

SUPREME COURT OF OREGON

Deckard v. Bunch

358 Or. 754 (2016) · No. S062948 · Decided March 10, 2016

SUMMARY

The Oregon Supreme Court held that ORS 471.565(2) does not create an independent statutory cause of action against a social host who serves alcohol to a visibly intoxicated guest. Instead, the statute limits common-law liability, which requires proof that the host knew or should have known of an unreasonable risk of harm when serving the guest. The court reversed the Court of Appeals and affirmed the circuit court’s judgment.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Brewer, J.; Balmer, Chief Justice; Kistler, Justice; Walters, Justice; Landau, Justice; Baldwin, Justice; Brewer, Justice; Nakamoto, Justice
JURISDICTION	Oregon
DECIDED	March 10, 2016
DOCKET	S062948
DISPOSITION	reversed
PROCEDURAL POSTURE	Petitioner sought review of the Court of Appeals' reversal of a circuit-court dismissal of plaintiff's statutory liability claim under ORCP 21 A(8).
STANDARD OF REVIEW	On review of dismissal under ORCP 21 A(8), the court accepted all well-pleaded allegations as true and gave plaintiff the benefit of favorable inferences.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jeffrey N. King, as Personal Representative of the Estate of Roland King, Deceased v. Casey J. Deckard

TOPICS

- statutory interpretation
- legislative history
- negligence
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether ORS 471.565(2) creates an independent statutory right of action against a social host who furnishes alcohol to a visibly intoxicated guest who subsequently injures a third party.
2. Whether the 1979 enactment and later amendments to the statute eliminated the common-law negligence requirement that the defendant knew or should have known of an unreasonable and foreseeable risk of harm.
3. Whether the trial court properly dismissed plaintiff's statutory liability claim under ORCP 21 A(8).

HOLDINGS

1. ORS 471.565(2) does not provide an independent statutory right of action against a social host or commercial alcohol provider for serving alcohol to a visibly intoxicated person.
2. A plaintiff pursuing common-law negligence liability under ORS 471.565 must still establish that, when the defendant served the visibly intoxicated person, the defendant knew or should have known of an unreasonable risk of harm to a third party and that the relevant harm was reasonably foreseeable.
3. The circuit court properly dismissed plaintiff's statutory liability claim under ORCP 21 A(8), because ORS 471.565(2) did not provide the independent cause of action alleged.

KEY QUOTATIONS

“In synthesis, to prove a claim for statutory liability, the plaintiff must establish that: (1) a statute imposed a duty on the defendant; (2) the legislature expressly or impliedly intended to create a private right of action for violation of the duty; (3) the defendant violated the duty; (4) the plaintiff is a member of the group that the legislature intended to protect by imposing the duty; and (5) the plaintiff suffered an injury that the legislature intended to prevent by creating the duty.” (at 759-60)

“In short, the 1979 legislature ultimately enacted compromise legislation that rejected both a gross negligence standard and a negligence per se standard for alcohol providers and, as a middle ground, endorsed this court’s common-law negligence standard in Campbell.” (at 788-89)

“ORS 471.565(2) does not provide a right of action against alcohol providers that has elements independent of a claim for common-law negligence.” (at 793)

FACTUAL BACKGROUND

Bunch consumed several alcoholic drinks at social host Roland King’s home shortly before her vehicle crossed the center line and collided head-on with plaintiff’s vehicle. Plaintiff alleged serious injuries and claimed that King negligently served or provided alcohol to Bunch while she was visibly intoxicated, when it was reasonably foreseeable that she would drive and injure others. Plaintiff asserted both common-law negligence and an independent statutory liability claim under ORS 471.565(2).

PROCEDURAL HISTORY

Plaintiff sued the driver, Diana L. Bunch, and the personal representative of social host Roland King after Bunch, allegedly intoxicated after consuming alcohol at King's home, caused a motor-vehicle collision injuring plaintiff. The circuit court dismissed plaintiff's statutory liability claim for failure to state ultimate facts sufficient to constitute a claim, and the case proceeded to trial only on common-law negligence, resulting in a defense verdict. The Court of Appeals reversed the dismissal, concluding that ORS 471.565(2) created statutory liability for social hosts. The Oregon Supreme Court reversed the Court of Appeals and affirmed the circuit-court judgment.

DISPOSITION

reversed

CASES CITED

- Stringer v. Car Data Systems, Inc., 314 Or. 576, 584, 841 P.2d 1183 (1992), reconsideration denied, 315 Or. 308 (1993)
- Campbell v. Carpenter, 279 Or. 237, 243-44, 566 P.2d 893 (1977)
- Doyle v. City of Medford, 356 Or. 336, 344-45, 337 P.3d 797 (2014)
- Nearing v. Weaver, 295 Or. 702, 670 P.2d 137 (1983)
- Bellikka v. Green, 306 Or. 630, 636, 650, 762 P.2d 997 (1988)
- State v. Gaines, 346 Or. 160, 171-73, 206 P.3d 1042 (2009)
- Fazzolari v. Portland School District No. 1J, 303 Or. 1, 17, 734 P.2d 1326 (1987)
- Gattman v. Favro, 306 Or. 11, 15, 22-24, 757 P.2d 402 (1988)
- Stachniewicz v. Mar-Cam Corporation, 259 Or. 583, 585-88, 488 P.2d 436 (1971)
- Davis v. Billy's Con-Teena, Inc., 284 Or. 351, 356 n. 4, 587 P.2d 75 (1978)
- Wiener v. Gamma Phi, ATO Frat., 258 Or. 632, 639-44, 485 P.2d 18 (1971)
- Rappaport v. Nichols, 31 N.J. 188, 156 A.2d 1, 8-9 (1959)
- Chartrand v. Coos Bay Tavern, 298 Or. 689, 694-97, 696 P.2d 513 (1985)
- Sager v. McClenden, 296 Or. 33, 37-40, 672 P.2d 697 (1983)
- Solberg v. Johnson, 306 Or. 484, 487-89, 760 P.2d 867 (1988)
- Hawkins v. Conklin, 307 Or. 262, 264-68, 768 P.2d 66 (1988)
- Grady v. Cedar Side Inn, Inc., 330 Or. 42, 44-49, 997 P.2d 197 (2000)
- Fulmer v. Timber Inn Restaurant and Lounge, Inc., 330 Or. 413, 416-19, 427, 9 P.3d 710 (2000)
- ODOT v. Alderwoods (Oregon), Inc., 358 Or. 501, 520 n. 8 (2015)
- State v. Christian, 354 Or. 22, 40, 307 P.3d 429 (2013)
- Abraham v. T. Henry Construction, Inc., 350 Or. 29, 35 n. 5, 249 P.3d 534 (2011)
- Barnum v. Williams, 264 Or. 71, 74-79, 504 P.2d 122 (1972)
- Resser v. Boise-Cascade Corporation, 284 Or. 385, 392, 587 P.2d 80 (1978)

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