IN THE COURT OF APPEALS OF IOWA

No. 1-963 / 11-0452
Filed February 29, 2012

IN RE THE ESTATE OF ADDISON FISCHER, by and through its Duly Appointed Personal Representative, MELINDA ZEIMET; MELINDA ZEIMET, Individually; and HARVEY N. FISCHER JR., an Individual,
Plaintiffs-Appellants,

vs.

DYNO OIL, INC., a Duly Registered Corporation d/b/a DYNO'S AMOCO,
Defendant-Appellee.

Appeal from the Iowa District Court for Palo Alto County, David A. Lester, Judge.

The plaintiffs appeal from the district court order granting summary judgment in favor of the defendant on their negligence claims. **AFFIRMED.**

Justin Swaim of Swaim Law Firm, Bloomfield, and Marc Humphrey of Humphrey Law Firm, P.C., Urbandale, for appellants.

David L. Phipps of Whitfield & Eddy P.L.C., Des Moines, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

The plaintiffs appeal from the district court order granting summary judgment in favor of the defendant, Dyno Oil, Inc., on their negligence claims. The district court held as a matter of law the plaintiffs could not recover under Iowa's Dramshop Act, and further held the statute preempted their common law claims. The plaintiffs seek a change in our interpretation of Iowa's dramshop law. They also contend the court erred in holding the legislation preempted their common law claims. Finally, they contend the Iowa Dramshop Act is unconstitutional. Finding no merit in these claims, we affirm.

I. Background Facts and Proceedings. The undisputed facts of this case show the following: Addison Fischer died in the early morning hours of October 6, 2007, after his car collided with a tow truck on Highway 18. Fischer was nineteen years old. Testing revealed his blood alcohol level was 0.177.

In the hours before his death, Fischer had been at a party where he consumed Keystone Light Beer he had purchased earlier at a Dyno Oil convenience store. Dyno Oil is a Class C liquor licensee. Fischer and two underage friends had entered the store where Kaycee Pettit was working as the sole attendant. Pettit knew Fischer's companions were underage at the time of the sale. She denies knowing Fischer was underage, but did not ask him for identification before selling him the beer. One of Fischer's friends used his debit card to pay for the thirty-pack of beer, and Pettit gave Fischer a second thirty-pack of Keystone Light free of charge.

Pettit was eighteen years of age on the night in question. She had been given three nights of supervised shift training before she was allowed to work at

Dyno Oil alone. The only instruction Pettit recalls being given regarding the sale of alcoholic beverages was to check identification if the consumer appeared to be under twenty-one.

Following Fischer's death, Pettit was charged with and pled guilty to selling alcoholic beverages to an underage person. After learning what had occurred, the manager of the Dyno Oil store called the owner of the company to report it. Pettit never returned to work at Dyno Oil, so no further investigation was made into the incident by Dyno Oil.

On September 30, 2009, Fischer's estate and his parents individually filed a petition against Dyno Oil, alleging Dyno Oil was negligent in selling alcoholic beverages to Fischer and in failing to supervise and train Pettit regarding the sale of alcoholic beverages. They also filed loss of consortium claims.

Dyno Oil moved for summary judgment on all of the plaintiffs' claims on October 7, 2010. As a Class C liquor licensee at the time of the accident, it claimed the Iowa Dramshop Act precluded the causes of action. The plaintiffs resisted, alleging there are disputed issues of material fact and there is a gap in Iowa law placing its citizens at extreme risk. They argued the interpretation of the law should be changed. Following a hearing in January 2011, the trial court entered its ruling, granting summary judgment in favor of Dyno Oil and dismissing the petition. The plaintiffs filed a timely notice of appeal.

II. Scope and Standard of Review. Our review of a summary judgment is for the correction of errors at law. *Peak v. Adams*, 799 N.W.2d 535, 542 (Iowa 2011). We must determine whether the moving party has demonstrated the absence of any genuine issue of material fact in dispute and is entitled to

judgment as a matter of law. *Id.* To avoid summary judgment, the resisting party must set forth specific facts showing a genuine factual dispute exists. *Id.* Summary judgment is only proper where the only issue is the legal consequences flowing from the undisputed facts. *Id.*

In reviewing a ruling on a motion for summary judgment, we look at the facts in a light most favorable to the party resisting the motion. *Id.* We give the nonmoving party every legitimate inference that can be reasonably deduced from the record. *Id.* at 542-43. An inference is legitimate if it is "rational, reasonable, and otherwise permissible under the governing substantive law." *Id.* at 543. If it is "based on speculation or conjecture," an inference is not legitimate. If reasonable minds can differ on resolution of an issue, a genuine issue of material fact exists. *Id.*

III. Analysis. The plaintiffs and the trial court recognize existing statutes and case law support the granting of summary judgment in favor of the defendant. However, the plaintiffs contend the district court erred in ruling the Iowa Dramshop Act provides them no cause of action against this defendant and preempts their theories of common law negligence and negligence per se. They also argue it unconstitutionally denies the equal protection afforded by both the Iowa and United States Constitutions by creating distinctions between those injured by underaged persons who are furnished alcohol by licensees and those who are provided alcohol by social hosts. We reject both claims.

Iowa Code section 123.92(1)(a):

> Any person who is injured in person or property or means of support by an intoxicated person or resulting from the intoxication of a person, has a right of action for all damages actually sustained,

> severally or jointly, against any licensee or permittee, whether or not the license or permit was issued by the division or by the licensing authority of any other state, who sold and served any beer, wine, or intoxicating liquor to the intoxicated person when the licensee or permittee knew or should have known the person was intoxicated, or who *sold to and served* the person to a point where the licensee or permittee knew or should have known the person would become intoxicated.

(Emphasis added.) This code section is the exclusive remedy provided against a liquor licensee or permittee for losses related to furnishing alcohol to an intoxicated person. *Summerhays v. Clark*, 509 N.W.2d 748, 750 (Iowa 1993). It preempts common-law claims against liquor licensees. *Ballard v. Hazel's Blue Sky*, 653 N.W.2d 609, 611 (Iowa 2002). Our supreme court has rejected claims the statute denies equal protection of the law. *See id.* ("We continue to adhere to the view expressed in that case that the legislature can limit recovery for alcohol-related claims against liquor licensees to a specified list of claimants.").

Because Dyno Oil only sold but did not serve Fischer the alcoholic beverages, it is not liable under section 123.92. Convenience stores selling alcohol for off-premises consumption are not deemed to be serving alcohol within the meaning of the act. *Eddy v. Casey's General Store, Inc.,* 485 N.W.2d 633, 635 (Iowa 1992); *Kelly v. Sinclair Oil Corp.*, 476 N.W.2d 341, 347 (Iowa 1991). Fischer drank the beer at the party, and there is no suggestion he drank beer at the Dyno Oil store. The plaintiffs concede Dyno Oil is not civilly liable under the Iowa Dramshop Act under existing caselaw, but argue this court should modify the interpretation of the current law, offering a variety of arguments on why modification is needed to protect the citizenry. We decline this invitation. It is a fundamental principle of our doctrine of separation of powers that the legislature

makes the law and the courts interpret the law. *Andover Volunteer Fire Dep't. v. Grinnell Mut. Reinsurance Co.*, 787 N.W.2d 75, 81 (Iowa 2010). Because the law arising from the undisputed facts of this case entitles Dyno Oil to judgment as a matter of law, we affirm the grant of summary judgment in its favor.

AFFIRMED.