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Judge nixes bid to dismiss parents' suit over fentanyl death

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A federal judge cleared the way for the parents of a man who died of an acute opioid overdose to pursue a lawsuit under the Illinois Drug Dealer Liability Act against the friend who purportedly supplied their son with fentanyl.

In a written opinion, U.S. District Judge Thomas M. Durkin denied defendant James Harrington's motion to dismiss Christopher and Grace Masi's suit for failure to state a claim.

Durkin rejected Harrington's argument that the Masis failed to adequately allege that their son, Ryan, was a "drug user" as defined by the Illinois statute.

The statute states that the parents of an "individual drug user" may seek damages against a defendant who "knowingly distributed ... an illegal drug that was actually used by the individual drug user."

The statute defines an "individual drug user" as an "individual whose illegal drug use is the basis of an action brought under this Act."

On Sept. 18, 2021, Ryan Masi met Harrington and Michael Beaudin for dinner, according to his parents' suit. The men, who were in their mid-20s, had gone to Fenwick High School in Oak Park together.

Masi and Beaudin were "unwittingly exposed" to fentanyl powder when they and Harrington went to Harrington's apartment after midnight, the suit alleges.

It contends that Masi and Beaudin died early in the morning Sept. 19 and that a toxicology test showed both died of an opioid overdose.

Harrington called 911 that afternoon, the suit maintains, and told the operator that he had consumed cocaine and could not move. Harrington also told the operator that two friends were passed out in his apartment, the suit alleges.

It alleges Chicago police officers responding to Harrington's call found a bag in his apartment containing about 0.3 grams of a powder that later was determined to be a mixture of fentanyl and a synthetic opioid.

The suit says Christopher and Grace Masi do not know whether Harrington thought at the time that the powder was cocaine or that it was fentanyl.

The Masis filed their suit in federal court in Chicago under diversity jurisdiction in April of this year. They filed an amended complaint in August that contains one count accusing Harrington of violating the Drug Dealer Liability Act.

In their amended complaint, the Masis allege no illegal drugs other than fentanyl were found in their son's or Beaudin's body. The couple also allege their son's and Beaudin's friends assured them the two did not use illegal drugs.

Harrington filed his motion to dismiss two weeks after the Masis amended their suit. He argued the couple did not adequately allege their son "used" fentanyl because their suit contends he was "unwittingly exposed" to the drug.

Durkin rejected that argument.

"To survive a motion to dismiss, Plaintiffs need only plausibly allege that Masi took action to avail himself of the powder, not that Masi was specifically aware the powder was fentanyl," Durkin wrote in his opinion Monday. "Drawing all reasonable inferences in favor of the non-moving party, the Court finds this plausible."

Durkin also rejected the argument that Christopher and Grace Masi's assertion in their complaint that their son was not a "user of illegal drugs" defeated their Drug Dealer Liability Act claim.

Taken in context, that assertion "refers to Masi's pattern of behavior *prior* to the night in question, not to whether Masi 'actually used' an illegal drug on

September 19," Durkin wrote.

The case is *Christopher Masi, et al. v. James Harrington*, No. 23 C 2132.

The lead attorney for the Masis is Peter S. Lubin of the Oakbrook Terrace office of Lubin Austermuehle P.C.

Lubin said the couple sued Harrington because they want to know what happened to their son, and the Drug Dealer Liability Act is designed to allow parents in their situation to do that.

"Their son was not a regular drug user," Lubin said. "This was a real tragedy."

And he said the deaths of Masi and Beaudin were just two examples of the tragic results of the "plague of fentanyl" sweeping the United States.

The lead attorney for Harrington is Michael T. Trucco of Stamos & Trucco LLP. He could not be reached for comment.

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