

STATE OF MICHIGAN
COURT OF APPEALS

TERESA J. HUDSON, Personal Representative of the
Estate of JACK D. HUDSON, Deceased,

UNPUBLISHED
November 21, 1997

Plaintiff-Appellant,

v

No. 194722
Oakland Circuit Court
LC No. 91-407942 NO

CLAREFORD ENTERPRISES, INC., d/b/a
MAURA'S PUB,

Defendant-Appellee.

DAVID B. SCARBOROUGH,

Plaintiff-Appellant,

v

No. 195863
Oakland Circuit Court
LC No. 91-407943 NO

CLAREFORD ENTERPRISES, INC., d/b/a
MAURA'S PUB,

Defendant-Appellee.

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Plaintiffs, having dismissed claims based on all other theories of liability with prejudice so as to generate a final order disposing of all the claims as to all the parties, MCR 2.604, appeal by right summary disposition, under MCR 2.116(C)(10), in favor of defendant Clareford Enterprises, Inc., d/b/a Maura's Pub, based on their dramshop theory of liability, §22(5) of the Liquor Control Act. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

The trial court determined that plaintiffs had failed to adduce any evidence, sufficient to create a triable issue of fact, to establish that, for purposes of a dramshop action, intoxicating liquor was sold, furnished, or given away to the primary tortfeasor, John Frederick Martin, while he was visibly intoxicated. In opposition to the motion for summary disposition, plaintiffs adduced only the preliminary examination testimony of Sam Hall, given at the initial stages of the prosecution of John Frederick Martin for murder and assault. This Court's task is to examine plaintiffs' evidence to determine whether they have established the existence of a material factual dispute, inasmuch as plaintiffs would have the burden of proof at trial of all elements of a civil action based on the dramshop theory. *Quinto v Cross & Peters*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

Hall's testimony indicates that after plaintiff Scarborough and plaintiff's decedent Jack Hudson left Maura's Pub at approximately 2:30 p.m. on the date in question, Martin remained, and between 4:00 and 5:00 p.m., played a game of pool with Sam Hall. Hall testified that while he was present at Maura's Pub, he saw Martin served about three beers. The third beer was not, however, served directly to Martin, but was purchased by Hall and given to Martin in satisfaction of a bet the two men had made on the outcome of the game. Hall's testimony indicates that until Martin began consuming this beer, he had not displayed visible signs of intoxication. Subsequent to receiving this beer from Hall, Martin became loud, aggressive, and eventually assaultive. As there is no evidence in the record to suggest that, when he purchased the beer, Hall informed defendant's employees of his intent to give the beer to Martin, or that defendant, its agents, servants, and employees, must have known from the circumstances that such was Hall's intent, even if Martin was then visibly intoxicated defendant did not then serve him that beer and it is not civilly liable for the consequences of that beer being transferred to him by a person, Sam Hall, not its agent, employee, or servant. *Maldonado v Claud's, Inc*, 347 Mich 395, 409; 79 NW2d 847 (1956); accord, *Verdusco v Miller*, 138 Mich App 702, 706-707; 360 NW2d 281 (1984); *Walling v Allstate Ins Co*, 183 Mich App 731, 738-739; 455 NW2d 736 (1990).

As plaintiffs proffered no evidence of any other furnishing of intoxicants to Martin while he was visibly intoxicated, the trial court correctly concluded that plaintiffs failed to develop evidence to create a genuine issue of material fact to suggest violation of the dramshop statute sufficient to furnish a basis for imposing civil liability under these circumstances.

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.