

Court of Appeals, State of Michigan

ORDER

Connie Fournier v Lucia V Moretti

Docket No. 267625

LC No. 05-067290 NO

Alton T. Davis
Presiding Judge

David H. Sawyer

Bill Schuette
Judges

The Court orders that the July 6, 2006 opinion is hereby AMENDED. The opinion contained the following clerical error: third party "Eugene Wright" was inadvertently referred to as plaintiff "Walker" in the first line on page 3; he was again inadvertently referred to as "Walker" in the second line of the last paragraph on page 3. Both instances should have referred to him as "Wright".

In all other respects, the July 6, 2006 opinion remains unchanged.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 13 2006

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

CONNIE FOURNIER, Personal Representative of
the ESTATE OF STELLA DEMENIUK,

UNPUBLISHED
July 6, 2006

Plaintiff-Appellant,

v

No. 267625
Oakland Circuit Court
LC No. 05-067290-NO

LUCIA V. MORETTI,

Defendant-Appellee.

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant. We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. FACTS

According to plaintiff, defendant brought a highly alcoholic concoction to an office party and provided some of it to Eugene Wright, who was visibly intoxicated. Shortly thereafter, Wright and plaintiff's decedent were involved in a traffic accident which claimed the latter's life.

Plaintiff filed suit, pressing theories of negligence, gross negligence, and battery. The trial court granted defendant's motion for summary disposition, holding that Michigan does not impose liability on a social host for providing alcohol to a guest who then injures a third party.

II. STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. This Court reviews de novo a trial court's decision regarding a motion for summary disposition under MCR 2.116(C)(8) to determine whether the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery." *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998).

III. ANALYSIS

A. Negligence

“As part of its tort reform legislation, the Michigan Legislature abolished joint and several liability and replaced [it] with ‘fair share liability.’ The significance of the change is that each tortfeasor will pay only that portion of the total damage award that reflects the tortfeasor’s percentage of fault.” *Smiley v Corrigan*, 248 Mich App 51, 55; 638 NW2d 151 (2001) (footnote omitted). See MCL 600.2956 and MCL 600.6304.

Plaintiff argues that the adoption of comparative fault overturned the common-law principles shielding a social provider of alcohol to an adult from liability for that adult’s subsequent behavior in connection with third parties. We disagree.

According to the common law, “a third party has no cause of action against a social host who furnishes alcohol to a guest who is visibly intoxicated.” *Leszczynski v Johnston*, 155 Mich App 392, 398; 399 NW2d 70 (1986). The reasoning behind the rule is that “it is the drinking rather than the furnishing of the liquor which is the proximate cause of the injury to a third party.” *Id.* at 397. In arguing that the adopting of comparative liability has changed this situation, plaintiff attempts to make something out of nothing.

Under traditional principles of joint and several liability, all tortfeasors were fully liable for a victim’s injuries. See *Markley v Oak Health Care Investors of Coldwater, Inc*, 255 Mich App 245, 253; 660 NW2d 344 (2003). The common law did not extend any liability to social hosts serving alcohol to adults who then committed torts, because the common law did not consider the social host to be a tortfeasor at all. The social host bears zero percent of the responsibility because a social host is not among those who could be found to have proximately caused the injury, and thus principles of comparative negligence do nothing to expose such a social host to liability.

Insofar as legislation derogates the common law, it should be interpreted narrowly. See *Sotelo v Twp of Grant*, 470 Mich 95, 100; 680 NW2d 381 (2004); *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 645 n 9; 662 NW2d 424 (2003). Accordingly, because nothing in the tort reform legislation here at issue specifically addresses the question of a social host’s liability for an adult guest’s intoxication, the common-law principle recognizing zero liability in such instances must stand. The trial court correctly dismissed plaintiff’s negligence claim.

B. Gross negligence

Concerning plaintiff’s gross negligence claim, the trial court stated that there was no legal support for the proposition that a claim of gross negligence could pierce the social host’s immunity for liability for serving alcohol to an adult. Arguing to the contrary, plaintiff cites *Hollerud v Malamis*, 20 Mich App 748; 174 NW2d 626 (1969). In that case, this Court cited sister-state authority for the proposition that liability “has been recognized in a few unusual cases where the consumer could be said to have lost his free will, *e.g.*, where he was addicted to alcohol or intoxicated to the point of helplessness and such addiction or incapacity was known to the vendor or should have been.” *Id.* at 760. However, this Court went on to declare that it need not decide if any such rule applied in this state, because the case at bar concerned only ordinary negligence. *Id.* at 760-761. This case likewise does not call for a decision in this regard, because

plaintiff alleges no more than simple beverage sharing at a party, not that plaintiff Walker was for some reason helpless to resist the ingestion of additional intoxicants.

C. Battery

Finally, plaintiff complains that the trial court dismissed the battery claim without explanation. This is true, but we need no guidance from the trial court to affirm that result. See *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997) (this Court will not reverse when the trial court reaches the correct result regardless of the reasoning employed). Plaintiff asserts that defendant battered Wright by offering him a drink of unexpected potency, and that the doctrine of transferred intent should thus come into play to impute liability to defendant for Wright's alleged subsequent injury to plaintiff's decedent. We disagree.

There is no suggestion that defendant in some way forced the additional alcohol on Walker, and he or anyone else could only expect that a beverage offered at a drinking party is apt to contain alcohol. Social hosts are not obliged to announce what concentrations of alcohol their offerings contain; social guests must instead inquire, or gauge the matter for themselves as they consume them. An adult who accepts another drink at a social occasion can hardly call him- or herself a victim of a battery only because the drink was a strong one.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette