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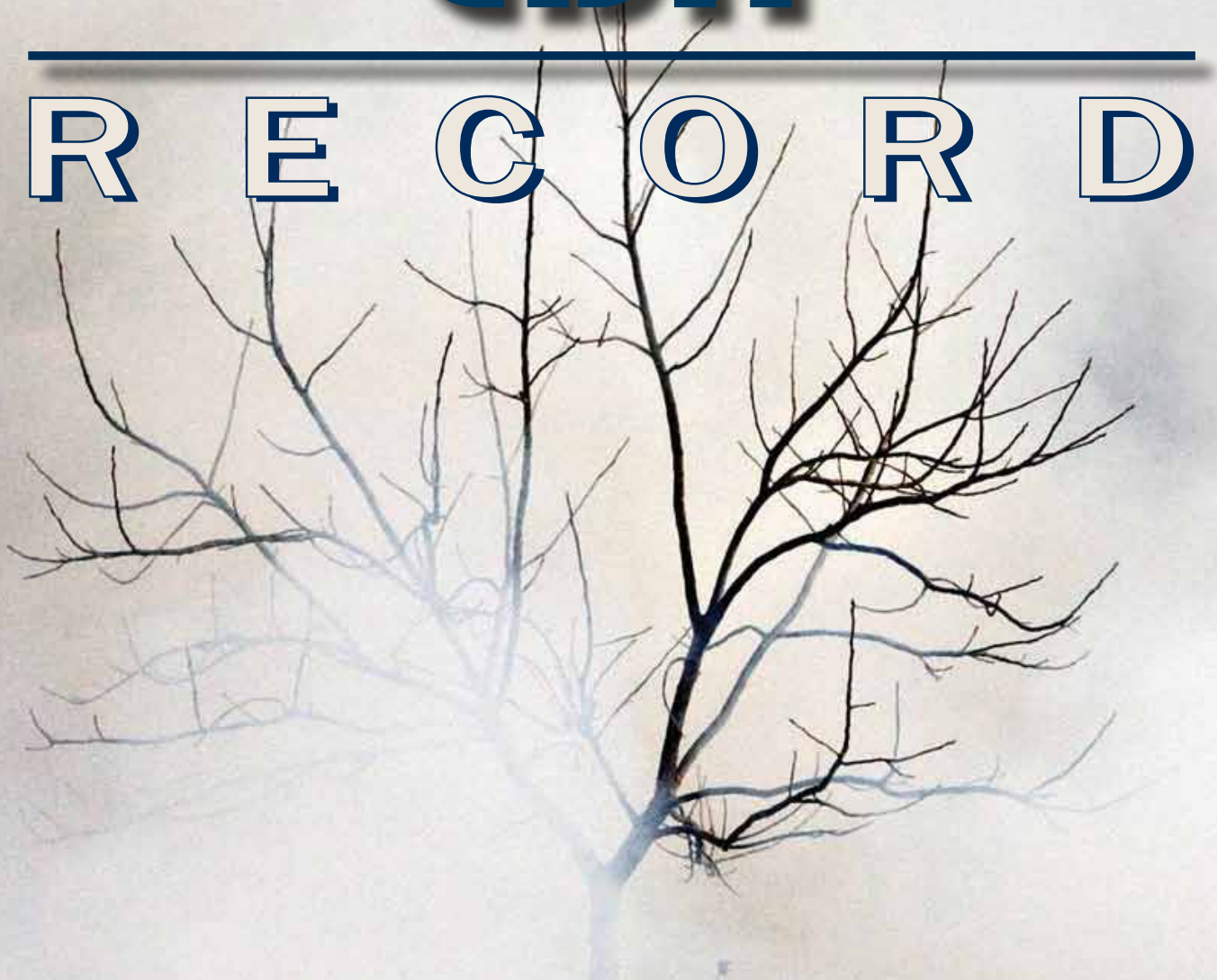

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NO COMMON LAW EXISTS

Social Host Liability for Underage Alcohol-Related Injuries

By Matthew A. Passen

Every parent's worst nightmare: their teenage child goes to a party at a friend's house; alcohol is consumed. Their child subsequently drives home from the party and is seriously injured or killed in a car accident.

Can the adult "social hosts" of the party–*e.g.*, the friend's parents who may have supplied the alcohol or allowed the underage drinking–be held civilly liable for negligence in contributing to their child's injury or death?

No Common Law Social Host Liability in Illinois

The landmark Illinois Supreme Court case dealing with social host liability is *Charles v. Seigfried*, 165 Ill.2d 482 (1995), in which the Court considered two consolidated common law negligence actions against social hosts for serving alcoholic beverages to minors who were subsequently injured in motor vehicle accidents.

The majority of the Court expressly held there is no common law social host liability in Illinois:

> For over one century, this court has spoken with a single voice to the effect that no social host liability exists in Illinois…[I]t has been, and continues to be, well-established law that Illinois has no common law cause of action for injuries arising out of the sale or gift of alcoholic beverages; that the legislature has preempted the field of alcohol-related liability; and that any change in the law governing alcohol-related liability should be made by the General Assembly, or not at all. *Charles*, 165 Ill. 2d at 486.

First, the Court noted the historical common law rule that there is no cause of action for injuries arising out of the sale or supply of alcoholic beverages. The rationale for the rule "is that the drinking of the intoxicant, not the furnishing of it, is the proximate cause of the intoxication and the resulting injury." *Id.*, *citing Cunningham v. Brown*, 22 Ill. 2d 23, 29-30 (1961) and *Cruse v. Aden*, 127 Ill. 231 (1889).

Second, the Court held that the Illinois legislature has preempted the entire field of alcohol-related liability through its passage and continued amendment of the Dram Shop Act of 1872, presently titled the Liquor Control Act of 1934. *See* 235 ILCS 5/6-21 (West 2006) ("Dram Shop Act"). The Dram Shop Act allows for very limited liability upon (1) businesses where alcoholic beverages are sold; and (2) persons over 21 years old who rent a hotel room and use it for underage drinking. Liability extends only to third-parties who are injured by intoxicated individuals, and not to the intoxicated individuals themselves.

The majority in *Charles* held that legislative preemption for alcohol-related liability "extends to social hosts who provide alcoholic beverages to another person,"

and because the Dram Shop Act does not impose liability upon social hosts, no such cause of action exists. 165 Ill.2d at 491. The Court stated that the question of whether, and to what extent, social host liability should be imposed must be answered by the legislature.

Exception to Rule Against Social Host Liability: Voluntary Undertaking

The Supreme Court next addressed social host liability in *Wakulich v. Mraz*, 203 Ill.2d 223 (Ill. 2003). In *Wakulich*, the plaintiff-mother alleged that a pair of brothers (ages 21 and 18) were negligent in providing alcohol to her 16-year-old daughter, Elizabeth, and in their performance of a "voluntary undertaking" to take care of Elizabeth after she became unconscious, which proximately caused her death.

The complaint alleged that the defendants dared Elizabeth and offered her money to drink an entire bottle of Goldschlager liqueur, which she did and subsequently lost consciousness. Elizabeth then began vomiting and making gurgling sounds. The brothers then "placed her in the family room; checked on her periodically; took measures to prevent aspiration; removed her soiled blouse; and prevented other persons present in the home from intervening in Elizabeth's behalf." *Wakulich*, 203 Ill.2d at 243. Elizabeth died the next day.

Plaintiff asserted two theories of liability: (1) that the defendants were negligent in providing alcohol to Elizabeth and inducing her to drink to excess; and (2) that the defendants were negligent in failing to act reasonably to protect Elizabeth after voluntarily undertaking to care for her once she lost consciousness.

With respect to plaintiff's first theory, the Court held that such a cause of action was foreclosed by *Charles* and its progeny, which specifically barred any form of social host liability apart from the limited civil liability provided by the Dram Shop Act. The Court declined plaintiff's request to overrule *Charles* and recognize a common law negligence cause of action against social hosts. Rather, it again stated that the legislature is best equipped to define the scope, if any, of social host liability.

On the other hand, with respect to plaintiff's "voluntary undertaking" theory, the Court held that the plaintiff stated a valid cause of action against the defendants. Generally, under a voluntary undertaking theory of liability, "one who undertakes, gratuitously or for consideration, to render services to another is subject to liability for bodily harm caused to the other by one's failure to exercise due care in the performance of the undertaking." *Id.* at 241, *citing Rhodes v. Illinois Central Gulf R.R.*, 172 Ill.2d 213, 239 (1996); Restatement (Second) of Torts § 323 and 324 (1965).

According to the Court, the defendants assumed a duty to care for Elizabeth after she became unconscious by taking affirmative steps to treat her, check on her, and prevent other people from helping her. *See Wakulich*, 203 Ill.2d at 243. In other words, plaintiff's voluntary undertaking theory was not based on the defendants' failure to act on Elizabeth's behalf (*i.e.* "nonfeasance"); instead, plaintiff's theory was that defendants "*negligently performed* their voluntary undertaking and are liable for their misfeasance." *Id.* at 246 (emphasis in original).

The Court disagreed with the defendants that voluntary undertaking theory was simply a way to circumvent the rule against social host liability. *Id.* at 241-42. Indeed, such a theory of liability is not contingent on the defendants' status as social hosts–the theory could apply to any class of defendants. Thus, in *Wakulich*, the defendants' liability arose "by virtue of their voluntary assumption of a duty to care for Elizabeth after she became unconscious, irrespective of the circumstances leading up to that point." *Id.* at 242.

Statutory Social Host Liability: The Drug or Alcohol Impaired Minor Responsibility Act

Following the Supreme Court's decision in *Wakulich*, the Illinois legislature enacted the Drug or Alcohol Impaired Minor Responsibility Act, 740 ILCS 58/1 *et seq.* (West 2004) ("Act"), which prohibits any person 18 years of age or older from "willfully suppl[ying] alcoholic liquor or illegal drugs to a person under 18 years of age and caus[ing] the impairment of such person."

The Act specifically creates a private cause of action for damages against persons over the age of 18 who: (1) sell, give or deliver alcohol or drugs to a minor; or (2) permit consumption of alcohol or drugs on *non-residential premises* owned or controlled by the person(s) over the age of 18. 740 ILCS 58/5(b) (emphasis added). Individuals who violate the Act may be held "liable for death or injuries to persons or property caused by the impairment of such [underage intoxicated] person." 740 ILCS 58/5(a).

The Act does not exclude any element of damages otherwise available in a personal injury action. *See* 740 ILCS 58/10. Prevailing plaintiffs may also recover attorney's fees and expenses, as well as punitive damages, for violations of the Act. *Id.*

Unlike the Dram Shop Act, a cause of action may be brought by the injured intoxicated minor, as well as by any injured third-parties (or their next of kin). Still, businesses that sell alcohol, and their employees, are excluded from liability under the Act if they otherwise complied with the Dram Shop Act. *See* 740 ILCS 58/20.

Accordingly, the Act imposes civil liability for most individuals–including social hosts–for selling, giving or delivering alcohol or drugs to a minor. However, the Act does not extend liability for simply permitting underage drinking in one's home.

Supreme Court's Most Recent Application: *Bell v. Hutsell*

The Illinois Supreme Court recently addressed the scope of voluntary undertaking as a theory of social host liability in *Bell v. Hutsell*, No. 110724, slip op. NRel (Ill. May 19, 2011). The plaintiffs, parents of an 18-year-old boy who died in a car accident after drinking alcohol at a house party, brought a wrongful death action against the owners of the residence.

The defendants in *Bell* did not supply the alcohol for the party, and therefore the Act, 740 ILCS 58/5, did not apply. Instead, the plaintiffs asserted a voluntary undertaking theory premised on the defendants' alleged duty to prohibit underage consumption of alcohol in their home and negligent performance of that duty.

Plaintiff's complaint alleged that the

defendants informed their son–not the plaintiff's son–both that alcohol consumption would not be tolerated and that they would monitor the party to see that underage partygoers did not possess or consume alcoholic beverages. The defendants were allegedly aware of underage drinking at their home on the night in question, and actually observed plaintiffs' son consume alcohol before getting into his car to leave the party. Further, the defendants allegedly spoke to a number of underage partygoers on multiple occasions and requested that if they had been drinking alcohol at the party not to drive a vehicle when leaving.

Consequently, the plaintiffs alleged that the defendants were negligent in "fail[ing] to comply with their own verbal directions to the party guests to ensure that underage drinking and driving thereafter from their home not occur." *Bell*, slip op. at 3.

The Court began its analysis by noting that under a voluntary undertaking theory of liability, "the duty of care to be imposed upon a defendant is limited to the extent of the undertaking." *Id.* at 5, *citing Frye v. Medicare-Glaser Corp.*, 153 Ill. 2d 26, 32 (1992). In examining the extent of the undertaking in *Bell*, the Court found no allegations of any "affirmative action" taken by the defendants to prohibit possession and consumption of alcohol:

> "Defendants did not attempt to confiscate alcoholic beverages in the possession of underage partygoers; they did not ask offenders to leave; they did not call a halt to the party–they did nothing…At most, the allegations of plaintiff's complaint suggest that defendants failed to follow through on an expressed intent to act that *might* have protected [plaintiff's son]."

Bell, slip op. at 11-12.

In other words, even if the defendants expressed a rule against underage drinking, they did nothing to enforce the rule. In addition, the defendants' conduct did not increase the risk of harm to plaintiff's son.

The Court found this a case of "true nonfeasance" (as opposed to misfeasance in *Wakulich*). In cases of nonfeasance, "a plaintiff's reliance on the defendant's promise is an independent, essential element." *Id.* at 10, *citing Buerkett v. Illinois Power Co.*, 384 Ill. App. 3d 418, 428 (2008); *see also* Restatement (Second) of Torts §§ 323 through 324A (1965).

The plaintiffs in *Bell* made no allegations that plaintiff's son acted in reliance upon the defendants' stated intent and subsequent inaction. Rather, the complaint alleged that the defendants' intention to prohibit underage possession and consumption of alcoholic beverages was expressed *only to defendants' son*, not to other partygoers, including plaintiff's son. Therefore, the Court held that the plaintiffs failed to state a legal duty to prohibit their son's voluntary possession or consumption of alcohol, and dismissed plaintiff's cause of action for voluntary undertaking. In essence, the Court held that voluntary undertaking liability does not extend "to people to whom no statements of intent were even communicated and with respect to whom no affirmative action appears to have been taken." *Bell*, slip op. at 9.

Conclusion

The Illinois legislature has now made clear that adults who supply alcohol to minors may be held civilly liable for death or injuries caused by or to the impaired minors. Where adults do not supply the alcohol, however, and a minor consumes the alcohol in someone's home, liability is limited.

Under the current state of the law, parents who allow minors to bring alcohol into their home, drink alcohol on their premises until they become impaired, and drive themselves home are not necessarily civilly liable for any resulting injuries or deaths. Instead, liability for alcohol-related injuries or death only arises if the social hosts voluntarily undertake a duty of care for the intoxicated person–through statements of intent or affirmative conduct–and do so negligently. ■

PRACTICE AREA POINTERS

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Matthew A. Passen, attorney with Passen Law Group, represents individuals and families in serious personal injury, medical malpractice and wrongful death actions. He is a member of the CBA Record editorial board. His father, Stephen Passen, represented the plaintiffs in Wakulich v. Mraz, the landmark Supreme Court decision extending voluntary undertaking liability.