

SUPREME COURT OF TENNESSEE

Biscan v. Brown

160 S.W.3d 462 (Tenn. 2005) · Decided March 30, 2005

SUMMARY

The Tennessee Supreme Court held that an adult who hosts a party for minors and knows alcohol will be consumed may owe the minor guests a duty of care, even if the adult does not furnish alcohol. The court upheld the exclusion of evidence concerning the injured minor's prior alcohol-related experiences and juvenile adjudications. It also held that Tennessee's alcoholic-beverage statute precluded allocating fault to a minor who furnished beer to the intoxicated driver.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Tennessee                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | E. Riley Anderson, J.; Janice M. Holder, J.; William M. Barker, J.; Allen W. Wallace, Sp. J.                                                                                                                                                                                                                                                                                                                                                                              |
| JURISDICTION          | Tennessee                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DECIDED               | March 30, 2005                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Plaintiffs prevailed in negligence actions arising from an alcohol-related automobile accident. The trial court excluded evidence of the minor plaintiff's prior alcohol experiences and juvenile adjudications, directed a verdict precluding allocation of fault to her sister who furnished alcohol, and denied the adult host's motion for summary judgment on duty grounds. The Tennessee Court of Appeals affirmed, and the Tennessee Supreme Court granted review. |
| STANDARD OF REVIEW    | Evidentiary rulings are reviewed for abuse of discretion. Directed verdicts are reviewed de novo under the same standard applied by the trial court and are proper only when the evidence permits but one conclusion. Summary-judgment rulings are reviewed de novo, with the evidence and reasonable inferences viewed in the light most favorable to the nonmoving party.                                                                                               |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| PARTIES               | Franklin H. Brown, Paul N. Worley v. Jennifer L. Biscan, Robert Biscan                                                                                                                                                                                                                                                                                                                                                                                                    |

## TOPICS

dram shop liability

duty of care

negligence

evidence

statutory interpretation

## PRACTICE AREAS

torts

negligence

evidence

alcohol liability

appellate procedure

## QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by excluding evidence of Jennifer Biscan's prior alcohol experiences and juvenile court citations.
2. Whether Tennessee Code Annotated sections 57-10-101 and 57-10-102 precluded allocating fault to Dana Biscan for furnishing alcohol to Brown, including under a negligence-per-se theory.
3. Whether an adult who hosts a party for minors, knows alcohol will be consumed, and permits the consumption has a common-law duty of care to protect the minor guests.
4. Whether the adult host voluntarily assumed a duty to protect the minor guests from the consequences of drinking and driving.

## HOLDINGS

1. The evidence was relevant to Jennifer's capacity, knowledge, and experience in evaluating the risk of riding with an intoxicated driver, but the trial court acted within its discretion under Tennessee Rules of Evidence 403 by excluding it.
2. The trial court properly excluded Jennifer's juvenile court adjudications in this civil action because Tennessee Code Annotated section 37-1-133(b) bars use of juvenile-court dispositions and evidence outside juvenile court, subject to an inapplicable criminal-sentencing exception.
3. Tennessee Code Annotated section 57-10-101 precludes allocating fault to a person who furnishes alcohol when the claimed injury results from an intoxicated person's consumption; Dana Biscan was therefore not at fault as a matter of law, and the directed verdict was proper.
4. Dana Biscan could not be liable under a negligence-per-se theory because, although furnishing alcohol to a minor may violate criminal statutes, Tennessee Code Annotated section 57-10-101 legislatively removes proximate cause for civil liability based on furnishing alcohol.
5. An adult who hosts a party for minors, knows in advance that alcohol will be consumed, and knowingly permits and facilitates that consumption has a common-law duty to exercise reasonable care to protect the minor guests from harm, including harm from drinking and driving, even if the adult did not furnish the alcohol.
6. The adult host voluntarily assumed a duty to the minor guests by undertaking to require drinking guests to remain overnight, monitor the party, and protect guests from drinking and driving; failure to enforce the undertaking did not constitute abandonment as a matter of law.

## KEY QUOTATIONS

*“We hold that the defendant adult host had such a duty of care even though he did not furnish any alcohol.”* (466)

*“The clear language of the statute admits of only one conclusion: that the legislature intended to shield persons such as Dana who “furnish” alcohol in a social setting.”* (473)

*“Because he knowingly permitted and facilitated the consumption of alcohol by minors, an illegal act, Worley had a duty to exercise reasonable care to prevent his guests from harming third persons or from befalling harm themselves.”* (482)

*“One who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully.”* (483)

## FACTUAL BACKGROUND

Sixteen-year-old Jennifer Biscan was severely injured when she rode in a car driven by sixteen-year-old Franklin Brown after both attended a party hosted by adult Paul Worley for Worley's daughter. Worley did not provide alcohol but expected minors to bring and consume it; he announced a rule that guests who drank would stay overnight, but he did not effectively enforce the rule. Brown drank beer obtained from Jennifer's sister Dana Biscan, left the party with Jennifer, and crashed into a guardrail while intoxicated. Jennifer suffered permanent brain injuries and other serious physical impairments.

## PROCEDURAL HISTORY

Jennifer Biscan and Robert Biscan sued Franklin Brown, the intoxicated teenage driver, and Paul Worley, the adult who hosted the party. A jury allocated 70% fault to Brown, 15% to Worley, and 15% to Jennifer, and awarded damages. The trial court entered rulings concerning evidentiary exclusions, Dana Biscan's statutory protection from fault allocation, and Worley's duty of care. The Court of Appeals affirmed in all respects, and the Supreme Court affirmed the result on separate grounds.

## DISPOSITION

affirmed

## CASES CITED

- Mercer v. Vanderbilt Univ., Inc., 134 S.W.3d 121, 131 (Tenn. 2004)
- Eldridge v. Eldridge, 42 S.W.3d 82, 85 (Tenn. 2001)
- Eaton v. McLain, 891 S.W.2d 587, 590, 592 (Tenn. 1994)
- Brookins v. The Round Table, Inc., 624 S.W.2d 547, 550 (Tenn. 1981)
- State v. Saylor, 117 S.W.3d 239, 247 (Tenn. 2003)
- Otis v. Cambridge Mut. Fire Ins. Co., 850 S.W.2d 439, 442 (Tenn. 1992)
- Planned Parenthood of Middle Tenn. v. Sundquist, 38 S.W.3d 1, 24 (Tenn. 2000)
- Gaston v. Tenn. Farmers Mut. Ins. Co., 120 S.W.3d 815, 819 (Tenn. 2003)
- Childress v. Currie, 74 S.W.3d 324, 328 (Tenn. 2002)

- Cecil v. Hardin, 575 S.W.2d 268, 270-71 (Tenn. 1978)
- Bradshaw v. Daniel, 854 S.W.2d 865, 868, 870-72 (Tenn. 1993)
- Worley v. Weigels, Inc., 919 S.W.2d 589, 593-94 (Tenn. 1996)
- Burns v. City of Nashville, 132 Tenn. 429, 178 S.W. 1053, 1054 (1915)
- Childress v. Sams, 736 S.W.2d 48 (Mo. 1987)
- Elizondo v. Ramirez, 753 N.E.2d 1123, 1130 (Ill. App. Ct. 2001)
- Koehnen v. Dufuor, 590 N.W.2d 107, 112-13 (Minn. 1999)
- Carroll v. Whitney, 29 S.W.3d 14, 17-21 (Tenn. 2000)
- Dotson v. Blake, 29 S.W.3d 26, 29 (Tenn. 2000)
- Martin v. Lear Corp., 90 S.W.3d 626, 631-32 (Tenn. 2002)
- Ridings v. Ralph M. Parsons Co., 914 S.W.2d 79 (Tenn. 1996)
- Snyder v. LTG Lufttechnische GmbH, 955 S.W.2d 252, 256 (Tenn. 1997)
- Turner v. Jordan, 957 S.W.2d 815, 818 (Tenn. 1997)
- Coln v. City of Savannah, 966 S.W.2d 34, 39 (Tenn. 1998)
- Doe v. Linder Constr. Co., 845 S.W.2d 173, 178 (Tenn. 1992)
- McClung v. Delta Square Ltd. P'ship, 937 S.W.2d 891 (Tenn. 1996)
- Staples v. CBL & Assocs., Inc., 15 S.W.3d 83 (Tenn. 2000)
- Burroughs v. Magee, 118 S.W.3d 323, 329, 332 (Tenn. 2003)
- Stewart v. State, 33 S.W.3d 785, 793 (Tenn. 2000)

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