

STATE OF MICHIGAN
COURT OF APPEALS

SHANE M. MARIETTA,

Plaintiff-Appellant,

v

COLUMBIA CASUALTY INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 21, 2000

No. 210675

Oakland Circuit Court

LC No. 96-530787-CK

Before: Gribbs, P.J., and Doctoroff and T.L. Ludington*, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition in this declaratory action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant provided a Michigan liquor liability insurance policy for Rubble's bar in Mt. Pleasant. Plaintiff sustained injuries in a fight outside the bar, involving an off-duty employee of the bar and a person being ejected from the bar. As part of an underlying action against the employee and the bar, the right of action against defendant insurer was assigned to plaintiff. Plaintiff conceded that he was not bringing a claim under the dram shop act. The trial court granted summary disposition based on a finding that the policy did not provide coverage for this incident.

The dram shop act is the exclusive remedy for money damages against a licensee arising out of the selling, giving, or furnishing of alcoholic liquor. MCL 436.22(11); MSA 18.993(11), now MCL 436.1801(10); MSA 18.1175(801)(10). This provision precludes any common law action arising out of the sale or furnishing of alcohol. *Jackson v PKM Corp*, 430 Mich 262; 422 NW2d 657 (1988). Defendant could not be legally liable for any claim that arose out of the use of alcohol, but did not fall under the dram shop act. There is no basis for finding coverage under defendant's policy. Where there was no coverage, any negligent investigation of the claim was harmless as to plaintiff. The trial court

* Circuit judge, sitting on the Court of Appeals by assignment.

properly dismissed plaintiff's remaining claims, as they were dependent upon a finding of insurance coverage.

The lack of factual or legal support for plaintiff's positions shows that this appeal was taken without any reasonable basis for belief that there was a meritorious issue to be determined. This matter is remanded to the trial court for a determination of actual damages owed by plaintiff to defendant pursuant to MCR 7.216(C)(2).

Affirmed and remanded. We do not retain jurisdiction.

/s/ Roman S. Gibbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington