

SUPREME COURT OF MICHIGAN

Davis v. Terrien, 364 Mich. 82

110 N.W.2d 754 (1961) · No. No. 39, Calendar No. 48,837 · Decided September 22, 1961

SUMMARY

The Michigan Supreme Court considered whether evidence supported a jury finding that defendants unlawfully furnished beer to an intoxicated patron who later assaulted the plaintiff under Michigan's civil damage act. The court held that testimony concerning the patron's conduct and consumption constituted competent evidence for the jury and reversed the judgment notwithstanding the verdict.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Dethmers, C.J.; Carr, J.; Kelly, J.; Talbot Smith, J.; Black, J.; Edwards, J.; Kavanagh, J.; Souris, J.
JURISDICTION	Michigan
DECIDED	September 22, 1961
DOCKET	No. 39, Calendar No. 48,837
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After a jury returned a \$20,000 verdict for the plaintiff, the trial court entered judgment notwithstanding the verdict for the defendants. The plaintiff appealed.
STANDARD OF REVIEW	On review of a judgment notwithstanding the verdict, the evidence must be viewed in the light most favorable to the plaintiff. The reviewing court does not weigh the testimony; it determines whether competent evidence existed from which the jury could find for the plaintiff.
PRECEDENTIAL VALUE	Published Michigan Supreme Court opinion
PARTIES	Davis v. Terrien

TOPICS

- dram shop liability
- personal injury
- evidence
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence, viewed in the light most favorable to Davis, was sufficient to allow the jury to find that Johnson was intoxicated when defendants' employee served him beer and when he injured Davis.
2. Whether the trial court properly entered judgment notwithstanding the verdict rather than submitting the disputed intoxication and causation issues to the jury.

HOLDINGS

1. The plaintiff bears the burden of proving that the patron was intoxicated when the liquor was furnished, intoxicated when the injury occurred, and that the unlawful furnishing was causally connected to the plaintiff's injuries.
2. The evidence was competent and sufficient to submit to the jury the questions whether Johnson was intoxicated when served and when he assaulted Davis; the trial court therefore erred in entering judgment notwithstanding the verdict.

KEY QUOTATIONS

"It is not for us to weigh the testimony but to determine, from a most favorable view of the evidence for plaintiff, whether there was competent proof to go to the jury that Johnson was intoxicated at those times."
(364 Mich. at 84)

"Even though the lone expression of plaintiff's opinion of Johnson's state of intoxication, unsupported by testimony as to the indicia thereof, were to be held insufficient, it seems to us that the above recited items of testimony as to facts, given by plaintiff and by Johnson, sufficed as competent evidence to go to the jury, upon which they might properly make the finding they did." (364 Mich. at 85)

FACTUAL BACKGROUND

Davis was in defendants' tavern when Celestine P. Johnson, a stranger, sat beside him, behaved abusively, and made an immoral proposition. Davis complained to the bartender, who told Johnson that he had had enough to drink and should go home, but the bartender nevertheless served Johnson another beer. Johnson then assaulted Davis, swung him around, and knocked him down. Testimony indicated that Johnson had consumed several beers and supported an inference that he was intoxicated both when served and when he assaulted Davis.

PROCEDURAL HISTORY

Davis sued under Michigan's civil damage act, alleging that defendants' employee unlawfully served beer to an intoxicated patron, who then assaulted Davis. The jury found for Davis and awarded \$20,000. The trial judge entered judgment notwithstanding the verdict for defendants, concluding that competent evidence did not establish an illegal furnishing of liquor. The Michigan Supreme Court reversed and remanded for entry of judgment on the jury's verdict.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment notwithstanding the verdict and remand for entry of judgment on the jury's \$20,000 verdict, with costs to plaintiff.

CASES CITED

- Wyatt v. Chosay, 330 Mich. 661

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