

OREGON CASE UPDATE

Social Host Liquor Liability: Dram Shop Limitations Apply to Party Host

case in point...

From the Desk of Jeff D. Eberhard: For a social host or tavern to be liable under Oregon’s Dram Shop statute for injuries resulting from a patron or guest consuming alcohol, the patron or guest must have been “served or provided” alcohol while visibly intoxicated. In the following case, the Oregon Supreme Court was tasked with determining the meaning of the term “provided,” as well as whether a host has a continuous duty to monitor the level of intoxication of a guest. The result may surprise you....

Claims Pointer: In this case involving the shooting death of a social host’s guest by another intoxicated guest, the Oregon Supreme Court held that there may be circumstances under which a social host who makes alcohol available to guests may be liable for injuries caused by that intoxicated guest. Under Oregon’s Dram Shop statute, ORS 471.565, a social host can be liable for having “served or provided” alcohol to a visibly intoxicated guest. According to the Court, liability under the statute turns on the extent to which the social host controls the supply of alcohol and how that control is exercised. Once it is “readily observable” that the guest shows signs of visible intoxication, then the social host has a duty to deny the guest further alcoholic drinks. However, the Court makes clear that a social host does not have a duty to continuously monitor a guest’s level of intoxication. Instead, the duty exists only if the host is present when a visibly intoxicated guest obtains additional drinks when they are “conspicuous,” or “readily observable” by the social host as visibly intoxicated. Additionally, “provided” may include situations where the guest pays for part of the alcohol by giving money to the host or if the host leaves out a jar for guests to contribute to the cost of the party. Finally, although not stated in this opinion, the harm must be foreseeable.

Baker v. Croslin, 359 Or 147 (2016).

Matthew Croslin (“Croslin”) hosted a party at which his guests drank alcohol. Among the attendees were Tyler Baker (“Baker”) and Tyler Smith (“Smith”). Croslin had alcohol in his home, including a bottle of vodka, a bottle of rum, and other hard liquor. Croslin also purchased a bottle of Cockspur rum for which Baker reimbursed him. Meanwhile, Baker brought a 30-pack of beer, and Smith brought six 16-ounce bottles of Coors Light beer.

There was no evidence Croslin personally served alcohol to any of his guests. Rather, guests understood that they were expected to help themselves. Smith did so, later recalling he drank two light beers and two mixed drinks of vodka and Squirt soda.

During the party, Croslin placed several guns he possessed on display for his guests on a table. Smith and Baker also displayed their handguns, and Croslin later gave Smith some hollow-point bullets, which Smith loaded into his gun. Thereafter, Croslin, Smith and Baker had a shot of hard liquor, which Croslin later recalled was the Cockspur rum. Smith, however, could not recall if it was whiskey, rum or some other alcohol. Afterwards, while Smith and Baker were playacting self-defense scenarios with their weapons, Smith drew his pistol and accidentally shot Baker through the chest, killing him.

The personal representative of Baker’s estate (“estate”) initiated a civil action against Smith and Croslin. The estate ultimately settled with Smith. Croslin moved for summary



Contact: Jeffery Eberhard | www.smithfreed.com | email: jeberhard@smithfreed.com

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

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judgment, arguing there was no evidence he had personally served or provided Smith with alcohol while Smith was visibly intoxicated. The trial court granted summary judgment, and the estate appealed. The Oregon Court of Appeals reversed this ruling, holding that a social host “serves or provides” alcohol under the statute when the host controls the alcohol supply and that the evidence permitted an inference that Croslin controlled the alcohol supply at a time when Smith was visibly intoxicated and took the final shot of hard liquor. (See our prior case update for more detail on the Court of Appeals’ reasoning.)

The Oregon Supreme Court agreed with the Court of Appeals, holding that there may be circumstances in which a social host is liable for injuries resulting from a guest’s intoxication where the social host, although not directly serving alcohol, nevertheless makes alcohol available to guests. According to the Court, to the extent that the social host controls the supply of alcohol, he or she may be liable for the way that control is exercised. Thus, liability for having “served or provided” a guest turns on how the social host’s control over the alcohol supply is exercised. Furthermore, the social host must be shown to have “served or provided” alcohol during a time when the guest was visibly intoxicated, which the Court determined was an objective test whereby the guest’s intoxication “may be said to be conspicuous to, or readily observable by, the social host.” The Dram Shop statute provides this must be established by clear and convincing evidence. Significantly, the Court indicated that a social host is under no obligation to continuously monitor all guests—instead, only if the social host becomes aware (using an objective standard) that the guest has become visibly intoxicated does the host lose the protections of the statute. Thus, under Baker, if a host goes to bed before any guest is visibly intoxicated, the host should

not have liability if a guest then becomes fall-down-drunk and injures another.

The Court emphasized that the word “provide” is broader than “serve” and can be taken to include more general and less direct action than “serve.” With this broader definition, the Court determined that the term was broad enough to encompass purchasing the alcohol and making it available to guests. The Court was unpersuaded by Croslin’s argument that because Smith’s last shot was Cockspur rum, and because the Cockspur rum belonged to Baker due to Baker having reimbursed Croslin for the cost, Croslin did not “serve or provide” it to Smith. According to the Court, the decision as to the amount of actual control rests with the trier of fact, not the Court. Furthermore, the Court indicated this argument was problematic not only because it assumed the last shot of rum was Cockspur rum, but also because even if the last shot was Cockspur rum, there was evidence Croslin purchased it and provided it for consumption at his party. According to the Court, the fact that guests can contribute to the costs of alcohol at a party does not necessarily mean that the social host does not control the supply of alcohol.

Accordingly, because there was a genuine issue of material fact about the extent to which Croslin controlled the supply of alcohol, the Court of Appeals concluded that summary judgment was inappropriate. The Oregon Supreme Court affirmed the holding of the Oregon Court of Appeals and remanded to the trial court for further proceedings.

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