STATE OF MICHIGAN

COURT OF APPEALS

RONALD CLIFTON, SR., Individually, and as Personal Representative of the Estate of JANET M. CLIFTON, Deceased,

Plaintiff-Appellee/Cross-Appellant,

v

JOSEPH ANDREW WEGRECKI,

Defendant,

and

CENTRAL DISTRIBUTORS OF BEER, INC.,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
September 11, 2001

No. 221225
Wayne Circuit Court
LC No. 98-815485-NI

Before: Jansen, P.J., and Collins and Cooper, JJ.

PER CURIAM.

Defendant Central Distributors of Beer, Inc. (Central), appeals by leave granted, and plaintiff cross-appeals from a circuit court order granting in part and denying in part Central's amended motion for summary disposition. We affirm in part and reverse in part.

Central, a wholesale liquor licensee, supplied kegs of beer in a refrigerated truck with taps for a company picnic held at Hines Park. It is undisputed that the picnic's sponsors, ACI Carron and the UAW (collectively, "the company"), did not obtain a one-day license for serving the beer. Defendant Joseph Wegrecki attended the picnic and allegedly drank beer supplied by Central and served by someone hired by the company. After leaving the picnic in his automobile, Wegrecki allegedly ran a red light and struck plaintiff's decedent's vehicle. Plaintiff's decedent died as a result of her injuries.

On appeal, Central argues that the trial court erred in denying its amended motion for summary disposition with respect to plaintiff's claim under MCL 436.44 of the Michigan Liquor Control Act, MCL 436.1 *et seq*.,[1] because § 44 did not create a basis for an independent cause of action against Central. We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Id*.

Plaintiff sought to impose civil liability upon Central, on the basis of its alleged violation of the former MCL 436.19d,[2] through § 44, which provided as follows:

> Any person engaged in the business of selling or keeping for sale alcoholic liquor in violation of the provisions of this act, whether as owner, clerk, agent, servant or employe, shall be equally liable, as principal, both civilly and criminally, for the violation of the provisions of this act, or any person or principal shall be liable, both civilly and criminally, for the acts of his clerk, servant, agent or employe, for the violation of the provisions of this act.

Whether § 44, in and of itself, created a civil cause of action is a question of statutory interpretation. The primary goal of judicial statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the language of a statute is clear and unambiguous, it is presumed that the Legislature intended the meaning plainly expressed, and the statute must be enforced as written. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

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[1] The Liquor Control Act was repealed by 1998 PA 58, effective April 14, 1998. The act was replaced by the Michigan Liquor Control Code of 1998, MCL 436.1101 *et seq*.

[2] Under MCL 436.19d(1), wholesalers were not permitted "to sell or deliver to the consumer any quantity of alcoholic liquor at retail." Plaintiff contends that by selling beer to the company, which had no retail license, Central violated MCL 436.19d(4), which provided:

> A wholesaler may sell or deliver beer and alcoholic liquor to hospitals, military establishments, governments of federal Indian reservations, and churches requiring sacramental wines and may sell to the wholesaler's own employees to a limit of 2 cases or 24 12-ounce units or its equivalent of malt beverage per week, or 1 case of 12 1-liter units or its equivalent of wine or mixed spirit drink per week.

The former MCL 436.2m(i) defined a wholesaler as "a person who sells beer, wine, or mixed spirit drink only to retailers or other licensees. . . ."

We find that the language of § 44 is clear and unambiguous, and therefore presume that the Legislature intended the meaning plainly expressed in the statute. *Sun Valley, supra* at 236. Under the plain language of § 44, owners, agents, and employees may be held equally liable, both civilly and criminally, for violations of the act. Thus, for example, under § 44 an owner may be held liable for its agent's or employee's violation of the act. However, the language of § 44 does not, as proposed by plaintiff, create a separate cause of action under which an injured person may seek personal injury damages for a wholesale licensee's alleged negligence in violating the act by selling as a retail licensee rather than a wholesale licensee. This conclusion is in accordance with *Malone v Lambrecht*, 305 Mich 58, 63; 8 NW2d 910 (1943), where our Supreme Court found that § 44 "was not intended to and does not enlarge the express provisions found earlier in the act which provide for and define the extent of civil damage liability." We conclude, therefore, that the trial court erred in denying Central's amended motion for summary disposition of plaintiff's claim under § 44.

On cross-appeal, plaintiff first contends that the trial court erred in granting summary disposition in favor of Central on plaintiff's claim for violation of the dramshop act, MCL 436.22. We disagree. This Court has held that § 22 applies only to retail licensees. *Tennille v Action Distributing Co, Inc*, 225 Mich App 66, 72; 570 NW2d 130 (1997); see also *Guitar v Bieniek*, 402 Mich 152, 166; 262 NW2d 9 (1978). Indeed, in *Tennille, supra,* we found that "when the Liquor Control Act is read as a whole, its provisions indicate a legislative intent to *exclude* wholesalers from dramshop liability." *Id.* at 71 (emphasis added; footnote excluded).

Further, we are not persuaded that Central may be liable under the dramshop act because it maintained "operations tantamount to those [of a retail licensee]." *Guitar, supra* at 166-167. We previously noted that our Supreme Court has found the Legislature's objective in enacting the dramshop act was to "discourage bars from selling intoxicating beverages to minors or visibly intoxicated persons." *Tennille,* supra at 73, quoting *Browder v Int'l Fidelity Ins Co,* 413 Mich 603, 611; 321 NW2d 668 (1982). Here, Central did not own or operate the premises where the alcohol consumption occurred, and no Central representative organized or attended the event where the beer was served; thus, Central had no way of knowing whether minors or visibly intoxicated persons were being served. Although Central may have violated § 19d by selling beer to the company, we conclude that its conduct was not within the realm of conduct that § 22 was intended to control. Accordingly, the trial court properly granted Central's motion for summary disposition of plaintiff's claim under § 22.

Plaintiff next contends that the trial court erred in granting Central's amended motion for summary disposition with respect to his claim of common law negligence and negligence per se. This Court has recognized that while a wholesaler may not be subject to liability under the dramshop act, it may be subject to liability under theories of common law negligence. See *Tennille, supra* at 68. However, under Michigan common law, it is not a tort to furnish intoxicating beverages to a person over twenty-one years of age. *Whittaker v Jet-Way, Inc,* 152 Mich App 795, 798; 394 NW2d 111 (1986), citing *Longstreth v Gensel*, 423 Mich 675, 684, 686; 377 NW2d 804 (1985). The theory behind this rule is that it is the drinking rather than the furnishing of the alcohol that is the proximate cause of any injury to a third party. *Id.* Here, it is undisputed that defendant Wegrecki was over twenty-one when he was served alcohol at the company picnic. We thus distinguish this case from *Tennille, supra,* where this Court found that

the trial court erred in granting summary disposition to the defendant wholesaler on plaintiff's common law negligence claims that arose from the defendant's alleged sale of alcohol to its nineteen-year-old employee. *Tennille, supra* at 67-68.

Plaintiff contends, however, that his common law claims are viable because they arise out of Central's sale of beer directly to the company, which had no license, in violation of former MCL 436.19d. The violation of a civil statute may create a rebuttable presumption of negligence. *Longstreth, supra* at 692-693; *Johnson v Bobbie's Party Store*, 189 Mich App 652, 661; 473 NW2d 796 (1991). Even assuming, however, that defendant did violate § 19d, we are not persuaded that § 19d was designed to protect against the harm which occurred in this case, i.e., the accident that killed plaintiff's decedent. *Longstreth, supra.* Further, plaintiff failed to present evidence sufficient to show that the alleged statutory violation was a proximate cause of the occurrence. *Longstreth, supra* at 695; *Zeni v Anderson*, 397 Mich 117, 138-139; 243 NW2d 270 (1976). Here, there was no causal connection between the accident and the fact that the company did not hold a liquor license at the time that Central sold the company the beer. Therefore, the trial court did not err in granting Central summary disposition of plaintiff's negligence claims.

Affirmed in part, reversed in part, and remanded for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Jessica R. Cooper