

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SIMON MESLEH,

Plaintiff-Appellant,

v

STEPHEN YOUNG and SHARON YOUNG,

Defendants-Appellees,

and

JASON SAMP,

Defendant.

UNPUBLISHED

September 20, 2005

No. 262514

Macomb Circuit Court

LC No. 03-5212-no

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Before: Meter, P.J., and Murray and Schuette, JJ.

PER CURIAM.

In this negligence case, plaintiff Simon Mesleh appeals as of right from the order granting defendant Sharon Young's motion for summary disposition, and granting defendant Stephen Young's motion for summary disposition in part. In addition, plaintiff appeals the order granting defendant Stephen Young's renewed motion for summary disposition. We affirm.

**I. FACTS**

This case arose from a fight between plaintiff and defendant Jason Samp<sup>1</sup> (Samp) at the home of defendant Sharon Young (Sharon) and her son, defendant Stephen Young (Stephen). On December 31, 2000, after his mother left the house at approximately 10 p.m., Stephen had people come to his home throughout the night to celebrate New Year's Eve. According to plaintiff, he was at the Young's home for less than a half-hour when Samp, a 21-year-old friend

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<sup>1</sup> Samp is not a part of this appeal.

of Stephen's, asked him to move his car from the driveway. Plaintiff claims Samp followed him through the hallway of the Youngs' home, pushed him, and then tackled him from behind. Samp placed plaintiff in a headlock and repeatedly punched him in the face resulting in the loss of plaintiff's left eye. A neighbor, who was an eyewitness, claims the fight took place in front of the Young residence, partly in the street.

Stephen claims he asked plaintiff to leave several minutes after his arrival, immediately before the fight occurred. Plaintiff denies this ever happened and alleges that Stephen recruited Samp to kick him out of the house. Plaintiff presented no evidence or testimony that Stephen prompted Samp's behavior. In addition, Stephen testified that Samp was one of the "most polite" of his friends and that he did not have a reputation as a fighter. Stephen also claims he was not outside during the fight and that at the time, he could not leave his home because he was on a tether<sup>2</sup>. Plaintiff refutes this with the deposition testimony of two eyewitnesses who claim they saw Stephen in the front yard when the fight occurred.

At approximately 1:53 a.m., the Warren police arrived at defendants' home. Once inside, the officers cited several individuals for underage drinking. They also cited Stephen for disorderly premises, minor in possession, and arrested him because drinking alcohol violated his probation. Plaintiff, aged 19 at the time, admits he drank beer at defendants' home the night of the fight. He testified that he found the beer on a counter in the Young's kitchen. Plaintiff also alleges illegal substances were being consumed at the party. Stephen admits he was aware of underage drinking, but denies any knowledge of drug use in his home that evening. In addition, the Warren police found no evidence of drugs in the home.

As a result of the injuries he sustained in the fight, plaintiff filed an action on November 17, 2003, against defendants Sharon and Stephen Young and Samp. Plaintiff alleged defendants Sharon and Stephen Young were negligent per se for violation of Michigan statutes, MCL 750.141a (consumption or possession of alcohol by minors or controlled substances at a social gathering), MCL 436.1701(furnishing alcohol to minors), and MCL 436.33 (repealed and replaced in 1998 by MCL 436.1701). Plaintiff further alleged that Stephen was liable for engaging in willful and wanton misconduct. On March 30, 2004, defendants Young filed for summary disposition for all claims against them. Sharon argued she was not liable because she was not home when the fight occurred. Stephen argued he had no duty to protect plaintiff from Samp's criminal acts and as a social host, he was not liable because he did not furnish minors with alcohol.

The trial court granted Sharon's motion for summary disposition and granted partial summary disposition to Stephen. The trial court granted Stephen's motion on all claims filed under a theory of negligence per se, and denied the motion, in part, based on his finding that a genuine issue of material fact existed as to whether Stephen had engaged in willful and wanton misconduct that resulted in plaintiff's injuries. In August 2004, after discovery closed, the trial court granted Stephen's renewed motion for summary disposition finding that he had not

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<sup>2</sup> Stephen was on a tether due to criminal cases against him regarding drugs.

engaged in willful and wanton misconduct and that he had no duty to stop the altercation between plaintiff and Samp or to notify the authorities. In October 2004, the trial court dismissed defendants Young from the case and denied plaintiff's motion for reconsideration.

## II. STANDARD OF REVIEW

This Court reviews a trial court order for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When deciding a motion for summary judgment, all documentary evidence submitted by the parties such as affidavits, pleadings, depositions, and admissions are viewed by the court in the light most favorable to the party opposing the motion. *Rose v National Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). This Court reviews the entire record to determine whether the moving party is entitled to judgment as a matter of law. *Maiden, supra*. All reasonable inferences are to be drawn in favor of the nonmoving party. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 618; 537 NW2d 185 (1995).

## III. ANALYSIS

Plaintiff argues Sharon violated MCL 750.141a by negligently entrusting her home to her son Stephen when she left him home alone the entire night, knowing that he had thrown parties involving underage drinking in the past. Plaintiff also claims Stephen violated MCL 750.141a by allowing underage drinking in his home and that Sharon and Stephen's violations were the proximate cause of his injuries. We disagree.

### A. Negligence Per Se

In *Thaut v Finley (On Rehearing)*, 50 Mich App 611, 613; 213 NW2d 820 (1973), this Court held a violation of a statute such as MCL 750.141a, prohibiting furnishing of intoxicants to minors, constitutes negligence per se and gives rise to a civil cause of action. However, plaintiff must still establish that defendants' violation of the statute was the proximate cause of the damages he seeks to recover. *Id* at 613, n6.

MCL 750.141a provides in pertinent part:

(1)(b) "Allow" means to give permission for, or approval of, possession or consumption of an alcoholic beverage or a controlled substance, by any of the following means:

(i) in writing

(ii) By 1 or more oral statements

(iii) By a form of conduct, including a failure to take corrective action, that would cause a reasonable person to believe that permission or approval had been given.

(2) Except as otherwise provided in subsection (3), an owner, tenant, or other person having control over any premises, residence, or other real property shall not do either of the following:

(a) Knowingly allow a minor to consume or possess an alcoholic beverage at a social gathering on or within that premises, residence or other real property.

(b) Knowingly allow any individual to consume or possess a controlled substance at a social gathering on or within that premises, residence or other real property.

(6) Evidence of all of the following gives rise to a rebuttable presumption that the defendant allowed the consumption or possession of an alcoholic beverage or controlled substance on or within a premises, residence, or other real property, in violation of this section:

(a) The defendant had control over the premises, residence or other real property.

(b) The defendant knew that a minor was consuming or in possession of an alcoholic beverage or knew that an individual was consuming or in possession of a controlled substance at a social gathering on or within that premises, residence or other real property.

(c) The defendant failed to take corrective action.

Plaintiff claims Sharon violated MCL 750.141a by failing to take corrective action to stop underage drinking in her home by leaving Stephen home alone, when, based on her neighbors' previous complaints, she knew her son had thrown parties in the past where underage drinking occurred. We disagree and find the trial court correctly stated that the issue is not whether underage consumption was foreseeable, but whether Sharon knowingly allowed the underage consumption. In *Christensen v Parrish*, 82 Mich App 409, 412; 266 NW2d 826 (1978), this Court found that to knowingly give or furnish alcoholic beverages, as prohibited by the statute, equates to having some control over or actively participating in supplying a minor with alcohol. On the night in question, it is undisputed that Sharon was not home and did not return home until the following day. Plaintiff has not presented any evidence that during her absence Sharon had any knowledge of the party occurring at her home; thus, the trial court correctly found there was no genuine issue of material fact on this claim.

In addition, the trial court correctly found that Sharon did not have a duty to supervise her son because he is over the age of majority. In Michigan, a person who is 18-years-old is deemed to be an adult of legal age and any duty a parent has to reasonably supervise their child's conduct ends when that child becomes an adult. *Reinert v Dolezel*, 147 Mich App 149, 156; 383 NW2d 148 (1985).

Plaintiff also claims that Stephen violated MCL 750.141a. In addition to several police citations for underage drinking issued the night of the party at the Young's home, Stephen's testimony indicates that he was aware that underage partygoers were consuming alcoholic beverages during his party and that he failed to take corrective action. However, a violation of MCL 750.141a alone does not give rise to liability, it must also be the proximate cause of the damages for which plaintiff seeks to recover. *Thaut, supra* at 613, n6. A court should decide the issue of proximate cause only when reasonable minds could not differ regarding the proximate cause of plaintiff's injury. *Dep't of Transportation v Christensen*, 229 Mich App 417, 424; 581 NW2d 807 (1998).

In *Rogalski v Tavernier*, 208 Mich App 302, 307; 527 NW2d 73 (1995), this Court held that criminal or violent acts are not foreseeable results of the serving of alcohol to minors, and therefore, cannot serve as a basis for social host liability. However, plaintiff relies upon *Nichols v Dobler*, 253 Mich App 530, 536-537; 655 NW2d 787 (2002) which distinguished *Rogalski* by stating it was not the *Rogalski* Court's intention that, as a matter of law, all violent or criminal acts of a minor are unforeseeable regardless of whether they occur at the premises where the alcohol is served, and instead, such acts can be seen as a foreseeable consequence of the activities taking place along with the provision of alcohol. In *Nichols*, the defendant, a minor who had been served alcohol at the party, attacked the plaintiff with a hammer, due to the outgrowth of a dispute that developed at the party. *Id.* The *Nichols* Court found the issue of proximate causation was properly left to a jury. *Id.* However, unlike the defendant in *Nichols*, who was a minor who consumed alcohol at the party, this case involves a defendant (Samp) who was of legal drinking age. In addition, evidence does not indicate that Samp consumed alcohol at the party. Also, the fight in *Nichols*, as the Court indicated, was the result of a dispute between plaintiff and defendant that developed and grew throughout the duration of the party. In addition to the underage consumption of alcohol by the defendant, the Court determined that the underlying dispute between defendant and plaintiff was a factor contributing to the attack's foreseeability.

Here, plaintiff indicated he had been at the party for less than a half hour before Samp approached him and asked him to move his car. During that time, plaintiff, who was 19-years-old, consumed beer he found at the Young's home. Plaintiff has presented no testimony that he became intoxicated in the short time he was at the house or that his underage drinking contributed to his fight with Samp. In addition, there was no evidence of an underlying dispute between Samp and plaintiff prior to the fight at Stephen's party that would have indicated a likely altercation. As a result, we find the trial court correctly determined that plaintiff presented no evidence that creates a causal connection between the underage consumption of alcohol and plaintiff's injuries. Although we disagree with the trial court's holding that Stephen did not violate MCL 750.141a, we find the trial court correctly granted Stephen summary disposition because his violation was not the proximate cause of plaintiff's injuries. We will not reverse the court's order when the right result was reached for the wrong reason. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 640; 534 NW2d 217 (1995).

Next, plaintiff argues Stephen violated MCL 436.1701 and falls under social host liability as outlined in *Longstreth v Gensel*, 423 Mich 675; 377 NW2d 804 (1985). In *Longstreth*, the defendants were accused of knowingly furnishing alcohol to the plaintiff at a wedding reception.

The plaintiff, who was under twenty-one years of age, was killed in a car collision after the reception. *Id.* at 686. MCL 436.33 (now MCL 436.1701) provided and MCL 436.1701 now provides that a person is guilty of a misdemeanor for knowingly selling or furnishing liquor to a person under 21 years of age, or for failing to make a diligent inquiry of whether that person was 21 years of age. *Id.* at 690. In addition to licensees, this Court held that MCL 436.33 extended to social hosts. *Id.* at 680. Unlike the social hosts in *Longstreth*, there is no evidence that indicates Stephen furnished or provided any of his underage guests with alcohol. While deposition testimony of plaintiff indicates he found the beer he consumed at the party on the kitchen counter in the Young's home, plaintiff has not established that Stephen furnished the alcohol to the guests. Thus, the trial court correctly found that there was no genuine issue of material fact as to whether Stephen violated MCL 436.1701.

### B. Willful and Wanton Misconduct

Next, plaintiff contends that Stephen's alleged initiation and failure to intervene in the fight between plaintiff and Samp constitutes willful and wanton misconduct, thus violating his duty to protect plaintiff. As a general rule, there is no duty that obligates one person to aid or protect another unless a special relationship exists between a plaintiff and a defendant. *Williams v Cunningham Drug Stores, Inc.*, 429 Mich 495, 498-499; 418 NW2d 3181 (1988). This Court has held, regardless of status as an invitee, licensee, or trespasser, an owner of land has no duty to protect people using his land from the criminal acts of third parties unless the owner actively creates or maintains the criminal activity or fails to act reasonably to end the criminal activity taking place in his presence. *Gouch v Grand Trunk WR Co.*, 187 Mich App 413, 416-417; 468 NW2d 68 (1991). Based on this rule, this Court concluded that a social host's duty to control his guests extends only to refraining from willful and wanton misconduct that results in one guest injuring another. *Taylor v Laban*, 241 Mich App 449, 457; 616 NW2d 229 (2000). The required elements for willful and wanton misconduct are (1) knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another, (2) ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand, and (3) the omission to use such care and diligence to avert the threatened danger, when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another. *Id.*

In *Taylor*, the plaintiff was invited to the defendant Schmitz's home for a graduation party. During the party, the plaintiff and the defendant Schmitz argued and the defendant Schmitz struck the plaintiff. The plaintiff threatened the defendant Schmitz, but was then thrown into the pool by other guests. When the plaintiff tried to exit the party he was followed and subsequently attacked by four other partygoers while the defendant Schmitz was indoors. *Id.* at 450-451. This Court affirmed the trial court's grant of summary disposition for the defendant Schmitz because the plaintiff had not produced evidence that indicated the defendant Schmitz had the ability and "means at hand" to prevent the plaintiff's resulting injuries. *Id.* at 457-458.

Here, we agree with the trial court that plaintiff has not presented evidence that Stephen failed to act reasonably or that such failure was the proximate cause of his injuries. This Court has found omissions to act are not readily viewed as willful and wanton misconduct. *Id.* at 457. Other guests at the party who were in the yard intervened after Stephen's neighbor yelled at them

to stop the fight. Similar to the plaintiff in *Taylor*, there is no evidence that Stephen had the means to stop the fight before plaintiff sustained his injuries.

In addition, we agree with the trial court that no authority states “ordinary care and diligence” requires that a host physically come between two guests. Finally, Stephen’s failure to contact the police does not constitute willful and wanton misconduct because there is no evidence that indicates this action would have prevented plaintiff’s injuries.

Plaintiff also claims Stephen initiated the fight by either encouraging or requesting that Samp “kick out” plaintiff from the party. Plaintiff argues that the small amount of time between Stephen telling plaintiff to leave and Samp’s attack allows the inference that it was at Stephen’s request. We disagree and find the trial court correctly stated:

There is no evidence to suggest that the attack by Samp was initiated or encouraged by defendant Young. While plaintiff contends that the close proximity between being told to leave by Young and Samp’s attack provides a ‘reasonable inference’ that Samp acted at Young’s behalf, any finding would be based on pure conjecture and speculation. There was no evidence or testimony from anyone including plaintiff himself that Young made any such direction to Samp or that Young’s instructions from plaintiff to leave prompted Samp.

Our Supreme Court has held that when all theories of causation are based solely on conjecture, there is no question for the jury. *Cummings v Grand Truck WR Co*, 372 Mich 695, 697, 127 NW2d 842 (1964). In his witness statement, Samp wrote that on the night of the incident, he wanted to leave the party, but plaintiff’s car was blocking him so he asked plaintiff to move his car. This corroborates the story that the fight began after Samp asked plaintiff to move his car, not because Stephen asked Samp to remove plaintiff from the party.

Affirmed.

/s/ Patrick M. Meter  
/s/ Christopher M. Murray  
/s/ Bill Schuette