

SOCIAL HOST LIABILITY IN NORTH CAROLINA: THE PARTY IS OVER

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I. INTRODUCTION

Social activities almost invariably involve alcohol. From small parties to large company Christmas parties, alcohol is an integral part of social entertainment in American culture. Since the 1970s courts in the United States have been grappling with the issue of social host liability.¹ Should party hosts who serve alcohol be liable for the actions of an intoxicated guest leaving the party? Injured victims and their families are understandably outraged and expect to recover from hosts who allow alcohol to be over-consumed.² Hosts, on the other hand, feel that it is not their fault that the victim has been injured since they were not driving the vehicle which caused the injury. Determining the proper level of liability in this context is painfully difficult.

Since defining liability under this situation is so difficult, one can expect different states to take widely divergent approaches.³ Some

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¹ One of the first cases holding a host liable involved a fraternity party in Oregon. *See Wiener v. Gamma Chapter of Alpha Tau Omega Fraternity*, 258 Or. 632, 485 P.2d 18 (1971).

² In contrast to social hosts, commercial vendors are in the business of selling alcohol for profit. Most states have enacted Dram Shop Legislation which covers commercial vendors. North Carolina originally passed Dram Shop Legislation in 1923. *See* N.C. GEN. STAT. § 18B-120 to -129 (1989) (compensation for injury caused by sales to underage persons).

³ *See, e.g.,* Kenneth F. Lewis, *Pennsylvania's Limitations on Social Host Liability: Adding Insult to Injury*, 97 DICK. L. REV. 753 (1993); Kelly B. Dick, *Minor Drinking and Driving: California's Inconsistent and Inequitable Statutory Scheme of Social Host Immunity*, 25 U.C. DAVIS L. REV. 463 (1992).

states refuse to hold hosts liable at all, some states impose liability on hosts only if minors are served, while others simply apply negligence principles to the facts of each case. Another possible approach would be to limit liability to cases where the host acted in a manner which would constitute gross negligence or recklessness. The North Carolina Supreme Court has recently decided a case involving social host liability which could drastically affect social activities within the state. It is safe to say that potential liability under this recent decision is staggering.

II. THE NORTH CAROLINA APPROACH

The North Carolina Supreme Court in *Hart v. Ivey*⁴ held that social hosts in North Carolina are subject to negligence claims by victims of intoxicated guests. The North Carolina Supreme Court modified the earlier holding of the North Carolina Court of Appeals and adopted a much broader liability standard for social hosts in general than the court of appeals had allowed.⁵ In *Hart* several eighteen-year-old males hosted a spring break keg party. They charged two dollars each for all male guests at the beer party.⁶ One of the guests was Mr. John D. Little, Jr., an eighteen-year old. Little apparently consumed beer at the party and allegedly drove away from the party under the influence of alcohol. Mr. Little crossed a double yellow line into oncoming traffic colliding with the plaintiff's vehicle.⁷ The plaintiff suffered substantial injuries and sued a number of parties including the hosts of the keg party.

The trial judge dismissed the lawsuit against the hosts.⁸ In reviewing the dismissal, the court of appeals held that hosts who serve alcohol to underage persons are liable under the doctrine of negligence *per se*.⁹ The court of appeals reviewed the legislative history of statutes regulating sales to underage consumers and determined that this legislation applied to commercial vendors of alcohol and to noncommercial social hosts. The court of appeals reasoned that the underage drinking provisions of the legislation was designed to protect the public, and that a violation of a public safety statute

⁴ 332 N.C. 299, 420 S.E.2d 174, *affg and modifying* 102 N.C. App. 583, 403 S.E.2d 914 (1992).

⁵ See *Hart v. Ivey*, 403 S.E.2d 914 (1992).

⁶ *Id.* at 916.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 917-18.

tuted negligence *per se*. Since the hosts had served alcohol to an underage individual, the court remanded the case for trial.

In addition to the negligence *per se* theory, the plaintiff also asserted that the hosts should be liable for negligence.¹⁰ The court of appeals disagreed and specifically held that social hosts could *not* be held liable for mere negligence. Under the court of appeals' decision the only time a host could be held liable was if the host served alcohol to underage guests, since such conduct would be deemed negligence *per se*. A number of states follow the one recommended by the North Carolina Court of Appeals. It is a narrow approach to liability but stops short of eliminating liability for hosts altogether. Imposition of liability if one serves alcohol to underage drinkers is good public policy and is logical. Everyone is aware that alcohol and young people together make an explosive combination.

On appeal the North Carolina Supreme Court took a significantly different approach. While the supreme court in *Hart vs. Ivey*¹¹ determined that the trial judge had wrongfully dismissed the lawsuit against the host and therefore affirmed the court of appeals' reversal of that ruling, the logic of the supreme court was decidedly different from that used by the court of appeals. It held that the legislation affecting underage drinking was *not* a "public safety statute"¹² and therefore a violation of this statute did not constitute negligence *per se*. The court reasoned that the purpose of the legislation was to stop underage drinking and not necessarily to protect the driving public. The Supreme Court was concerned that if a violation of this legislation did occur and was always deemed negligence *per se*, liability could attach even if only a small amount of alcohol was consumed.¹³

¹⁰ *Id.* at 921-22.

¹¹ 420 S.E.2d 174 (1992).

¹² *Id.* at 177.

¹³ The court stated:

[W]e do not believe N.C.G.S. Sec. 188-302 is a public safety statute which was intended to protect the plaintiffs. We believe its purpose was to stop persons under the statutory age from drinking alcoholic beverages. If it was to protect the public, it should not be limited to persons under twenty-one years of age. An adult driver under the influence of alcohol can be as dangerous on the highway as a person under twenty-one years of age. We also believe if it were a public safety statute, it would be related more to being under the influence of alcohol. The section does not restrict sales or the giving of alcoholic beverages to those who might be under the influence of alcohol, to those under twenty-one years of age. In this state, we do not prescribe all driving by those who have drunk some alcoholic beverage, but only those who are under the influence of alcoholic beverage. This demonstrates to us that the purpose of the section is to restrict the consumption of alcohol by those under twenty-one years of age and it was not adopted for the protection of the driving public.

Id.

Small amounts of alcohol may not affect driving ability, but could result in liability under a negligence *per se* approach. The Supreme Court concluded that serving alcohol to an underage consumer was not negligence *per se*. However, the court did not intend for this result to insulate all hosts from liability. To the contrary, it went on to address negligence liability.

The Supreme Court noted that this was a case of first impression for North Carolina and that it was inclined to apply general negligence principles to social host situations.¹⁴ It is crucial to understand that this decision goes far beyond the limited situation where underage drinkers are present at a party, and clearly covers adult-hosted and adult-attended social functions. The court noted that it was concerned with situations in which the host “serves an alcoholic beverage to a person who then injures someone while operating an automobile while under the influence of an intoxicating beverage.”¹⁶ The court used basic tort language to indicate that hosts must “exercise that degree of care which a reasonable and prudent person would exercise under similar conditions.”¹⁶ The Supreme Court held that the facts alleged in *Hart* did in fact state a claim, and that the case should not have been dismissed. In a statement which best summarizes its feelings the court stated: “The defendants were under a duty to the people who travel on the public highways not to serve alcohol to an intoxicated individual who was known to be driving.”¹⁷

III. APPLICATION OF THIS DECISION TO PARTY SITUATIONS

Since the North Carolina Supreme Court determined that negligence principles will apply to all social host situations, it is interesting to speculate on how this decision will be applied in future cases. When will a party host be deemed to have acted negligently? Clearly any one who knowingly serves alcohol to a minor is going to be hard pressed to avoid negligence liability. Beyond that, hosts will also have to act reasonably in the serving of alcohol to adult guests who may be or may become intoxicated and intend to drive home. In order to avoid liability the social host should be prepared to show that the

¹⁴*Id.*

¹⁵*Id.* at

¹⁶*Id.*

¹⁷*Id.*

host used reasonable care in giving the party. Keep in mind that typically lawsuits will only be maintained after a guest has seriously injured a completely innocent person. Juries will no doubt be sympathetic to innocent victims and will critically view the actions of the host.

A number of factors will become important in deciding whether or not the host has acted negligently. For example, how closely did the host monitor the alcohol consumption? Did guests serve themselves? Did the host come into personal contact with the guest who later caused the injuries? Did the host offer to furnish rides for guests to their homes? Did the host fail to insist upon giving rides or calling a taxi? What if the party is designated as a Bring-Your-Own-Booze (“BYOB”) party. Could the host still be liable if a guest becomes intoxicated? One could speculate that hosts of this type of party potentially would face less liability because they did not furnish the alcohol. On the other hand, the host of a BYOB party will still be expected to act reasonably under the circumstances. If a guest consumes his own whiskey and becomes so intoxicated that he cannot walk without stumbling, that host will no doubt need to stop him from driving in order to avoid liability. Future decisions will no doubt clarify some of these issues. At the present time, all that is known for sure is that if the host fails to act in a reasonable manner, the host could incur liability.

IV. IS NEGLIGENCE THE PROPER TEST?

It is easy to criticize the holding of the North Carolina Supreme Court. No doubt many attorneys in North Carolina disagree with the holding. Some no doubt agree. Is negligence the appropriate approach? There are four alternatives available to define social host liability with legitimate arguments supporting and criticizing each approach.

A. IMMUNITY FROM LIABILITY FOR SOCIAL HOSTS

The first alternative would be to provide for no liability for any social hosts. One could argue that social hosts are not in the business of selling alcohol and should not have any responsibility for the wrongful actions of intoxicated guests. States that have taken this approach reason that the host is not the party at fault; rather, the intoxicated person who injures the victim is the sole or intervening proximate

cause of the injury.¹⁸ It could be argued that this approach is valid because it places the fault on the party most accountable for the harm, the intoxicated guest. This extreme approach can be criticized, however, because it fails to protect adequately the rights of innocent victims, while protecting even outrageous actions by hosts who are well aware of the dangers of alcohol and driving. The host should be held accountable for actions that may have contributed to the likelihood of injuries being inflicted by intoxicated drivers. Hosts do not deserve complete immunity from liability.

B. LIABILITY ONLY IF UNDERAGE GUESTS ARE SERVED

The North Carolina Court of Appeals' approach of imposing liability only upon hosts who serve underage guests has many supporters. Nearly everyone will agree that hosts should not allow underage drinkers to consume alcohol.¹⁹ If liability were limited to that situation, social hosts would rarely incur liability since arguably few adults serve underage guests. The problem remains, however, that innocent victims are under-protected. This approach concludes that no host can be held liable as long as underage guests are not served, and therefore precludes liability even in cases where the host acts in an outrageous manner. Broader liability appears justifiable.

C. LIABILITY ONLY IF HOSTS ARE GROSSLY NEGLIGENT OR RECKLESS

An alternative not discussed by the North Carolina Supreme Court would be to impose liability only upon hosts who act in a grossly negligent or reckless manner.²⁰ Under this approach social hosts are held accountable, but the burden placed upon the host is not unduly bur

¹⁸ The court of appeals addressed the issue of proximate cause and intervening causes. The court of appeals cited an earlier North Carolina case and held that furnishing alcohol may be a proximate cause of injuries inflicted by a guest. *Hart*, 403 S.E.2d at 920 (quoting *Hutchens v. Hankins*, 63 N.C. App. 1, 303 S.E.2d 584 (1983)). The fact that a guest could become intoxicated and injure someone was deemed a foreseeable intervening cause such that liability could attach. *Id.* at 920-21. The North Carolina Supreme Court in *Ivey* never addressed the topic of intervening or superseding causes.

¹⁹ All states have statutes setting forth the legal age for alcohol consumption. See, e.g., N.C. GEN. STAT. § 18B-302 (1989) (age of twenty-one in North Carolina).

²⁰ Oregon's statute, for example, provides for liability only if the guest is "visibly intoxicated". Or. REV. STAT. § 30.950 (1987).

densome. Greater liability than this is arguably too difficult to measure and enforce. Social hosts should not be placed in a position approaching that of a law enforcement officer, nor that of a professional tavern keeper. This approach establishes a realistic expectation of the typical social host. Such a compromise approach would impose liability only if the actions of the host are clearly inappropriate. For example, under this approach a host who knowingly serves alcohol to an underage guest would no doubt be held liable. If the host helps staggering guests into their vehicle to drive away, he would also be held liable. This approach would recognize that hosts cannot close their eyes to dangerous situations and safely avoid liability. Knowingly serving additional alcohol to visibly intoxicated guests who are expected to drive home would most likely result in host liability under this approach. Hosts should not be allowed to create unreasonable dangers for the traveling public without any liability or responsibility; this approach would result in liability for reckless actions.

D. PUBLIC POLICY SUPPORTING LIABILITY FOR NEGLIGENCE

In defense of the North Carolina Supreme Court's decision, there are a number of persuasive arguments which can be asserted in support of the negligence approach. Innocent drivers on the roadways deserve to be protected. Placing increased liability on hosts will hopefully lead to a reduction of intoxicated drivers on the roadways. Another good argument supporting the use of the negligence theory is that it can be applied and adapted to all situations. The proximate cause requirement will result in liability only in appropriate cases. The actions of the host will have to be the foreseeable cause of the injuries or the host will not be liable. All that is expected of hosts is that they act reasonably under the circumstances which is not an unreasonable demand, especially when a dangerous drug such as alcohol is involved. People who voluntarily choose to allow alcohol to be consumed in their presence should be willing to accept the responsibility to act reasonably under the circumstances.

The negligence approach of North Carolina certainly protects victims, but arguably goes too far. There are so many variables which arise in these situations that perhaps negligence liability is just too broad. Social hosts are not in the business of evaluating the intoxicated state of guests; further, some guests can consume large quantities of alcohol without showing visible effects. If hosts are told not to allow guests who are intoxicated to leave or else they will potentially

be held liable, the host may be forced to physically restrain intoxicated individuals. Guests typically feel that they are in full control and do not appreciate being told they cannot drive home. This type of confrontation may lead to violence, charges of assault, false imprisonment and possibly battery. If keys are taken from guests, that may result in allegations of conversion or theft of property. Finally, some may argue that this increase in potential liability will result in significant and unwelcome increases in home owners' insurance rates.

V. SUMMARY

If the North Carolina legislature feels that Ivey creates an unfair situation, it obviously could adopt legislation to alter host liability. Perhaps it will consider limiting liability to situations of gross negligence. It may even consider adopting the approach of the court of appeals. Whether or not one agrees or disagrees with the holding of the North Carolina Supreme Court, it is important to be aware of its implications. Party hosts may wish to retain professional bartenders or caterers to serve alcohol. Some hosts may decide to purchase single event liability insurance; however, the costs may be prohibitive. The next time one hosts a party, minimum thought should be given to what precautions should be taken to avoid liability for the actions of guests. Be prepared to give rides to visibly intoxicated guests whose abilities are impaired. Perhaps serving nonalcoholic drinks would be advisable. Unfortunately, if alcohol is going to be involved, the only completely safe approach is to forget the party.