

NEW JERSEY SUPERIOR COURT, APPELLATE DIVISION

Kelly v. Gwinnell, 190 N.J. Super. 320

463 A.2d 387 (N.J. Super. Ct. App. Div. 1983) · Decided June 29, 1983

SUMMARY

This New Jersey Appellate Division case addresses whether social hosts may be held liable for injuries caused by adult guests who become intoxicated at their home. The court affirmed summary judgment for the defendant hosts, holding that no cause of action exists against social hosts for serving alcohol to adults whose subsequent negligent acts injure third parties. The decision distinguishes prior New Jersey law imposing liability on tavern owners and social hosts who serve minors, and notes that attempts to create such liability in other jurisdictions were often abrogated by legislation.

CASE DETAILS

COURT	New Jersey Superior Court, Appellate Division
WRITING FOR THE COURT	Ard; King; McElroy
JURISDICTION	New Jersey
DECIDED	June 29, 1983
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from grant of summary judgment in favor of defendants-respondents Zaks.
STANDARD OF REVIEW	Summary judgment standard; court reviews legal determination de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Marie E. Kelly; Donald C. Gwinnell; Paragon Corp. v. Joseph J. Zak; Catherine Zak

TOPICS

- negligence
- duty of care
- dram shop liability
- proximate cause
- personal injury
- summary judgment

PRACTICE AREAS

- Torts
- Alcohol Liability
- Civil Procedure

QUESTIONS PRESENTED

1. Whether a cause of action exists against social hosts for the subsequent negligent acts of adults who consume liquor on the social host's premises.

HOLDINGS

1. A social host who furnishes alcoholic beverages to another person is not liable for damages resulting from the latter's intoxication.

KEY QUOTATIONS

"We hold that a social host who furnishes alcoholic beverages to another person is not liable for damages resulting from the latter's intoxication." (326)

"Our determination that a cause of action does not exist against a social host for serving intoxicating liquors to adults whose subsequent negligent acts injure innocent third parties is not based on the law of proximate cause." (325)

"If the patron is a minor or is intoxicated when served, the tavern keeper's sale to him is unlawful; and if the circumstances are such that the tavern keeper knows or should know that the patron is a minor or is intoxicated, his service to him may also constitute common law negligence." (322)

FACTUAL BACKGROUND

Donald Gwinnell, a painting contractor, left his home to assist Joseph Zak, a subcontractor, whose truck was mired in mud. After unsuccessful efforts, Gwinnell drove Zak home. Zak invited Gwinnell inside and offered him a drink. Gwinnell had not eaten since lunchtime and consumed two drinks, each containing a shot of liquor. Zak did not perceive Gwinnell as drunk. Gwinnell left around 8:45 p.m. and later was involved in a head-on collision with plaintiff Marie Kelly. A chemist later estimated Gwinnell's blood alcohol at .286% and that he would have shown unmistakable symptoms of drunkenness by 8:30 p.m.

PROCEDURAL HISTORY

Plaintiff Kelly sued driver Gwinnell and vehicle owner Paragon Corp. after a head-on collision. Gwinnell and Paragon filed a third-party complaint against the Zaks; plaintiff amended her complaint to add the Zaks as direct defendants. The Zaks moved for summary judgment, which was granted. Plaintiffs appealed.

DISPOSITION

affirmed

CASES CITED

- Rappaport v. Nichols, 31 N.J. 188 (1959)
- Linn v. Rand, 140 N.J. Super. 212 (App.Div. 1976)
- Coulter v. Superior Court of San Mateo County, 21 Cal. 3d 144 (1978)
- Cory v. Shierloh, 29 Cal.3d 430 (1981)
- Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity, 258 Or. 632 (1971)

- Miller v. Moran, 96 Ill. App.3d 596 (1981)
- Paul v. Hogan, 56 A.D.2d 723 (N.Y. App. Div. 1977)
- Klein v. Raysinger, 302 Pa.Super. 248 (1982)
- Cartwright v. Hyatt Corp., 460 F. Supp. 80 (D.D.C. 1978)
- Olsen v. Copeland, 90 Wis.2d 483 (1979)
- Profitt v. Canez, 118 Ariz. 235 (1977)
- Carr v. Turner, 238 Ark. 889 (1965)
- Meade v. Freeman, 93 Idaho 389 (1969)
- State v. Hatfield, 197 Md. 249 (1951)
- Runge v. Watts, 180 Mont. 91 (1979)
- Holmes v. Circo, 196 Neb. 496 (1976)
- Hamm v. Carson City Nugget, Inc., 85 Nev. 99 (1969)
- Marchiondo v. Roper, 90 N.M. 367 (1977)
- Phillips v. Derrick, 36 Ala.App. 244 (1951)
- Nelson v. Steffens, 170 Conn. 356 (1976)
- Keaton v. Kroger Co., 143 Ga. App. 23 (1977)
- Edgar v. Kajet, 84 Misc.2d 100 (1975)
- Griffin v. Sebek, 90 S.D. 692 (1976)
- Parsons v. Jow, 480 P.2d 396 (Wyo. 1971)