1 and had the hunters fire simultaneously at a bull and cow elk. Mr. Rockenfield told the hunters that the elk were 240-250 yards away, which meant that the hunters needed to aim high. He was wrong, the elk were only

160 yards away. As a result of the wrong yardage, the bullets missed the elk and continued over a hill onto the neighbor's land. Plaintiffs Eric Armstrong and Luke Armstrong were scouting elk on the Ute Creek Ranch, which is adjacent to the Atmore Ranch. The bullet fragments struck Eric and Luke Armstrong, knocking both men to the ground. The bullet hit Luke in the face and caused permanent damage, including nerve damage to his face. A piece of the bullet also struck Luke in the shoulder. Eric was hit by the bullet in the abdomen. The bullet fragment lodged in Eric's abdomen such that surgical removal was too dangerous. The bullet fragment remains in Eric's abdomen.

Defendants are liable to Plaintiffs under ordinary negligence theories. Express Ranches is vicariously liable for Rockenfield's actions as he, at all times, was acting within the course and scope of his employment as a ranch manager and hunting guide. Defendants are also strictly liable to Plaintiffs because they were engaged in an inherently dangerous activity when the bullet fragments injured Plaintiffs. The undisputed facts show that Defendants knew, or should have known, that individuals like Plaintiffs would be hunting on the adjacent ranch near where the elk were located when Wilson and Norman were instructed to shoot. It is undisputed that Rockenfield grossly miscalculated the distance of the elk from where he and Wilson and Norman were positioned, which caused the hunters to aim too high and miss the elk. Consequently, Express Ranches, through Rockenfield's actions, breached their duty of care and directly caused Plaintiffs' serious injuries. Eric and Luke Armstrong seek all damages permitted by law, including punitive damages.

B. Defendants' Version:

This case arises from a hunting accident that occurred in Colfax County, New Mexico on October 7, 2014. At the time of the incident, James Wilson (*hereinafter* "Wilson") and Michael Norman (*hereinafter* "Norman") were being assisted by Ranch Manager, James W.

Rockenfield, on an elk hunt at the Atmore Ranch near Ute Park, New Mexico. At one point during the hunt, Wilson, Norman and Mr. Rockenfield saw a group of elk traveling across a hillside. The party patiently set up a shot to attempt to kill the elk, stopping near a tree at the ranch house to allow for a line of sight to the elk on the hillside. There was a backstop behind the hillside and no person visible on the horizon. Wilson and Norman both shot their firearms causing bullet fragments to impact Plaintiffs. This was purely an accident that was unforeseeable and unpreventable. Defendant denies that James Rockenfield, Wilson and Norman were negligent at the time of the incident and that the accident was completely unforeseeable and that Defendant does not bear any liability to Plaintiffs for the incident.

3. THE PARTIES' CONTENTIONS

Plaintiffs' Contentions:

A. At the time of the incident described herein, James Rockenfield was the agent and/or employee of Defendant Express Ranches, and he was acting within the course and scope of his employment as an agent and/or employee of Defendant Express Ranches.

B. Defendant Express Ranches is vicariously liable for Plaintiffs' damages under the Doctrine of *Respondeat Superior* because the negligence of its agent and/or employee was a proximate cause of the incident and damages described herein. Moreover, Defendant Express Ranches is responsible for the actions of its agent, James Rockenfield, under the common law principles of agency.

C. The negligence of Defendant Rockenfield and Defendant Express Ranches was a proximate cause of the incident made the basis of this suit, and the subsequent damage and injury suffered by Plaintiffs.

D. The negligent, careless, and reckless disregard of duty of Defendant Rockenfield and Express Ranches consisted of, but is not limited to, the following acts and omissions:

- i. in that Defendant ROCKENFIELD failed to act as a reasonably careful person would have acted under the circumstances;
- ii. in that Defendant ROCKENFIELD failed to provide accurate distance information to his hunters, which a reasonably careful person would have done under the circumstances;
- iii. in that Defendant ROCKENFIELD failed to determine whether there were people on the neighboring ranch property, which a reasonably careful person would have done under the circumstances; and
- iv. in that Defendant ROCKENFIELD instructed his hunters to fire at elk in a location that ran the risk of bullets going onto the neighboring ranch, which a reasonably careful person would not have done under the circumstances.

E. As a result of these negligent acts and omissions, Plaintiffs Eric and Luke Armstrong were injured.

F. In accordance with New Mexico law, Plaintiffs Eric and Luke Armstrong seek all damages permitted by law.

Defendants' Contentions:

A. Defendant denies that any individual was negligence at the time of the incident.

B. Defendant denies that it was a proximate cause of the incident made the basis of this suit.

C. Defendant denies that any individual was negligent, careless, and reckless disregard of duty at the time of the incident and that this incident was a completely unforeseeable accident.

D. Defendant denies that there is any appropriate basis for punitive damages.

4. CONTESTED ISSUES OF LAW

A. Whether the hunting activities were inherently dangerous.

- B. Whether James Rockenfield and Express Ranches were negligent.
- C. Whether Defendants' actions were reckless.

5. EXHIBITS

A. Plaintiffs' Exhibits:

- 1. Scene photographs
- 2. Luke Armstrong injury photographs
- 3. Eric Armstrong injury photographs
- 4. DPS Incident Report
- 5. Medical Records Luke Armstrong:
Miners Colfax
Dr. Philip Marin
Desert Hawk Dental
Kaiser Permanente Co.
- 6. Medical Records Eric Armstrong:
Miners Colfax
- 7. Demonstrative exhibits

B. Defendants' Exhibits:

- 1. None except those listed by Plaintiff and which have agreed upon as admissible.

C. Any objections to admissibility of exhibits must be made within five (5) days of making exhibits available 14 days before trial, and the Court notified of such objections. Where possible, admissibility will be ruled on, and objections reserved for the record.

D. At the time of trial, each counsel will furnish the Court two copies (*and one copy to opposing counsel*) of the list of all exhibits to be offered.

E. All exhibits will be offered and received in evidence as the first item of business at the trial.

6. MOTIONS IN LIMINE

All motions in limine have been filed.

7. DEPOSITIONS

Any party proposing to offer all or any portion of a deposition shall notify opposing counsel by June 12, 2019 (unless the necessity for using the deposition develops unavoidably thereafter). If objection is to be made, or if additional portions of a deposition are to be requested, opposing counsel will notify offering counsel by June 19, 2019. If any differences cannot be resolved, the Court must be notified in writing of such differences by June 25, 2019.

8. DISCOVERY

Discovery is complete.

9. WITNESSES

Plaintiffs will or may call the following witnesses:

Expert Witnesses:

1. Andrew Gallegos

Fact Witnesses:

1. Eric R. Armstrong
2. Luke Armstrong
3. Debbie L. Armstrong
4. James D. Wilson
5. Michael D. Norman
6. James W. Rockenfield
7. Philip C. Marin, M.D.
8. Ted P. Kamp
9. Rebecca Armstrong
10. Loretta Conder, M.D., Miners Colfax Medical Center
11. Christopher N. Liontas, D.D.S.
12. Heather Cooke, M.D.
13. Monty McGowen, DC
14. Chris Espinosa
15. Paul DeMuesy
16. Debbie Fisher

Defendants will or may call the following witnesses:

None outside of those named by Plaintiff above.

10. INSTRUCTIONS

The parties' joint and separate instructions shall be submitted to the Court seven (7) days before trial.

11. AMENDMENTS TO PLEADINGS

There were no requests to amend pleadings.

12. MODIFICATIONS AND INTERPRETATION

All pleadings are deemed merged herein and this Order shall control the course of trial and may not be modified except by court order upon agreement of the parties to prevent manifest injustice.

13. TRIAL SETTING

This trial is set for a three-day trial. Jury selection will occur on July 8 at the Tierra Amarilla Courthouse. The trial will take place at the Santa Fe Courthouse from July 9 through 11, 2019.

14. MEMORANDUM

Estimated length of trial is three (3) days.

15. OBJECTIONS

None.

DATED: 06/27/19 _____



THE HONORABLE MATTHEW WILSON
DISTRICT COURT JUDGE

Approved as to Form:

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