

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TIMOTHY TERPENING,

Plaintiff-Appellant,

v

GILLIMINO, INC., d/b/a GRIZZLY BAR,

Defendant-Appellee,

and

NICHOLAS SHANECK,

Defendant.

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UNPUBLISHED

January 12, 2001

No. 221275

Calhoun Circuit Court

LC No. 96-001062-NO

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Plaintiff appeals of right from the trial court's order granting summary disposition to defendant Grizzly Bar pursuant to MCR 2.116(C)(10). Plaintiff had filed a claim against defendant Grizzly Bar for an alleged violation of the dramshop act, MCL 436.1801 *et seq.*; MSA 18.1175 *et seq.* We affirm.

Plaintiff sustained injuries as a result of defendant Shaneck's assault on him. Plaintiff had visited defendant Grizzly Bar on the evening of his assault. Defendant Shaneck is a minor who purchased a beer from defendant Grizzly Bar that night. Before defendant Shaneck had finished this beer, the bartender came over and asked defendant Shaneck for his ID. After discovering Shaneck was a minor, the bartender took his beer away from him and told him to leave the bar. According to plaintiff, defendant Shaneck believed that plaintiff was responsible for notifying the management that defendant Shaneck was underage. Defendant Shaneck left the bar, purchased a case of beer from a liquor store, and shared it with his friends.

Later that evening, defendant Shaneck stopped at plaintiff's home with his friends. He assaulted plaintiff. Plaintiff filed a complaint against defendant Grizzly Bar pursuant to the dramshop act. The trial court dismissed plaintiff's claim on the grounds that plaintiff had not established proximate causation.

Plaintiff argues that the trial court erred in finding that plaintiff had not established the requisite proximate causation under the dramshop act. We disagree. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

The dramshop act prohibits the sale of liquor to minors. MCL 436.1801(2); MSA 18.1175(2). It also gives an injured individual a cause of action against the person who sold the alcohol to the minor, provided that "the unlawful sale is proven to be a proximate cause of the damages, injury or death." MCL 436.1801(3); MSA 18.1175(3).

To establish proximate cause, a plaintiff must prove both cause in fact and legal cause. *Weymers v Khera*, 454 Mich 639, 647; 563 NW2d 647 (1997). To establish cause in fact, a plaintiff must introduce evidence from which one could reasonably conclude that the defendant's conduct more likely than not was a cause in fact of the result. *Id.* However, where the matter of causation is one of pure speculation or conjecture, or where the probabilities are balanced evenly, the court must enter a verdict for the defendant. *Id.* at 648.

Even if the court believed plaintiff's testimony that defendant Shaneck assaulted him because he thought plaintiff told management he was a minor, the illegal sale would still not amount to the cause in fact of plaintiff's injuries. It was not the illegal sale of beer that prompted the assault. Rather, it was defendant Shaneck's belief that plaintiff notified management of his status as a minor. Nor does legal causation exist under these facts. In order to establish legal causation, a plaintiff must show both that it was foreseeable that the defendant's conduct could create a risk of harm and that the result and any intervening causes were also foreseeable. *Id.* It is not foreseeable that selling a minor a beer would result in plaintiff, a third party, being beaten up at his home later that evening. Thus, plaintiff has failed to present evidence setting forth specific facts showing there is a genuine issue for trial.

While it is true that we held in *Weiss v Hodge*, 223 Mich App 620; 567 NW2d 468 (1997), that a dramshop defendant could be liable for the intentional torts of its patrons, this case is factually distinct. In *Weiss*, the defendant was served eight beers and three shots while at the bar. *Id.* at 623. Selling alcohol to an already visibly intoxicated individual is different from selling it to a minor. It is foreseeable that furnishing alcohol to an already drunk individual will prompt that individual to display raucous and even violent behavior causing injury to himself and

others. It is not foreseeable that the sale of one beer to a minor will have the effect of causing that minor to assault an individual hours later.

Affirmed.

/s/ Richard Allen Griffin

/s/ Donald E. Holbrook, Jr.

/s/ William B. Murphy