NOT DESIGNATED FOR PUBLICATION

"PLAINTIFF MOTHER" AND "PLAINTIFF FATHER" DOE, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILD, "PLAINTIFF DAUGHTER"	*	**NO. 2000-CA-1545**
	*	**COURT OF APPEAL**
	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
VERSUS	*	
DEFENDANTS P, DEFENDANTS B, DEFENDANTS J, AND ABC, DEF, AND GHI INSURANCE COMPANIES	* * * * * * *	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 96-14065, DIVISION “J-13”
Honorable Nadine M. Ramsey, Judge

* * * * * *

Judge David S. Gorbaty

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(Court composed of Judge Miriam G. Waltzer, Judge Terri F. Love, Judge David S. Gorbaty)

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AFFIRMED

In this appeal, plaintiffs contend that the trial court erred in granting Defendant J's motion for summary judgment. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

The underlying facts of this case are set out in Plaintiff Daughter's Deposition. On September 1, 1995, Defendant Daughter J, who was fifteen years old at the time, held a party at her home when her parents went out of town for the weekend. According to Plaintiff Daughter's deposition, Defendant Daughter J's parents did not know about the party, and in fact believed that Defendant Daughter J would be staying at a friend's house that weekend. Almost all of the partygoers were minors, and substantial quantities of alcohol were available to them. During the party, Plaintiff Daughter, who was also fifteen, became so intoxicated that she became incoherent and incapable of walking. She was taken by friends to an

upstairs bedroom to rest, and while there, was allegedly sexually assaulted by Defendant Son P. Plaintiff Daughter was so inebriated that she remembers virtually nothing that happened that evening.

On August 26, 1996, Plaintiff Mother and Plaintiff Father, individually and on behalf of their minor child, Plaintiff Daughter, filed suit, alleging that Plaintiff Daughter had suffered various physical and emotional injuries as a result of the assault. Defendants J, the parents of the minor child who hosted the party, moved for summary judgment, maintaining that, as a matter of law, their minor daughter owed no duty to Plaintiff Daughter, and Defendant Parents J were not negligent in the supervision of their daughter. On January 14, 2000, defense counsel appeared in court to argue the motion. Plaintiffs' attorney was not present, nor did she file a written opposition to the motion, so the trial judge granted the motion for summary judgment at that time.

DISCUSSION

Plaintiffs assert that the trial court erred in finding that, as a matter of law, Defendant Daughter J did not owe a duty to Plaintiff Daughter.

Appellate courts review summary judgments *de novo*, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. *Guy v. McKnight*, 99-2284 (La.App. 4 Cir. 2/16/00), 753 So.2d 955, 957, *writ denied*, 2000-0841 (La. 6/16/00), 764 So.2d 963; *Reynolds v. Select Properties, Ltd.*, 93-1480 (La. 4/11/94), 634 So.2d 1180, 1182.

Summary judgment is properly granted only if the pleadings and evidence show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. Art. 966 (c). Article 966 has recently been amended; the burden of proof remains with the mover to show that no genuine issue of material fact exists. Now, however, once the mover has made a prima facie showing that the motion should be granted, the burden shifts to the non-moving party to present evidence demonstrating that material factual issues remain. Once the motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to present evidence of a material factual dispute mandates the granting of the motion. See *Hayes v. Autin*, 96-287 (La. App. 3 Cir. 12/26/96), 685 So.2d 691. We must review the summary judgment with reference to the substantive law applicable to the case. To affirm summary judgment, we must find that reasonable minds would inevitably conclude that the mover is entitled to judgment as a matter of the

applicable law on the facts before the court. *Washington v. State, Dept. of Transp. & Development*, 95-14 (La. App. 3 Cir. 7/5/95); 663 So.2d 47.

Plaintiffs aver that under Louisiana law, a duty may be imposed upon one minor not to provide alcohol to other minors.

"Duty" is defined as an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another. *Gresham v. Davenport*, 537 So.2d 1144, 1147 (La. 1989) (citing *Prosser and Keeton on the Law of Torts* (5th ed. 1984)). The imposition of a duty depends on a case-by-case analysis. *Gresham*, 537 So.2d at 1147.

In *Gresham*, the Louisiana Supreme Court addressed the question of whether a minor host has a duty not to provide alcohol to other minors. The Court noted that La. R.S. 14:91.2 and 14:91.3 (now repealed) prohibit a minor from purchasing alcohol. However, the court held that this statutory prohibition did not address the situation where a minor gave the alcohol to another minor. *Gresham*, 537 So.2d at 1147. Thus, the Court concluded, there was no statutory duty for a minor not to provide another minor with alcoholic beverages.

Guy v. State Farm Mutual Insurance Company, 98-713 (La. App. 3 Cir. 12/9/98), 725 So.2d 39, and *Bell v. Whitten*, 97-2359 (La. App. 1 Cir. 11/6/98), 722 So.2d 1057, also held that no statutory duty exists for a minor

social host not to share with, or provide alcohol to, another minor. Although criminal statutes prohibit a minor's purchasing and possession of alcohol, Louisiana courts have specifically refused to extend the law to impose a duty upon one minor not to give alcohol to another minor. See *Hopkins v. Sovereign Fire & Casualty Insurance Company*, 626 So.2d 880 (La. App. 3 Cir. 1993). Upon review, we find nothing in the statutory provisions that imposes a duty upon minors not to share alcohol with their friends.

The *Gresham* Court also found that no duty was imposed upon the minor under the specific facts of the case. The Court noted that the situation involved a fifteen-year-old teenager who gave beer to her sixteen-year-old boyfriend. Neither teenager was a novice to beer drinking, and had imbibed beer occasionally on the weekends for about a year. The Court concluded that, under these circumstances, it was "doubtful" that the fifteen-year-old had a duty not to serve beer to the sixteen-year-old. *Gresham*, 537 So.2d at 1147.

Likewise, we find that no duty arose from the particular circumstances of the case. According to the deposition testimony of Plaintiff Daughter, she started drinking alcohol when she was in the eighth or ninth grade, two years before this incident occurred. She first purchased alcoholic beverages during her freshman year in high school. Plaintiff Daughter admitted that

she got “seriously drunk” during Mardi Gras of her freshman year, as well as possibly “another time like at a party or something.” She estimated that during her freshman year, she consumed enough alcohol to be considered inebriated about five times. Even before the night of this party, her parents caught her drinking or suspected that she was drunk on two occasions. The plaintiffs failed to produce any evidence of a material factual dispute as to any of these statements prior to the granting of the motion for summary judgment. Therefore, based on her own testimony, Plaintiff Daughter was not a “novice” drinker as discussed in *Gresham*, and as such, Defendant Daughter J owed her no duty.

Plaintiffs also suggest that the trial court erred in finding that Defendant Parents J were not negligent in supervising their minor child. They argue that it was naïve and negligent for the parents not to foresee the possibility that their teenage daughter would throw a party when left home alone. However, as Plaintiff Daughter stated in her deposition, Defendant Parents J believed that their daughter was spending the weekend at a friend’s house while they were out of town. They did not knowingly leave their daughter alone and unsupervised that weekend, and they had no reason to believe she would lie to them. Plaintiff Daughter testified that she was a good friend of Defendant Daughter J and had never known her to throw a

party while her parents were out of town. Plaintiffs failed to present any evidence before the granting of the motion for summary judgment that would indicate that Defendant Parents J knew of the party at their home. According to Plaintiff Daughter's own testimony, they did not know, and they had no reason to know. As such, there is no evidence to suggest that Defendant Parents J were negligent in the supervision of their daughter.

Plaintiffs also argue that Defendant Parents J are vicariously liable for the acts of their daughter, citing Louisiana Civil Code articles 2317 and 2318. However, as discussed above, Defendant Daughter J did not have a duty not to give alcohol to Plaintiff Daughter. Thus, there is no actionable negligence on her part to attribute vicariously to her parents. There is no alternative fault on the part of Defendant Parents J for alleged "negligent supervision" of their daughter, because she is not at fault, pursuant to *Gresham, Bell,* and *Guy, supra.* Hence, there is no basis for holding Defendant Parents J vicariously liable.

Plaintiffs assert that Defendant Parents J are independently liable. Citing *Lear v. United States Fire Ins. Co.,* 392 So. 2d 786 (La. App. 3 Cir. 1980), which held that homeowners owe a duty to shield guests from reasonably foreseeable dangers, they argue that teenage rape is a familiar occurrence in our society.

Under the well-settled jurisprudence, the duty imposed by law on a homeowner does not extend to unforeseeable or unanticipated criminal acts of a third party. *Vertudazo v. Allstate Ins. Co*, 542 So.2d 703, 704 (La. App. 4 Cir. 1989); *Corley v. Delany*, 629 So.2d 1255, 1257 (La. App. 3 Cir. 1993). In this case, the undisputed testimony of Plaintiff Daughter establishes that Defendant Parents J did not even know about the party. Therefore, there is no way they could have foreseen that the alleged criminal behavior would occur.

CONCLUSION

Accordingly, there is no basis for Defendant J's liability. For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED