

NO. COA14-271

NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2014

PHILIP J. MOHR, as Administrator of
the Estate of Sam Monroe Matthews,
Plaintiff,

v.

Forsyth County
No. 13 CVS 2020

JOHN C. MATTHEWS,
GLORIA MATTHEWS, and
JOBY MATTHEWS,
Defendants.

Appeal by plaintiff from order entered 12 November 2013 by
Judge David L. Hall in Forsyth County Superior Court. Heard in
the Court of Appeals 27 August 2014.

*Wall Esleeck Babcock, LLP, by Andrew L. Fitzgerald, Hannah
K. Albertson, and Margaret S. Shipley, for plaintiff-
appellant.*

*Davis and Hamrick, L.L.P., by James G. Welsh, Jr., for
defendant-appellee John C. Matthews.*

*Pinto Coates Kyre & Bowers, PLLC, by Richard L. Pinto and
Deborah J. Bowers, for defendants-appellees Gloria Matthews
and Joby Matthews.*

DAVIS, Judge.

Philip J. Mohr ("Plaintiff"), administrator of the Estate
of Sam Monroe Matthews, appeals from the trial court's order
granting the motion to dismiss of Defendants John C. Matthews

("John"), Gloria Matthews ("Gloria"), and Joby Matthews ("Joby") (collectively "Defendants") pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. On appeal, Plaintiff contends that his complaint stated a valid claim for negligence regarding the death of Sam Monroe Matthews ("Sam"). Specifically, Plaintiff contends that Defendants negligently allowed Sam to consume an excessive amount of alcohol despite their knowledge of his intent to operate a motor vehicle. After careful review, we affirm.

Factual Background

We have summarized the pertinent facts below using Plaintiff's own statements from his complaint, which we treat as true in reviewing the trial court's order dismissing his complaint under Rule 12(b)(6). *See, e.g., Stein v. Asheville City Bd. of Educ.*, 360 N.C. 321, 325, 626 S.E.2d 263, 266 (2006) ("When reviewing a complaint dismissed under Rule 12(b)(6), we treat a plaintiff's factual allegations as true.").

On 1 April 2011, Sam, who at the time was 19 years old, attended a cookout at the home of his paternal grandparents, Joby and Gloria, in Davie County, North Carolina. Sam's father, John, and his stepmother, Lisa Matthews, were also at the cookout. Sam arrived at around 7:00 p.m. and began drinking beer and liquor provided to him by Defendants. During the course of the evening, Sam continued to consume alcoholic

beverages and became visibly intoxicated. Defendants continued to provide Sam with additional alcoholic drinks and encouraged him to continue drinking despite his noticeably increasing level of intoxication.

Prior to 1 April 2011, Defendants had on a number of occasions provided Sam with alcohol and permitted him to consume alcohol at their homes despite the fact that he was under the legal drinking age. Defendants had actively encouraged Sam to drink alcoholic beverages on these occasions and had hosted parties where alcohol was provided to other individuals below the legal drinking age who were in attendance. Defendants were aware that following his consumption of alcoholic beverages at such gatherings, Sam would often drive – especially when he was agitated or angry.

At the cookout on the evening of 1 April 2011, Sam and John had a disagreement concerning whether John would provide money for Sam to attend college. Earlier that evening, one or more of Defendants had talked with Sam about him taking Gloria's car back to Winston-Salem the following day to clean and detail it. Sam had previously performed this task after other gatherings at his grandparents' house. At no time during the evening did Defendants instruct Sam not to drive that night nor did they take any measures to prevent Sam from obtaining the keys to Gloria's car. In fact, one or more of the Defendants informed

Sam that evening that the keys to Gloria's car were in the ignition.

At approximately 1:30 a.m., Defendants decided to go to bed. When asked if he was also coming up to bed, Sam replied that he was going to have one more drink. Defendants then went upstairs. Approximately 20 minutes later, while still intoxicated and agitated from his disagreement with John, Sam got into Gloria's car and began driving toward Winston-Salem.

Before he got out of his grandparents' subdivision, the vehicle crashed into a tree and caught fire. Sam died at the scene of the wreck. An autopsy report revealed that the primary causes of his death were smoke and fume inhalation and blunt force trauma to his head. The autopsy report also revealed that at the time of the accident Sam's blood alcohol level was 0.17.

On 1 April 2013, Plaintiff filed an action against Defendants in Forsyth County Superior Court alleging that their negligence proximately caused Sam's death. On 3 May 2013, Joby and Gloria filed a joint answer containing a motion to dismiss pursuant to Rule 12(b)(6). On 21 June 2013, John filed an answer also containing a motion to dismiss based on Rule 12(b)(6).

On 12 November 2013, the motion to dismiss was heard by the Honorable David L. Hall in Forsyth County Superior Court. On that same date, Judge Hall entered an order granting Defendants'

motion to dismiss with prejudice. Plaintiff filed a timely notice of appeal.

Analysis

On appeal, Plaintiff contends that the trial court erred in granting Defendants' motion to dismiss.

The standard of review of an order granting a Rule 12(b)(6) motion is whether the complaint states a claim for which relief can be granted under some legal theory when the complaint is liberally construed and all the allegations included therein are taken as true. On appeal, we review the pleadings *de novo* to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct.

Gilmore v. Gilmore, ___ N.C. App. ___, ___, 748 S.E.2d 42, 45 (2013) (internal citations, quotation marks, and brackets omitted).

A. Contributory Negligence

Plaintiff contends that he pled a proper cause of action for negligence under a common law theory of social host liability. Our Supreme Court has held that "an individual may be held liable on a theory of common-law negligence if he (1) served alcohol to a person (2) when he knew or should have known the person was intoxicated and (3) when he knew the person would be driving afterwards." *Camalier v. Jeffries*, 340 N.C. 699, 711, 460 S.E.2d 133, 138 (1995). In his complaint, Plaintiff alleged that Defendants served alcohol to Sam despite being

aware that he was already intoxicated and that they knew or should have known that he had a propensity to drive when simultaneously agitated and inebriated. We believe the trial court's dismissal of Plaintiff's complaint was proper based on the doctrine of contributory negligence.

It is well established that "[c]ontributory negligence consists of conduct which fails to conform to an *objective* standard of behavior – the care an ordinarily prudent person would exercise under the same or similar circumstances to avoid injury." *Cone v. Watson*, __ N.C. App. __, __, 736 S.E.2d 210, 213 (2012) (citation, quotation marks, and brackets omitted). In order to establish contributory negligence, it must be shown "(1) that the plaintiff failed to act with due care and (2) such failure proximately caused the injury." *Thorpe v. TJM Ocean Isle Partners LLC*, __ N.C. App. __, __, 733 S.E.2d 185, 190 (2012), *disc. review denied*, 366 N.C. 586, 739 S.E.2d 846 (2013). In addition, a court may dismiss a complaint based on contributory negligence pursuant to Rule 12(b)(6) "when the allegations of the complaint taken as true show negligence on the plaintiff's part proximately contributing to his injury, so clearly that no other conclusion can be reasonably drawn therefrom." *Sharp v. CSX Transp., Inc.*, 160 N.C. App. 241, 244-45, 584 S.E.2d 888, 890 (2003) (citation, quotation marks, and brackets omitted).

Our analysis in the present case is governed by our Supreme Court's decision in *Sorrells v. M.Y.B. Hospitality Ventures of Asheville*, 332 N.C. 645, 423 S.E.2d 72 (1992). In *Sorrells*, the decedent and his friend were highly intoxicated at a bar and showed visible signs of impairment. *Id.* at 646-47, 423 S.E.2d at 73. Their waitress asked the decedent's other friends who was driving and they responded that the decedent intended to drive and that he should not be served any additional alcoholic beverages. *Id.* Upon the waitress' refusal to serve him any additional drinks, the decedent and his friend went to the bar and attempted to order drinks directly from the bartender. *Id.* at 647, 423 S.E.2d at 73. The waitress informed the manager of the situation and expressed her belief that the decedent should not be served any more alcoholic beverages. The manager, however, told the bartender to continue serving the decedent. *Id.* The decedent ultimately drove away, lost control of his vehicle, and was killed when he crashed into a bridge abutment. *Id.*

The decedent's estate brought a wrongful death action alleging a violation of North Carolina's Dram Shop Act and also that the negligence of the bar's employees in continuing to serve the decedent alcoholic beverages proximately resulted in his death. The trial court granted the defendant's motion to dismiss under Rule 12(b)(6). This Court reversed the trial

court's order but our Supreme Court reinstated the order of dismissal, ruling that the plaintiff's claim was barred by the decedent's contributory negligence.

Plaintiff bases this action on the premise that defendant was negligent in two ways: first, by violating N.C.G.S. 18B and second, by serving alcohol to an intoxicated consumer with knowledge that the consumer would thereafter drive and cause injuries that were reasonably foreseeable. We have recognized that both of these bases may support a recovery for injuries to third parties. However, we conclude that defendant's motion to dismiss was properly granted since plaintiff's complaint discloses an unconditional affirmative defense which defeats the claim asserted and pleads facts which deny the right to any relief on the alleged claim.

In this state, a plaintiff's contributory negligence is a bar to recovery from a defendant who commits an act of ordinary negligence. The Superior Court and the Court of Appeals both found that the allegation that decedent drove his vehicle while impaired established contributory negligence as a matter of law. Thus, plaintiff's claim would be barred if defendant was merely negligent.

However, plaintiff argues and the Court of Appeals held that defendant's acts of serving the visibly intoxicated decedent alcohol after being requested to refrain from serving him were sufficient to constitute willful and wanton negligence, such that the decedent's contributory negligence would not act as a bar to recovery. While we recognize the validity of the rule upon which the Court of Appeals relied, we do not find it applicable in this case. Instead, we hold that plaintiff's claim is barred as a result of decedent's

own actions, as alleged in the complaint, which rise to the same level of negligence as that of defendant.

It is admitted in this case that decedent, a willing consumer of alcohol, drove his vehicle while highly intoxicated. He did so in violation of N.C.G.S. § 20-138.1. That statute provides that one who drives on a highway while under the influence of an impairing substance commits the misdemeanor offense of impaired driving. This Court has held that a willful violation of this statute constitutes culpable negligence. Proof of both a willful violation of the statute and a causal connection between the violation and a death is all that is needed to support a successful prosecution for manslaughter. Plaintiff cannot dispute either of these elements under the facts as alleged in the complaint. In fact, to the extent the allegations in the complaint establish more than ordinary negligence on the part of defendant, they also establish a similarly high degree of contributory negligence on the part of the decedent. Thus, we conclude that plaintiff cannot prevail.

Id. at 647-49, 423 S.E.2d at 73-74 (internal citations, quotation marks, and brackets omitted).

Plaintiff attempts to distinguish *Sorrells* by asserting that the Court relied solely upon the Dram Shop Act in reaching its conclusion as opposed to basing its decision on common law social host liability. The Supreme Court's decision, however, expressly analyzed the plaintiff's claims under common law negligence principles as well as under the Dram Shop Act. *Id.* at 647-48, 423 S.E.2d at 73. Moreover, *Sorrells* has been cited

in subsequent cases involving claims based on common law negligence where decedents voluntarily consumed alcohol and were found to be contributorily negligent in causing their own deaths. See *Canady v. McLeod*, 116 N.C. App. 82, 87, 446 S.E.2d 879, 882 (“[D]efendant[’s] . . . actions, in furnishing alcohol to the deceased while he was re-roofing a house on a cold and windy December day, may have risen to a level constituting willful and wanton behavior. Despite this, however, we are constrained to hold that the deceased’s own negligence in consuming the alcohol while working on a roof rose to the same level of negligence as that of defendant . . . and thus bars plaintiff’s claim.”), *disc. review denied*, 338 N.C. 308, 451 S.E.2d 632 (1994); see also *Meachum v. Faw*, 112 N.C. App. 489, 495, 436 S.E.2d 141, 145 (1993) (“We believe that, as in *Sorrells*, the decedent’s own negligence in driving while voluntarily intoxicated rose to the level of the defendant’s negligence in entrusting the automobile to her. Therefore, we find that, as a matter of law, the plaintiffs’ claim is barred by decedent’s contributory negligence as alleged in the complaint. Hence, plaintiffs’ complaint failed to state a claim upon which relief might be granted, and the trial court properly dismissed the action.”).

B. Special Relationship

Plaintiff also argues that Defendant should be held liable

on the theory that a special relationship existed between Sam and Defendants. Specifically, Plaintiff contends that because of Defendants' blood relationship to Sam, they owed him a special duty to prevent him from harming himself. Based on the facts of this case, we disagree.

It is true that a parent-child relationship is recognized under the law as a special relationship. *Scadden v. Holt*, ___ N.C. App. ___, ___ 733 S.E.2d 90, 92, *disc. review denied*, 366 N.C. 416, 736 S.E.2d 177 (2012). However, the special relationship doctrine is inapplicable here because Sam was past the age of majority at the time of the accident. See N.C. Gen. Stat. § 48A-2 (2013) ("A minor is any person who has not reached the age of 18 years."); *Scadden*, ___ N.C. App. at ___, 733 S.E.2d at 93 ("A finding that a special relationship exists and imposes a duty to control is justified where (1) the defendant knows or should know of the third person's violent propensities and (2) the defendant has the ability and opportunity to control the third person at the time of the third person's criminal acts. The ability and opportunity to control must be more than mere physical ability to control. Rather, it must rise to the level of custody, or legal right to control." (internal citations and quotation marks omitted)).

Because Sam was over 18 years old at the time of the accident, he was not a minor and, therefore, was not under the

legal control of his parents. See *Bridges v. Parrish*, 366 N.C. 539, 542, 742 S.E.2d 794, 797 (2013) (under the special relationship doctrine, "the parent of an *unemancipated child* may be held liable in damages for failing to exercise reasonable control over the child's behavior if the parent had the ability and the opportunity to control the child and knew or should have known of the necessity for exercising such control." (citation and quotation marks omitted and emphasis added)). Therefore, Plaintiff's argument on this issue is overruled.

Conclusion

For the reasons stated above, the order of the trial court granting Defendants' motion to dismiss is affirmed.

AFFIRMED.

Judges HUNTER, Robert C., and DILLON concur.