

OREGON LAW UPDATE

Think Twice About Having a Party: Does BYOB Limit Liability?

From the desk of Jeff Eberhard: What is the key factor in determining whether a social host “served or provided” alcohol to a visibly intoxicated guest, thereby exposing the social host to potential liability under ORS 471.565?

Claims Pointer: The Oregon Court of Appeals held that the key factor to determine whether a social host has “served or provided” alcohol to a visibly intoxicated guest is the amount of control the host had over the alcohol supply. Here, the mere fact that the defendant hosted a party, at his house, and made alcohol available to his guests, was enough to let the case go to a jury to decide if the host had control over the alcohol that was “served or provided” to the intoxicated person.

case in point...

Baker v. Croslin, 264 Or. App. 196; 330 P.3d 698 (2014).

Matthew Croslin (“Croslin”) invited friends to his house to watch the 2010 NBA finals. Among his guests were Tyler Baker (“Baker”), and Tyler Smith (“Smith”). All three men lawfully possessed handguns, and had their handguns with them that night. After consuming large amounts of alcohol, the three men began acting out self-defense scenarios using their guns. The men thought their guns were unloaded at the time; however, Smith’s gun happened to be loaded with a bullet that Smith had obtained from Croslin earlier that evening. While Smith and Baker were acting out a robbery, Smith’s gun discharged and killed Baker. The men had been drinking from Croslin’s home bar, as well as from a bottle of Cockspur rum that Croslin bought, but Baker reimbursed him for.

Baker’s widow and personal representative of his estate (“Plaintiff”) filed a wrongful death action against Smith and Croslin. The complaint alleged that Croslin, the host that night, was negligent in unreasonably serving Smith (the shooter) alcohol while Smith was visibly intoxicated; and that Croslin not only encouraged a “quick draw” game with the guns—but he encouraged Smith to load his gun with hollow point ammunition. Croslin moved for summary judgment arguing, in part, that ORS 471.565(2)(a) bars liability because there was insufficient evidence that Croslin served or provided alcohol to Smith while Smith was visibly intoxicated. On this point, the trial court granted Croslin’s motion and the plaintiff appealed.

ORS 471.565 limits a social host’s liability for harms caused by an intoxicated guest. The statute provides in part that a “social host is not liable for damages caused by intoxicated patrons or guests

unless the plaintiff proves by clear and convincing evidence that: . . . (a) The licensee, permittee or social host served or provided alcoholic beverages to the patron or guest while the patron or guest was visibly intoxicated[.]” ORS 471.565(2)(a) (emphasis added).

In the trial court the case was decided by summary judgment. To obtain reversal of a summary judgment the Court of Appeals need only find minimal evidence that supports the plaintiff’s claim. As a result, the court first concluded that the evidence in the record supported a conclusion that Smith was visibly intoxicated when he consumed his final drink (just before the shooting).

The next issue was whether Croslin “served or provided” alcohol to Smith, the key factor being “the amount of control” that Croslin had over the alcohol. *Wiener v. Gamma Phi ATO Frat*, 258 Or. 632, 639-40, 485 P.2d 18 (1971). In *Wiener v. Gamma Phi ATO Frat*, the plaintiff was injured in a car accident while riding with an intoxicated minor driver returning from a fraternity party. The court in *Wiener* concluded, where a defendant has no control over the supply of alcohol or acts as a “mere conduit” in providing alcohol to those who directly serve it to others, the defendant cannot be liable for permitting that person to become overly intoxicated from that supply. By contrast, if a defendant has control over the alcohol supplied to the visibly intoxicated person, the defendant has “served or provided” the guest with alcohol. The focus on a defendant’s control over the alcohol supply stems from the Oregon Supreme Court’s belief that a person who has control over the alcohol supply is in a position to prevent harm to third parties that could result from further consumption of alcohol by persons who are already intoxicated. *Wiener v. Gamma Phi, ATO Frat.*, 258 Or. 632, 639-40, 643



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case in point...

(1971). Of course, this concept is easier to apply in the context of a bar, but enters the land of grey when it involves a party at a house.

Here, the court found that a jury could decide either way on the issue. The record reflected that the source of Smith's final drink could be from either Croslin's home bar or from a bottle of Cockspur rum that Croslin had purchased for Baker, which Baker later reimbursed Croslin for. If Smith's final drink before the shooting was from Croslin's home bar, the jury could conclude that Croslin had the requisite control over the alcohol supply. In this case, factors supporting such a conclusion include: Croslin was the host of the gathering, the gathering took place at Croslin's house, and Croslin had procured the alcohol that Smith was drinking. By contrast, if Smith's final drink was from the Cockspur rum originally bought for Baker, the jury may find that Baker's reimbursement to Croslin for the rum effectively placed Baker in control of the alcohol and extinguished Croslin's control over the rum.

Ultimately, the court stated the question of who had control over the alcohol supply is one for the trier of fact to determine, not the court. Here, the court concluded that a reasonable inference could be made either way as to whether Croslin had the requisite control over the alcohol supply, and therefore, summary judgment on this issue was inappropriate.



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