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LIABILITY FOR SERVICE OF ALCOHOLIC BEVERAGES

by Ted Babbitt

The law of Florida is that a social host is ordinarily not liable for the service of alcoholic beverages to a guest who then causes an accident even when the guest is a known alcoholic. Dowell v Gracewood Fruit Co., 559 So.2d 217 (Fla. 1990). A social host is also not liable for serving alcoholic beverages to a minor who later causes injuries when those beverages are served at a private function. Bankston v Brennan, 507 So.2d 1385 (Fla. 1987), Kirkland v Johnson, 499 So.2d 899 (Fla. 1<sup>st</sup> DCA 1987). However, an adult who allows an open house party to take place at a residence and fails to take reasonable steps to prevent the consumption of alcoholic beverages by a minor is liable both civilly and criminally. Fla. Stat. 856.015, Newsome v Haffner, 710 So.2d 184 (Fla. 1<sup>st</sup> DCA 1998), Trainor v Estate of Hansen, 740 So.2d 1201 (Fla. 2<sup>nd</sup> DCA 1999).

The question of whether or not a private social club is responsible for selling alcoholic beverages to someone who it knew was habitually addicted to alcohol came up in Fritsch v Rocky Bayou Country Club, Inc., 26 F.L.W. D2736 (Fla. 1<sup>st</sup> DCA, Nov. 16, 2001). That case was a wrongful death suit against a private country club by the family of a club member who volunteered to drive a fellow club member who was too inebriated to drive home from a party. Enroute, the decedent was killed by a gunshot fired by the drunken passenger. The trial court granted a summary judgment, applying the social host rules in light of the

not-for-profit status of the private club, and ruled, as a matter of law, that the shooting was not foreseeable. The appellate court reversed.

Fla. Stat. §768.125 provides the following:

768.125 Liability for injury or damage resulting from intoxication. A person who sells or furnishes alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury or damage caused by or resulting from the intoxication of such person, except that a person who willfully and unlawfully sells or furnishes alcoholic beverages to a person who is not of lawful drinking age or who knowingly serves a person habitually addicted to the use of any or all alcoholic beverages may become liable for injury or damage caused by or resulting from the intoxication of such minor or person.

The appellate court found that since the country club held a license to sell liquor and charged for that service, it was not in the same position as a social host. In addition, a “golf mixer” at which the club sold alcohol was found not to be a private social function such as that anticipated by the above-cited “social host” cases. In light of the fact that there was evidence to indicate that the perpetrator was, indeed, habitually addicted to the use of alcoholic beverages and that the club had information to indicate that was the case, the appellate court found that the granting of the summary judgment was error.

On the issue of foreseeability the Court stated the following:

Finally, contrary to the trial court’s determination that even if a legal duty exists, Wright’s action was not foreseeable, Appellant presented evidence from which a jury could find that, by knowingly

-serving Wright too much alcohol, Appellee created a 'zone of danger' that some injury could be anticipated. A plaintiff is not required to prove the exact manner of the injury to support a claim under section 768.125. See McCain v Florida Power Corp., 593 So.2d 500 (Fla. 1992); Kirkman Road Sports Pub & Restaurant, Inc. v Dempsey, 723 So.2d 384 (Fla. 5<sup>th</sup> DCA 1998); Coker v Wal-Mart Stores, Inc., 642 So.2d at 774 (Fla. 1<sup>st</sup> DCA 1994).

This decision clarifies that a not for profit corporation is entitled to no immunity because of its status. Indeed the opinion states "Nowhere in Chapter 617, Florida Statutes, which addresses not-for-profit corporations, is there even a hint that the legislature intended by statute to exempt such corporations from liability." Thus where a bar, whether as part of a profit or nonprofit corporation, sells alcohol to a person known to be habitually addicted to alcohol, it does so at the risk of being held liable for damages caused by that person's state of intoxication.