IN THE COURT OF APPEALS OF IOWA

No. 2-147 / 11-1291
Filed April 25, 2012

CASEY J. ROOKER,
Plaintiff-Appellant,

vs.

FLANAGAN CORPORATION d/b/a TIM FLANAGAN'S RESTAURANT & LOUNGE and TIMOTHY J. FLANAGAN, Individually,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison and Eliza Ovrom, Judges.

Casey Rooker appeals from the district court's grant of summary judgment in favor of defendant Timothy Flanagan. **REVERSED AND REMANDED.**

Matthew Boles of Parrish Kruidenier Dunn Boles Gribble Parrish Gentry & Fisher, L.L.P., Des Moines, for appellant.

Mark J. Wiedenfeld and James W. Russell of Wiedenfeld & McLaughlin, L.L.P., Des Moines, Des Moines, for appellees.

Heard by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DOYLE, J.

Alleging bar-owner Tim Flanagan was a social host, not a licensee, Casey Rooker filed suit against Flanagan, individually, for common law negligence based on a criminal statute, Iowa Code section 123.47(1) (2007), which prohibits giving or supplying alcohol to minors. Rooker sought damages for injuries he sustained when he lost control of his vehicle and crashed after leaving Flanagan's bar. He alleged he was under the legal age to consume alcoholic beverages and became intoxicated after being given alcoholic beverages by Flanagan. Rooker appeals from the district court's grant of defendant Flanagan's motion for summary judgment and the subsequent dismissal of his common law claims. Upon our review of the unique facts presented in the summary judgment record, we reverse and remand for reinstatement of Rooker's negligence claims asserted against Tim Flanagan and further proceedings.

***I. Background Facts*.**

When viewed in the light most favorable to Rooker, the summary judgment record could establish the following facts: Tim Flanagan (Flanagan) owns a Des Moines bar known as Tim Flanagan's Restaurant & Lounge. Flanagan is a shareholder and officer of Flanagan Corporation, a for-profit corporation organized under Iowa Code chapter 490, doing business as "Tim Flanagan's Restaurant & Lounge" (Bar). Flanagan Corporation, not Flanagan, was a liquor licensee and authorized to sell alcoholic beverages pursuant to its license.

On June 23, 2008, Rooker, then eighteen years old, went to the Bar with Flanagan to celebrate a bowling team event. Flanagan purchased and provided

alcoholic beverages to Rooker at the Bar. Rooker did not pay for any of the alcoholic beverages provided by Flanagan.

Rooker became intoxicated as a result of the alcoholic beverages provided to him by Flanagan. Thereafter, Rooker drove his vehicle while intoxicated. Rooker lost control of the vehicle and crashed. Rooker sustained injuries as a result of the crash.

***II. Proceedings*.**

In January 2010, Rooker filed his petition at law, later amended, asserting a dramshop claim against the Bar pursuant to Iowa Code section 123.92 and a claim of negligence against Flanagan individually. Rooker claimed Flanagan was a "social host," not a licensee, who provided alcohol to a person under the legal drinking age in violation of section 123.47(1). Rooker alleged Flanagan was negligent in six ways: (a) in providing a place and setting for Rooker to consume alcoholic beverages; (b) in providing Rooker alcoholic beverages; (c) in continuing to provide alcoholic beverages to Rooker to the point of intoxication; (d) in allowing Rooker to operate his vehicle while intoxicated; (e) in failing to supervise Rooker; and (f) in failing to act in a reasonable manner under the circumstances. Rooker asserted Flanagan's alleged negligence was the proximate cause of his intoxication at the time of his accident.

Defendants filed a motion for summary judgment. Relying on *Fuhrman v. Total Petroleum, Inc*., 398 N.W.2d 807 (Iowa 1987), Flanagan asserted he was not liable under section 123.47, a criminal statute, for common law negligence. Additionally, he asserted civil liability for social hosts who served alcohol was expressly prohibited by section 123.49(1)(a) and (b). The Bar argued Rooker's

dramshop claim failed because the Iowa Dramshop Act bars an intoxicated person from recovering damages arising out of his own intoxication. It also argued Rooker was barred from any recovery under the dramshop act because there was no sale of alcoholic beverages. Rooker resisted.

District court judge Robert Hutchison granted the Bar's motion in full[1] and Flanagan's motion in part. Finding Rooker's claim to be indistinguishable from the claim rejected in *Hoth v. Meisner*, 548 N.W.2d 152 (Iowa 1996), the court concluded Rooker had no social host liability claim against bar owner Flanagan individually for providing alcoholic beverages to Rooker at the Bar. The court specifically granted Flanagan's motion "with respect to all claims arising from [Rooker's] allegation that [Flanagan] served or provided alcohol to [Rooker]." The court dismissed Rooker's negligence claims (a) through (c) asserted against Flanagan individually. Based upon "the court file, and as clarified at the hearing," the court believed Rooker's negligence claims (d) through (f) concerned alleged actions by Flanagan off the Bar's premises. Because Flanagan's motion did not address claims (d), (e), or (f), the court denied summary judgment on those claims.

Rooker and Flanagan later filed briefs on the issue of whether the remaining negligence claims against Flanagan were covered by the prior summary judgment ruling. After reviewing the court file, the parties' briefs, and hearing arguments, district court judge Eliza Ovrom entered her ruling and order dismissing Rooker's remaining negligence claims against Flanagan. The court

[1] The district court's grant of summary judgment and dismissal of Rooker's dramshop claim against the Bar is not at issue in this appeal.

noted Rooker now tacitly admitted his remaining negligence claims also arose from claims Flanagan furnished alcohol to Rooker on the Bar's premises. Because claims (d) through (f) were therefore also "related to allegations that Flanagan in his individual capacity provided alcohol to Rooker," the court concluded those claims would have been dismissed in Judge Hutchison's summary judgment ruling had he been aware the claims were not claims arising off premises. The court declined to reconsider Judge Hutchison's prior ruling. The court further concluded:

> [T]he immunity from suit in the Dram Shop Act would be meaningless if the principal of a corporation could be sued in lieu of the corporation that actually holds the license. Because [Flanagan] is so closely connected to the licensee, and because all actions are alleged to have occurred on the licensed premises, [Flanagan] is covered by the Dram Shop Act. He was not a social host. Therefore, the reasoning of the original summary judgment ruling is applicable to the remaining specifications of negligence.

Rooker now appeals.

***III. Scope and Standards of Review*.**

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.907; *Alliant Energy–Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 873 (Iowa 2007). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc*., 730 N.W.2d 198, 199 (Iowa 2007). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. The court reviews

the record in a light most favorable to the opposing party. *Frontier Leasing Corp. v. Links Eng'g, L.L.C.*, 781 N.W.2d 772, 775 (Iowa 2010). We afford the opposing party every legitimate inference the record will bear. *Id*. "No fact question exists if the only dispute concerns the legal consequences flowing from undisputed facts." *McNertney v. Kahler*, 710 N.W.2d 209, 210 (Iowa 2006) (citation omitted).

***IV. Discussion*.**

On appeal, Rooker contends the district court erred in granting summary judgment in favor of Flanagan. He asserts the court erred in finding the Iowa's Dramshop Act extended to protect Flanagan in his capacity as "bar owner" or "principal," and in finding Iowa Code section 123.47 did not apply to Flanagan. Because the case reaches us on appeal from an order granting summary judgment, our task is to determine whether a genuine issue of fact exists and whether the law was applied correctly. *Summerhays v. Clark*, 509 N.W.2d 748, 749 (Iowa 1993).

Here, the district court's initial ruling on summary judgment held the supreme court's ruling in *Hoth* was controlling in this case. The district court's subsequent ruling held Flanagan was not a social host because he was so closely connected to his Bar, the actual licensee, and was thus covered by the dramshop act. Upon our review of the applicable statutes and our supreme court's decisions applying and interpreting those statutes, we conclude the district court in both instances did not correctly apply the law.

To be sure, common law claims against liquor licensees are not cognizable "because the area of license liability is preempted by [Iowa Code]

section 123.92." *Ballard v. Hazel's Blue Sky*, 653 N.W.2d 609, 611 (Iowa 2002) (citing *Nutting v. Zieser*, 482 N.W.2d 424, 426 (Iowa 1992)). Section 123.92(1)(a) provides:

> 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* . . . 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.) But Flanagan conceded he was not a licensee, and Rooker asserts his common law claim against Flanagan as a social host.

"By its terms, section 123.49 ends the 'social host liability' that was previously recognized in *Clark v. Mincks*, 364 N.W.2d 226, 231 (Iowa 1985)." *Brenneman v. Stuelke*, 654 N.W.2d 507, 508 (Iowa 2002). Iowa Code section 123.49(1) provides:

> a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection *is not civilly liable* to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer.
>
> b. The general assembly declares that this subsection shall be interpreted so that the holding of *Clark v. Mincks*, 364 N.W.2d 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, wine, or beer rather than the serving of alcoholic beverages, wine, or beer as the proximate cause of injury inflicted upon another by an intoxicated person.

(Emphasis added.)

But, social host liability is still recognized for the furnishing of alcoholic beverages to underage drinkers. *Brenneman*, 654 N.W.2d at 509 (citing

Garofalo v. Lambda Chi Alpha Fraternity, 616 N.W.2d 647, 653 (Iowa 2000); *Sage v. Johnson*, 437 N.W.2d 582, 584-85 (Iowa 1989); *Blesz v. Weisbrod*, 424 N.W.2d 451, 452 (Iowa 1988)). Liability in these cases, as here, was predicated on the violation of statutory law in the furnishing of liquor to underage persons. *Id*. Iowa Code section 123.47(1) states: "A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that person to be under legal age." Rooker alleged he was an underage drinker when provided alcoholic beverages by Flanagan.

In *Sage v. Johnson*, 437 N.W.2d 582 (Iowa 1989), the court was faced with the question of "whether an underage drinker, a 'minor' for our purposes, may sue a social host in a common law action for injuries arising out of his own intoxication." *Sage*, 437 N.W.2d at 582. The court held:

> A minor consumer of alcoholic beverages should not automatically be precluded from recovering damages resulting from the effects of the alcohol. Such consumers, particularly those who are very young or immature, cannot be said to have been so negligent or to have assumed so much of the risk involved that, as a matter of law, they should be denied recovery. The extent and effect of such a plaintiff's culpability should be a question of fact just as it is in every other negligence case.
>
> Accordingly, we hold that a minor injured as the result of consuming alcoholic beverages furnished in violation of Iowa Code section 123.47 is not necessarily precluded from pursuing a [common law] claim against the person furnishing the alcohol, but that such a claim is subject to the comparative fault provisions of chapter 668.

Id. at 584-85.

The legislature has not made any changes in response to the court's holding in *Sage*. Further, upon our review of subsequent cases, we find the court has held to its conclusion in *Sage* that a common law negligence suit is

permissible against a non-licensee or non-permittee under those limited circumstances expressed in *Sage*. *See Brenneman*, 654 N.W.2d at 508 (rejecting common law claim against a social host where no statutory violations were alleged); *Ballard*, 653 N.W.2d at 610 (holding minor's estate's claims against a bar characterized as a "liquor licensee" was "preempted by section 123.92," but noting it did not consider any claim against the bar's owner "individually, as a [non-licensee] because that theory ha[d] not been asserted on appeal"); *Garofalo*, 616 N.W.2d at 652 (stating that a violation of section 123.47A will support a common law cause of action by the underage person against the person furnishing the alcohol); *Hoth*, 548 N.W.2d at 152 (rejecting a minor's common law claim against a bar owner characterized as a "liquor licensee"); *Summerhays*, 509 N.W.2d at 749 (holding that a bar owner, individually, was immune from liability as a social host under section 123.49(1)(a) where the intoxicated injured plaintiff was an adult, and that a section 123.92 action did not attach to him because he was neither a licensee or permittee); *Fullmer v. Tague*, 500 N.W.2d 432, 436 (Iowa 1993) (permitting a common law negligence claim against a minor who bought the alcohol and joined in the party "all the while knowing (and observing) that underage friends were drinking from the keg," and rejecting the minor's claim that section 123.47 did not apply to minors serving minors); *Nutting*, 482 N.W.2d at 424 (rejecting a minor's suit against a bar owner characterized as "a liquor licensee doing business as" a bar); *Bauer v. Cole*, 467 N.W.2d 221, 224 (Iowa 1991) (concluding a civil action based on a violation of section 123.47 was permissible, but "plaintiffs must show that defendants acted with knowledge in supplying" alcohol to a minor)).

We note the supreme court's ruling in *Hoth* is distinguishable from the case at hand, and the district court's reliance upon it was therefore misplaced. In *Hoth*, the bar owner was a "licensee" and, following its previous decisions, the supreme court determined the dramshop statute preempted the plaintiff's common law claim against a licensee. *Hoth*, 548 N.W.2d at 152. Such is not the case here. Here, Flanagan is an individual, not a licensee.

In addition to *Hoth*, Flanagan asserts claims similar to Rooker's have been rejected by the supreme court in other cases, citing *Ballard*, 653 N.W.2d at 610; *Nutting*, 482 N.W.2d at 424; *Fuhrman*, 398 N.W.2d at 807; and *Connolly v. Conlan*, 371 N.W.2d 832, 833 (Iowa 1985). All are distinguishable from the case at hand—the defendant in each case was a licensee. *See Ballard*, 653 N.W.2d at 610; *Nutting*, 482 N.W.2d at 424; *Fuhrman*, 398 N.W.2d at 810 (Schultz, J. dissenting); and *Connolly*, 371 N.W.2d at 832-33.

Additionally, upon a close reading of the above cases, and the applicable provisions of the statute, we conclude a person who is not a licensee or permittee, regardless of whether that person is a principal of a corporation that actually holds the license or permit, is not protected by the provisions of the dramshop act.

> By its terms, the dramshop statute extends liability only to liquor licensees and permittees. *See* Iowa Code § 123.92. Steven Kayser [the bar's owner and corporate president of licensee Steven R. Kayser, Inc.] is neither a licensee nor a permittee. Hence the cause of action stated in section 123.92 does not attach to him.

Summerhays, 509 N.W.2d at 752. Similarly, the protections of the dramshop act extend only to Flanagan Corporation, not to Flanagan.

For purposes of summary judgment, it was not disputed that Flanagan gave alcoholic beverages to Rooker, an underage drinker. Rooker asserted Flanagan violated section 123.47(1), not section 123.92. Based upon the supreme court's holdings in the various cases cited above, we conclude Rooker presented sufficient facts to avoid summary judgment. It matters not that Flanagan was the Bar's owner because he conceded he was a non-licensee for purposes of summary judgment. Had Rooker not been a minor, *Summerhays*, 509 N.W.2d at 749 (holding that a bar owner, individually, was immune from liability as a social host under section 123.49(1)(a) where the intoxicated injured plaintiff was an adult), would control here. Had Rooker not asserted Flanagan provided alcoholic beverages to a minor in violation of section 123.47, *Brenneman*, 654 N.W.2d at 508 (rejecting a minor's claim against a social host where the plaintiff did not allege any statutory violation), would apply here. Had Rooker asserted that Flanagan was a licensee, clearly *Nutting*, 482 N.W.2d at 424 (holding the dramshop act preempted common law claims against licensees) would apply. Because, for purposes of the summary judgment motion, Flanagan admitted he was a non-licensee, and he gave Rooker, an underage drinker, alcoholic drinks, we conclude the district court erred in dismissing Rooker's common law negligence claims against Flanagan individually. We therefore reverse and remand for reinstatement of Rooker's common law negligence claims against Flanagan individually and for further proceedings.

REVERSED AND REMANDED.