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Who's to Blame when Celebration Turns to Tragedy?

A hotel guest who drank herself to death at the hotel restaurant was determined to be at fault and barred from recovery under North Carolina contributory negligence rule.

Thomas and Lisa Davis checked into the Crowne Plaza Tennis & Golf Resort (resort) in Asheville on October 5, 2012, to celebrate their tenth wedding anniversary. What started as a celebration quickly turned to tragedy.

The Davises dined at Mulligan's, a bar and restaurant located within the resort. During their four and a half hour dinner, the couple ate and ordered 24 alcoholic drinks between the two of them. Mrs. Davis consumed at least ten of those drinks and was visibly intoxicated. At the end of dinner, she was unable to walk back to her room, so a hotel employee took her back to her room in a wheelchair. When Mr. Davis woke up the next morning, he discovered his wife on the floor. She had died of alcohol poisoning.

In July 2013, Mr. Davis sued the resort on behalf of his wife's estate. He alleged the following causes of action: (1) common law dram shop liability for the over service of alcohol; (2) negligent aid, rescue, or assistance; and (3) punitive damages. In response, the resort moved to dismiss the complaint for the failure of Mr. Davis to state a claim upon which relief could be granted [Rule 12(b)(6)] and asserted a defense of contributory negligence [a person contributes to the harm they suffered]. In North Carolina, a finding that Mrs. Davis contributed to her own injuries or damages prevents recovery except in limited circumstances.

On November 25, 2013, the trial court dismissed Mr. Davis' dram shop claim and the related punitive damages claim. The negligent aid, rescue, or

PRACTICAL TIPS FOR ALCOHOL SERVICE:

- Know the law: restaurants, bars, and even social hosts can be liable for improper alcohol service.
- It is illegal in North Carolina to serve an intoxicated individual.
- Train your employees on signs of intoxication.
- Have policies in place to discontinue alcohol service.
- Never serve a minor.
- Always offer cabs or Rideshare for intoxicated patrons. Don't let them drive.
- If someone has been overserved and needs medical attention, call an ambulance.

assistance claim, which came about from the employee taking Mrs. Davis to her room via wheelchair and leaving her there with her intoxicated spouse, was tried by jury. The jury returned a verdict in favor of the resort, finding that Mrs. Davis' death was not caused by the employee's negligent aid, rescue, or assistance. Mr. Davis then appealed only the dismissal of the dram shop claim.

North Carolina's Dram Shop Law [N.C.G.S. § 18B-305] prohibits the sale of alcoholic beverages to an intoxicated individual. Mr. Davis' appeal focused on the alleged violation of this law. The Court of Appeals reversed the trial court's dismissal of this claim. The resort then appealed to the N.C. Supreme Court based on a dissenting opinion from the Court of Appeals. A dissenting opinion is an opinion written by one or more judges that does not agree with the majority opinion of the court. In this dissenting opinion, the Court of Appeals reasoned the claim should not proceed based on Mrs. Davis' own negligence of consuming too much alcohol.

The Supreme Court, in a 4-3 split, ultimately agreed with the dissenting opinion at the Court of Appeals holding that Mrs. Davis' contributory negligence barred Mr. Davis' case.

Even though the resort ultimately prevailed in this case, the dissent reasoned that the case should have gone to a jury for a second time. In the dissenting opinion, Associate Justice Robin Hudson noted that a jury should determine whether the resort was grossly negligent. If the jury found gross negligence on behalf of the resort, it would overcome Mrs. Davis' contributory negligence and allow the Davises to prevail in their claim against the resort.

Liability for alleged over service of alcohol is costly and can go on for several years. In this case, there is no question that the guest was overserved, and unfortunately, lost her life after a night of celebrating her anniversary. Her estate was unable to recover since she chose to drink too much that night. If she had driven away from the bar and injured or killed another person, the outcome of this lawsuit would likely be different. In that circumstance, an innocent third party would have a valid claim against the resort. A restaurant or bar that serves alcohol has to think about not only the customers in the establishment, but those they may come in contact with after that customer leaves the bar.

The most important lesson that any provider of alcohol can learn from this case is that the specific facts of a given situation can drastically impact the outcome, especially when alcohol is involved. To best protect your establishment, employees, patrons, and the public, make sure you have taken time to minimize risks by implementing policies and training employees on safe service of alcohol. In the box on the left is a quick checklist you can use to get started. No one ever wants to see a celebratory evening turn into a tragedy.

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