

**IN THE COURT OF APPEALS OF IOWA**

No. 9-101 / 08-0833  
Filed March 11, 2009

**MICHAEL H. DAVIS,**  
Plaintiff-Appellant,

**vs.**

**R&D DRIFTWOOD, INC.,**  
**d/b/a THE DRIFTWOOD INN,**  
Defendant-Appellee.

---

Appeal from the Iowa District Court for Lee (South) County, Mary Ann Brown, Judge.

Michael Davis appeals from a district court ruling dismissing his dram shop action. **REVERSED AND REMANDED.**

Matthew M. Boles, Robert P. Montgomery, and Brandon Brown of Parrish, Kruidenier, Dunn, Boles, Gribble, Parrish, Gentry & Fisher, L.L.P., Des Moines, for appellant.

Bruce L. Walker of Phelan, Tucker, Mullen, Walker, Tucker & Gellman, L.L.P., Iowa City, for appellee.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

**DOYLE, J.**

Michael Davis appeals from a district court ruling dismissing his dram shop action. He contends the district court erred in ruling he had not complied with the applicable statute of limitations. We reverse and remand.

***I. Background Facts and Proceedings.***

On September 1, 2005, Michael Davis was a patron at The Driftwood Lounge in Keokuk, Iowa. While in the establishment, Davis was assaulted and stabbed multiple times by Percy Whitt, another patron in The Driftwood Lounge. Davis alleges Whitt was served alcoholic beverages by The Driftwood Lounge to the extent that the employees of the establishment knew or should have known Whitt was intoxicated. He alleged that as a result of the assault, he suffered injuries and damages.

On January 13, 2006, Davis served a notice via certified mail to The Driftwood Lounge's insurance carrier of his intention to bring a dram shop action against The Driftwood Lounge pursuant to Iowa Code section 123.92 (2005). Davis then filed his dram shop suit on September 12, 2007. The suit was filed more than two years from the date of the incident, but less than two years from the date of service of the notice.

The Driftwood Lounge raised the statute of limitations defense in its answer and later filed a motion for summary judgment asserting Davis's suit was barred by the applicable statute of limitations, Iowa Code section 614.1(2), because the suit was not filed within two years of the incident. In his resistance, Davis argued the time to sue began to accrue from the notice date, not the date of injury, and that his suit was therefore timely filed.

At the hearing on the motion, it appeared that the parties agreed for the court to consider The Driftwood Lounge's motion to be a motion to dismiss, and the court treated it as such. The court found that:

Iowa Code section 123.93 does not take itself out of the general statute of limitations provisions of Iowa Code section 614.1(2). Iowa Code section 614.1(2) requires that actions brought based upon injury to person be filed within two years of when the cause accrues.

In addressing Davis's accrual-from-the-date-of-notice argument, the court found "[b]ecause no such additional extension was included in the statute for extending the period of time in which the lawsuit can be brought, no such additional time exists." The court concluded the statute of limitations for filing Davis's lawsuit expired September 1, 2007. Because the suit was filed after that date, the court granted the motion to dismiss.

Davis appeals.

## ***II. Scope and Standard of Review.***

A motion to dismiss may be granted based on the statute of limitations. *Clark v. Miller*, 503 N.W.2d 422, 424 (Iowa 1993). "[W]hen it is obvious from the uncontroverted facts shown on the face of the challenged petition that the claim for relief was barred when the action was commenced, the defense may properly be raised by a motion to dismiss." *Rieff v. Evans*, 630 N.W.2d 278, 289 (Iowa 2001) (citation omitted). "We review the district court's order dismissing the action for errors at law." *Clark*, 503 N.W.2d at 424; see also Iowa R. App. P. 6.4; *Mlynarik v. Bergantzel*, 675 N.W.2d 584, 585-86 (Iowa 2004).

### **III. Discussion.**

Davis argues his action accrued from the date his section 123.93 notice was served. The Driftwood Lounge argues the action accrued from the date of Davis's injury. The crux of this appeal is: When does a dram shop action accrue?

Like many states, Iowa has adopted a dram shop act. *Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200, 202 (Iowa 2002). "These statutes are designed to give parties injured by an intoxicated person a right of action against the persons who sold and served the intoxicating liquors." *Id.* (citations omitted). It has been often noted that "dram shop statutes should be liberally construed in order to further their purpose of discouraging serving excessive liquor to patrons." *Shasteen v. Sojka*, 260 N.W.2d 48, 50 (Iowa 1977) (citing *Rigby v. Eastman*, 217 N.W.2d 604, 608 (Iowa 1974)).

Our dram shop statute created liability where none existed at common law. *Grovijohn*, 643 N.W.2d at 203. (citation omitted). The statute provides, in relevant part:

Any person who is injured . . . 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. If the injury was caused by an intoxicated person, a permittee or licensee may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the person.

Iowa Code § 123.92. The statute is designed to “place a hand of restraint” on those authorized to sell and serve intoxicating liquors. *Smith v. Shagnasty’s, Inc.*, 688 N.W.2d 67, 72 (Iowa 2004) (citations omitted).

The statute provides the exclusive remedy against a liquor licensee or permittee for violation of the statute. *Grovijohn*, 643 N.W.2d at 203. The first step in making a dram shop claim requires the injured party to notify the dram shop or its insurance carrier of his or her intent to sue under the dram shop statute. *Grovijohn*, 643 N.W.2d at 202. The notice provision provides:

Within six months of the occurrence of an injury, the injured person shall give written notice to the licensee or permittee or such licensee's or permittee's insurance carrier of the person's intention to bring an action under this section, indicating the time, place and circumstances causing the injury.

Iowa Code § 123.93.

Our dram shop statute does not contain any statute of limitations provisions. We therefore look to the general statute of limitations of actions set forth in Iowa Code chapter 614. Section 614.1 provides, in relevant part:

Actions may be brought within the times herein limited, respectively, *after their causes accrue*, and not afterwards, except when otherwise specially declared:

. . . .  
Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years.

Iowa Code § 614.1(2) (emphasis added).

Generally, “a cause of action accrues when the aggrieved party has a right to institute and maintain a suit.” *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457, 462 (Iowa 1984); *Chrischilles v. Griswold*, 260 Iowa 453, 461, 150 N.W.2d 94, 99 (1967), *superseded by statute*, 1975 Iowa Acts ch. 239, § 26, as

recognized in *Langner v. Simpson*, 533 N.W.2d 511, 517 (Iowa 1995), see also *Rathje v. Mercy Hosp.*, 745 N.W.2d 443, 448 (Iowa 2008). The right exists when “events have developed to a point where the injured party is entitled to a legal remedy.” *Sandbulte*, 343 N.W.2d at 462; *Stoller Fisheries, Inc. v. American Title Ins. Co.*, 258 N.W.2d 336, 341 (Iowa 1977).

As pointed out in *Grovijohn*, providing written notice pursuant to section 123.93 is the first step in bringing a dram shop action. *Grovijohn*, 643 N.W.2d at 202. It is a condition imposed by the legislature. *Id.* at 202-03. “Since the legislature created this cause of action, it follows the legislature may fix the conditions under which it is to be enforced.” *Id.* at 203. “When a statute supplies a specific notice requirement as a condition precedent to suit, any claims under that statute are barred when notice has not been timely given.” *Id.* at 204. Without such notice, one has no right to a legal remedy under the statute—one has no right to institute and maintain a suit.

Because the legislature mandated that no right exists to institute or maintain a dram shop action until timely notice is given, it follows the action does not accrue until timely notice under section 123.93 is given. Therefore, Davis’s action did not accrue until he served timely notice pursuant to section 123.93 on January 10, 2006. Since his lawsuit was filed within two years of the date of notice, his suit was timely filed. We reverse the district court’s dismissal and remand for further proceedings.

**REVERSED AND REMANDED.**