Daniel v. Armslist (Wisc. S.Ct.)

Topics Covered: Public Health

Issue

The issue in this case is whether the Federal Communications Decency Act, 47 U.S.C. § 230(c) (CDA), immunizes a website that published third-party content from claims arising from an illegal sale of a firearm.

AMA Interest

The AMA believes that people who are under domestic violence restraining orders should not be allowed to possess or purchase firearms. Further, the AMA believes that uncontrolled ownership and use of firearms, especially handguns, is a serious threat to public health.

Case Summary

It is against Wisconsin and federal law to sell firearms to certain persons, including those with active domestic protection orders against them. Licensed firearms dealers must perform a background check to prevent sales to prohibited individuals. However, a private individual who is not in the business of selling guns does not need to be licensed to sell a gun. Further, such private individuals are not required to perform background checks on the persons to whom they sell. These unlicensed transactions are commonly referred to as "private sales."

Armslist.com is a website marketplace specifically created for the purchase and sale of firearms and related weaponry. Visitors to the website may post "want" or "sale" ads and use its messaging platform to complete transactions.

For several years, Radcliffe Haughton had abused his wife, Zina Daniel Haughton. Zina left Radcliffe, and the following day Radcliffe appeared at Zina's workplace and threatened her with a knife. Radcliffe slashed Zina's car tires while Zina hid with her coworkers. In response, Zina secured a protective order against Radcliffe which, among other restrictions, prohibited him from purchasing or owning a gun for four years.

Less than two weeks after the order was issued, Radcliffe purchased a firearm in a cash transaction from an individual he found via the Armslist website. The day after the purchase, Radcliffe fatally shot Zina and two of her coworkers with the gun he had bought through Armslist. Radcliffe also injured four others, including Zina's daughter, Yasmeen Daniel, before killing himself.

Yasmeen Daniel sued Armslist, its creators, and several other defendants for contributing to the wrongful death of her mother, Zina, and for her own injuries. Daniel claimed that the Armslist website encouraged the sale of firearms to prohibited persons. Daniel pointed to several government reports which showed that sellers on private sale websites like Armslist were willing to sell to those who would not pass a background check and that ads for private gun sales spiked when states enacted background check laws. Daniel claimed that Armslist designed its site to attract gun purchasers who could not otherwise lawfully obtain a gun.

Armslist moved to dismiss Daniel's lawsuit, claiming immunity under CDA § 230(c). This statute provides: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." The district court granted the Armslist motion to dismiss. It concluded that Armslist was an interactive computer service that "passively displays content that [was] created entirely by third parties" and that Daniel "fail[ed] to allege facts which establish…that Armslist [was] materially engaged in creating or developing the illegal content on its page."

Daniel appealed to the Wisconsin Court of Appels, which found that the CDA only provides immunity to website operators when "the allegations treat the website as the publisher or speaker of third-party content," and "the Act does not protect a website operator from liability that arises from its own conduct in facilitating user activity." It reversed the order dismissing Armslist.

Armslist appealed to the Supreme Court of Wisconsin, where the case is now pending.

Litigation Center Involvement

The Litigation Center filed an amicus brief with the Wisconsin Supreme Court, which will support Daniel's claim.

Wisconsin Supreme Court brief