

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

OPINION

DETHMERS, J.

364 Mich. 82 (1961) 110 N.W.2d 754 DAVIS v. TERRIEN. Docket No. 39, Calendar No. 48,837. Supreme Court of Michigan. Decided September 22, 1961. *83 Albert Lopatin, for plaintiff. Clayton F. Jennings and Fletcher L. Renton, for defendants. DETHMERS, C.J. This action was brought under the civil damage act. CLS 1956, § 436.22, as amended by PA 1958, No 152 (Stat Ann 1959 Cum Supp § 18.993).

Plaintiff charged in his declaration that he had entered defendants' tavern; that while there one of defendants' employees unlawfully served one Celestine P. Johnson with beer while he was intoxicated; that after drinking some of that beer, which contributed further to his intoxication, Johnson, as a result, struck plaintiff and caused him the injuries for which this suit was brought.

A jury returned a verdict of \$20,000 for plaintiff. Having reserved decision on defendants' previous motions for directed verdict, the trial judge entered a judgment non obstante veredicto for defendants on the ground that plaintiff had failed to offer competent evidence of an illegal furnishing of liquor to Johnson by defendants and that the opposite had been proved by undisputed testimony.

Reliance by defense rests largely on Wyatt v. Chosay, 330 Mich. 661, as authority that the burden was on plaintiff to establish that Johnson was intoxicated when he injured plaintiff and also, as constituting the unlawful sale to him, that he was so when defendants sold the liquor to him, and that there was a causal connection between that unlawful sale and plaintiff's injuries.

That is the law. Our *84 opinion in that case sets forth much of the applicable law on this subject. While the burden of proof is on plaintiff, Wyatt and many other cases also hold that on review of a judgment non obstante veredicio against him we must view the testimony in the light most favorable to him.

The disputed question in this case was whether Johnson was intoxicated when defendants' employee sold him the liquor and when he struck plaintiff. There was testimony by Johnson, by the bartender, and by a police officer that he was not. Perhaps it should have been, but apparently was not, believed by the jury. 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.

If so, it was for the jury and not for the court to decide the case. Plaintiff's testimony included the following: 1. That at about 11 p.m., while he was in defendants' tavern, Johnson started to molest him, that he complained of it to defendants' bartender and that the latter told Johnson he had had enough to drink and that he should go home, but that that bartender nevertheless served Johnson with another drink of beer after that.

2. That plaintiff considered Johnson very drunk at that time. 3. That Johnson, a total stranger, came to sit next to him at the bar and insisted on shaking hands with him despite plaintiff's refusal. 4. That Johnson then put his hands on plaintiff's private parts and made an immoral proposition to him. 5. That plaintiff then got up to go because he feared Johnson, whereupon the latter swung him around, assaulted him and knocked him down. *85 Johnson testified that he did not know where he had been on the night in question between 6:30 and 8:30 p.m., but might have been in the Varsity Bar; that he could have arrived at that bar at 8:30 p.m. and that he consumed 4 shells of beer there and ordered 3 beers in defendants' tavern.

He admitted striking plaintiff at that time and place and having called plaintiff a "pimp", explaining that plaintiff looked like one to him. 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.

This case is thus distinguishable from *Wyatt v. Chosay*, in which there was only the opinion testimony of a doctor to support plaintiff's claim of intoxication, the infirmity having consisted of the fact that his opinion had been, as we said (p 671), "based on assumptions rather than on facts established by proof." Reversed and remanded for entry of judgment on the jury's verdict.

Costs to plaintiff. CARR, KELLY, TALBOT SMITH, BLACK, EDWARDS, KAVANAGH, and SOURIS, JJ., concurred.