

Swain files for new trial and appeal

Judge will hear motion for a new trial today

By Dotti Farrington

David Swain, 50, a former Jamestown town councilman has filed two motions in a civil lawsuit that was decided against him by jurors last month in Superior Court in Providence.

Swain has filed a motion for a new trial that was scheduled to be heard this afternoon. He has also filed an appeal that would go to Supreme Court in no less than two months if he follows through on his appeal motion.

In addition, Swain is involved in Jamestown Probate Court and federal Bankruptcy Court cases.

On Feb. 24, after a two-week trial before Associate Justice Patricia Hurst, a jury of five women and one man from northern Rhode Island communities found that Swain "by a preponderance of evidence committed battery . . . (and) killed with malice aforethought" his wife Shelley Arden Tyre, 46, while they were scuba diving in the British Virgin Islands on March 12, 1999.

The civil lawsuit against Swain was brought in 2002 by Richard and Lisa Tyre of Jamestown, the parents of Swain's wife.

In his motion to Superior Court for a new trial, Swain contends "the evidence presented is so circumstantial and speculative that reasonable minds, weighing the fair preponderance of evidence, could not reasonably conclude a verdict against (him). The verdict is contrary to the evidence and

lack of evidence." Swain chose not to attend most of his February trial. He has been representing himself since his lawyers were allowed to withdraw from his case in January, after months of arguments about their roles and delays, including the illness of one of the lawyers.

In his motion for a new trial, Swain contends that he requested "modest continuances" and that he was "prejudiced by his lack" of a lawyer.

Swain's nine filed objections include his claim that the Tyres are not the heirs if he is ruled out. He claims his two (adult) children by his first marriage succeed him as heirs. Shelley Tyre's will specifies that her step-children inherit her estate if Swain died within 30 days of her death. The Swain-Tyre marriage in 1993 was the second for each, and she never changed her birth name.

Swain's claims for a new trial faults the judge for wrong jurisdictional decisions, including acting under Rhode Island instead of British Virgin Island law, and for wrong instructions to the jury. He faults the Tyres' lawyer, J. Renn Olenn, for misrepresenting Swain as refusing to testify and for being unfair by stating that Swain's brother killed their mother in 1976.

No criminal charges were filed in the British Virgin Islands and none can be filed here or anywhere else except the British Virgin Islands, according to several law and court authorities. Swain cited the British Virgin Islands police and medical examiner as listing his wife's cause of

death as "accidental drowning unless proven otherwise." The British Virgin Islands police have acknowledged that the case is not closed, but have not detailed any actions or further investigations they are making.

Verdict award

The Tyres' lawsuit accused Swain with the "wrongful death and (the) crime of intentional killing" of their daughter. The jurors awarded the Tyres \$1.5 million in compensatory damages and \$2 million in punitive damages. Since the verdict was handed down, the court has applied interest of 12 percent on the compensatory award, from the date of death to the date of the verdict, adding more than \$1.2 million, for a total award of \$4,815,085.

The Tyres have said repeatedly that their case was to learn what happened to their daughter and that it never was about money for themselves. They are pursuing actions to keep Swain from benefiting further from his wife's death, and to possibly recover some of her estate or their court-awarded judgment. Most court observers suggest they will see little money even if they win all motions in all courts.

Early this month, the Superior Court issued a "civil judgment of verdict" that said "the Court determines that as a matter of law the verdict defines the defendant as a slayer" under Rhode Island law and that definition affects his right to any proceeds that his wife willed to him.

Swain filed an objection to the motion. Judge Hurst, who

presided over the civil trial and all court activity before and since the verdict, denied Swain's objection.

Other courts

The Tyres have claims against Swain pending in both Probate Court, which put a hold on the remainder of the estate after Swain liquidated about half of it. Estimates of the value of the Tyre estate have ranged from \$700,000 to \$1 million.

The Tyres also have actions pending in federal Bankruptcy Court, where last October Swain filed as being without assets and in debt for more than \$100,000 on 16 credit card accounts.

The next action in the bankruptcy case is set for April 6. On that date, Bankruptcy Trustee Stacy Ferrera is due to rule on the dischargability of the case.

The Tyres have filed objections to Swain's being discharged from responsibility for his debts.

Swain claimed his debts reflect expenses for and investments into his business, Ocean State Scuba that he operated from his late wife's property at 79 North Main Rd. in Jamestown.

During Swain's February trial, the Tyres' lawyer claimed Swain spent the money he took from the estate on expensive trips.

In order for his appeal to the Superior Court to proceed, Swain would have to pre-pay for a transcript of the trial, which could cost several hundred to \$1,000, court officials said.

Once a transcript is produced, the appeal will be assigned for hearing in Supreme Court.

Learn to use historical information resource at library

Ancestry Plus, a Web site that has scores of information that can be used in genealogical research, is available free of charge at the Jamestown library.

On Friday, April 7, at 2 p.m., Sue Maden, a local historian, will conduct an introductory class on how to use Ancestry Plus. Participants are asked to pre-register for the program, and they may submit questions that can be worked on during the tutorial.

Three years ago, the library acquired access to Ancestry Plus for its patrons to use. Ancestry.com, one of the most highly acclaimed Internet tools for genealogical research, allows access for a fee. Patrons may access the Ancestry Plus database, which was created for library users, on any of the computers in the library without charge.

Information that is accessible through AncestryPlus includes: U.S. Census records, Military Records, the Civil War Pension Index and Civil War Research Database, Revolutionary War Pension Index, Court, Land & Probate Records, Immigration Records, Passengers and Immigration Lists, and much more.

Funding for the Ancestry Plus database comes from the Rhode Island State Grant in Aid administered through the state Office of Library and Information Services.

Rabies clinic scheduled for April 1 at fire station

There will be a rabies vaccination clinic on Saturday, April 1, from 11 a.m. to noon at the fire station.

Vaccinations will be given to dogs, cats, and ferrets, six months of age or older, which must be leashed or in carriers. The fee is \$10 per animal and payable in cash only. Checks will not be accepted.

Vaccinations given to dogs that

day will be valid for two years, but only if proof of prior vaccination is supplied, otherwise the inoculations will only be valid for one year. Proof is a signed rabies certificate showing the date of vaccination and the expiration date. Tags will not suffice as proof.

Ferrets are inoculated every year and the Rhode Island Veterinary Medical Association recommends that cats also be vaccinated yearly.

Dog licenses will also be sold

at the clinic for a fee of \$5 for a spayed or neutered dog and \$15 for those that are not spayed or neutered. Checks will be accepted for licenses.

Licenses must be purchased by April 30 to avoid a \$25 late fee, and can also be bought at Town Hall.

The clinic is sponsored by the town of Jamestown, with volunteers from the state veterinary association, the Jamestown Animal Clinic, and the Humane Society of Jamestown.

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Please join Grapes & Gourmet and other Jamestown Leaders at a forum addressing Underage Drinking this Tuesday, March 28th at 6:30 p.m. at the Melrose School. Materials designed to assist parents in helping their children understand the consequences of underage drinking will be available at Grapes & Gourmet beginning on March 27th.

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