

STATE OF MICHIGAN
COURT OF APPEALS

DANA LYNN NYSTROM and DENNIS NYSTROM,

UNPUBLISHED

Plaintiffs-Appellants,

August 20, 1996

v

No. 178673

LC No. 91-002001 and

93-001437

MICHAEL CRAIG,

Defendant-Appellee.

and

KENNETH RIEDELL, CHRISTOPHER
WEINGARTEN, KURT BURRESCH¹,
ROBERT HULL, and JOSEPHINE FRANCES
PINKOWSKI, Jointly and Severally,

Defendants.

Before: White, P.J., and Smolenski and R.R. Lamb,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's grant of defendant Michael Craig's motion for summary disposition in this negligence case. We affirm.

On July 30, 1990, defendant held a party at his parents' house in Warren while they were away. Christopher Weingarten and Kenneth Riedell attended defendant's party and drank a six pack of beer they brought with them. Neither Weingarten nor Riedell was of legal drinking age. After leaving defendant's party, Riedell, who was driving, and Weingarten were challenged to a race by Kurt Burrsch and Robert Hull, who pulled up in a vehicle beside them. Riedell and Weingarten refused. They claim

* Circuit judge, sitting on the Court of Appeals by assignment.

to have seen a gun in Burrsch's hand. Riedell accelerated, disregarded a traffic signal at an intersection, and struck the vehicle driven by plaintiff Dana Lynn Nystrom. Nystrom incurred serious injuries. Riedell was uninsured.

Plaintiffs filed a multiple count complaint against various parties (lower court number 91-002001), and sought to establish defendant's liability in negligence by alleging that he violated MCL 436.33; MSA 18.1004 for allowing underage drinkers to consume alcoholic beverages at his house. When defendant moved for summary disposition pursuant to MCR 2.116(C)(10), the trial court granted defendant's motion, reasoning that plaintiffs failed to submit evidence to raise a genuine issue of fact regarding whether defendant furnished alcohol to minors Riedell and Weingarten.

Plaintiffs subsequently filed an action against Francis Pinkowski, Riedell's mother (lower court number 93-001437). The trial court consolidated the two cases and issued an order allowing plaintiffs to file a fourth amended complaint against defendant. Plaintiffs once again alleged that defendant's negligence caused Dana Nystrom's injuries. However, plaintiffs sought to establish defendant's negligence not by alleging that he furnished minors with alcohol in violation of MCL 436.33; MSA 18.1004, but by alleging that he was negligent for maintaining a nuisance at his residence the night of the party in violation of MCL 600.3801; MSA 27A.3801. When defendant moved for summary disposition pursuant to MCR 2.116(C)(6), (7), (8), and (10), the trial court granted his motion in an order certified as final in accordance with MCR 2.604(A).²

In deciding a motion for summary disposition pursuant to MCR 2.116(C)(10), the trial court reviews the record evidence, giving the benefit of reasonable doubt to the opposing party, and decides whether a genuine issue of material fact exists to warrant a trial. *Skinner v Square D Co*, 445 Mich 153, 161-162; 516 NW2d 475 (1994). This Court reviews a grant of summary disposition de novo. *West Bloomfield Charter Twp v Karchon*, 209 Mich App 43, 48; 530 NW2d 99 (1995). In *Longstreth v Gensel*, 423 Mich 675, 692-693; 377 NW2d 804 (1985), the Supreme Court held that a violation of MCL 436.33; MSA 28.1004 creates a rebuttable presumption of negligence when a social host furnishes alcohol to a person under twenty-one years of age. Generally, social host liability turns on control over, or active participation in, supplying a minor with alcohol. *Rodriguez v Solar of Michigan, Inc*, 191 Mich App 483, 495; 478 NW2d 914 (1991). However, when underage drinkers purchase alcoholic beverages elsewhere and merely consume them in a social host's house, no cause of action arises from the statute. *Reinert v Dolezel*, 147 Mich App 149, 155; 383 NW2d 148 (1985); *Christensen v Parrish*, 82 Mich App 409, 412; 266 NW2d 826 (1978).

Plaintiffs have not established a triable issue as to whether defendant furnished alcohol to a minor. Although plaintiffs present evidence that Riedell was drunk when his vehicle collided with the vehicle driven by plaintiff Dana Nystrom, they did not present evidence that defendant took an active role in furnishing Riedell with alcohol. The evidence shows that Riedell and Weingarten either stole or purchased a six pack of beer on the night of the collision and consumed it at defendant's house. Plaintiffs have pointed to nothing on the record from which a reasonable trier of fact could infer that defendant purchased alcohol for Riedell or supplied him with alcohol in some other way. As this Court

has made clear, this set of circumstances does not give rise to

social host liability under MCL 436.33; MSA 28.1004. *Bambino v Dunn*, 166 Mich App 723, 732; 420 NW2d 866 (1988); *Reinert, supra.*

Affirmed.

/s/ Helene N. White
/s/ Michael R. Smolenski
/s/ Richard R. Lamb

¹ Also spelled as “Buresch” throughout the lower court record.

² MCR 2.604 has subsequently been amended. See 450 Mich XIX (1995) and 448 Mich lviii (1995).