

Courtroom observation paper



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Edward Hard, Mrs. Whites former fiancée. This would be the standard required in order for the plaintiff to recover under Indiana Law (Ind. Code Ann. § 7. 1-5-10-15. 5). Furthermore, they stated that the act of crashing into the White's car was not the " proximate cause" of the injuries to the plaintiff and the death of her husband but rather the result of a criminal act by Mr. Hard. The defendants believe there are no disputes of the material facts in the case and ask that the Court grant their motion The Appellee's lawyers in this case, believe that Mrs.

White was injured and her husband, Bruno White was killed when the vehicle driven by her ex-fiancée, Edward Hard, crashed into their vehicle. They believe the evidence showed that Mr. Hard was served and had consumed several alcoholic beverages at O'Malley's Tavern and that the defendants had actual knowledge that Mr. Hard was intoxicated and that his actions were the " proximate cause" of the injuries to Mrs. White and the death of her husband. The plaintiff, believes that she is entitled to recover for damages for personal injury or death for the defendants' actions pursuant to Indiana law (Ind.

Code Ann. §7. 1-5-10-15. 5, 2006) (hereafter " Dram Shop Act"). A claim under the Dram Shop Act would require that the claimant satisfy two elements in order to apply. The first element the plaintiff needs to prove is that there was actual knowledge of visible intoxication. The element is satisfied when: " the person furnishing the alcoholic beverage had actual knowledge that the person to whom the alcoholic beverage was furnished was visibly intoxicated at the time the alcoholic beverage was furnished. " *Fast Eddie's v. Hall*, 688 M/E/ 2d 1270. 1274 (Ind. Ct. App. 1997).

The second element requires that: “ the intoxication of the person to whom the alcoholic beverage was furnished was a proximate cause of the death, injury, or damage. ” Id. The plaintiff believes that she has satisfied both these elements and that there are disputes of material fact that would prevent the Court from granting the defendants’ motion and request the Court deny the same and allow the case to go to trial.. REVIEW I knew that prior to giving a review on the Moot Trial, I had to have an understanding as to what the definition of a Summary Judgment Claim and Proximate Cause were.

First, what is a Summary Judgment Claim? According to the Free Dictionary by Farflex, a Summary Judgment Claim is: “ A procedural device used during civil litigation to promptly and expeditiously dispose of a case without a trial. It is used when there is no dispute as to the material facts of the case and a party is entitled to judgment as a Matter of Law. ” (web. 26 Feb. 2012 <http://legal-dictionary.thefreedictionary.com/Summary+Judgment>) I followed up the definition by looking at when a Summary Judgment Motion would be awarded. Summary Judgment is appropriately awarded where the moving party shows that “ there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. ” (See Fed. R. Civ. P. Rule 56, web. 1 Mar. 2012 <http://www.uscourts.gov>) The Appellants’ in this case would have to show that there is “ No Dispute as to the material facts of the case, meaning that because there client did not have “ actual knowledge” that Mr. Hard was visibly intoxicated at the time he received his last drink, as a “ Matter of Law”, the Court would have to grant their motion.

The Appellee would have to show that there are, in fact, matters that should be heard by a jury and therefore, the motion should be denied. Next, I looked at the definition of " Proximate Cause. " According to the Free Dictionary by Farflex, a Proximate Cause is: " An act from which an injury results as a natural, direct, uninterrupted consequence and without which the injury would not have occurred. Proximate cause would be the primary cause of an injury. It is not necessarily the closest cause in time or space nor the first event that sets in motion a sequence of events leading to an injury.

Proximate cause produces particular, foreseeable consequences without the intervention of any independent or unforeseeable cause. It is also known as legal cause. " (web. 26 Feb. 2012 <http://legal-dictionary.thefreedictionary.com/proximate+cause>) The Appellants in this case would have to show that the actions of their bartender, John Daniels, in serving Mr. Hard his alcoholic drinks in excess was not the " proximate cause" of the injuries to the plaintiff or the death of her husband. They would have to prove that Mr. Daniels had no knowledge that Mr. Hard was visibly intoxicated at the time Mr. Daniels served him his last drink.

The plaintiff would have to prove that Mr. Daniels " did have" actual knowledge that Mr. Hard was intoxicated and that his actions as a result of being intoxicated were " foreseeable" and that the actions of Mr. Hard were the proximate cause of same. In reviewing the Moot Trial, I heard one other term that I knew I needed clarification on in order for me to give my opinion in regards to the motion, " foreseeability. " According to the Free Dictionary by Farflex, foreseeability is: " the facility to perceive, know in advance, or

reasonably anticipate that damage or injury will probably ensue from acts or omissions.

In the law of Negligence, the foreseeability aspect of proximate cause—the event which is the primary cause of the injury—is established by proof that the actor, as a person of ordinary intelligence and circumspection, should reasonably have foreseen that his or her negligent act would imperil others, whether by the event that transpired or some similar occurrence, and regardless of what the actor surmised would happen in regard to the actual event or the manner of causation of injuries. ” (web. 28 Feb. 2012

<http://legal-dictionary.thefreedictionary.com/foreseeability>) The Appellants in this case would have to show as to proximate cause that, without “ actual knowledge” as to the visible intoxication of Mr. Hard after serving him his last drink, Mr. Daniels would not have been able to “ foresee” Mr. Hard’s actions. OBSERVATIONS My position in this case is that the Lawyers for the Appellants are playing games with words. They are relying heavily on the words “ actual knowledge” and “ visibly intoxicated” to win the day for their argument. They stated that because the bartender didn’t see Mr.

Hard falling over drunk or bumping into chairs that the defendant couldn’t have had “ actual knowledge” of Mr. Hard being “ visibly intoxicated. ” I fully believe their motion should be denied. There are a couple of reasons for my position. First, our laws have been placed for us to use as a framework that can be and have been interpreted in different ways depending on who is using them. This framework does not “ exclude” the use of common sense! In arguing his case for the Appellants, Mr. Walton stated that the bar tender, John Daniels did not have “ actual knowledge” or see Mr.

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Hard “ visibly intoxicated” which elements are required by the Statute. (Ind. Code Ann. § 7. 1-5-10-15. 5) Even if Mr. Daniels didn’t see Mr. Hard falling over drunk, I find it difficult to believe that a bartender who has served a patron “ 13 drinks 6 of which were hard liquor” over the course of a couple of hours would not have at least a hint of “ actual knowledge” of intoxication when it was shown through deposition testimony that patrons, including the plaintiff, witnessed the defendant’s “ obvious intoxicated state.

If patrons could see Mr. Hard intoxicated, then it would be reasonable to infer that the person serving him the drinks should have also seen it. In one of the cases mentioned in the hearing, Jackson v. Gore, Essex and Goex, Inc. , 634 N. E. 2d 503 (Ind. Ct. App. 1994) the same waitress at a restaurant served her customer approximately 10 – 13 drinks over a 5 hour period. After leaving the restaurant, the customer hit a pedestrian, causing serious injuries.

The Court in the Jackson case stated that: “ quite simply, a jury could reasonably infer that the waitress, who had ample opportunity to observe [the patron] during a period in which he was visibly and obviously intoxicated, had actual knowledge of [the patron’s] intoxication. ” Id. at 505. The Court reasoned that actual knowledge “ may be inferred from facts reasonably supporting an inference of knowledge. ” Id. When the furnishing waitress had a long opportunity to serve and observe the patron, she had “ ample opportunity” to know the patron was “ visibly and obviously intoxicated. Id. In using this case, one can infer that Mr. Daniels did in fact have “ ample opportunity” to know that Mr. Hard was “ visibly and obviously intoxicated” because he was the one who was making and serving the

alcohol to him during a two hour period. This would be using “ common sense. ” For this reason I would side with the Appellee. Secondly, in arguing his case for the Appellant, Mr. VanMeter argued that it wasn’t Mr. Hard’s intoxication that was the “ proximate cause” of the injuries to Mrs. White and the death of her husband but rather a “ willful and wanton criminal act” by Mr.

Hard. Mr. VanMeter stated that since Mrs. White broke off her engagement with Mr. Hard, he has started drinking heavily and been irate in finding out Mrs. White got married. He argued that Mr. Hard had a “ vendetta” against Mrs. White and her husband. While I thought Mr. VanMeter did a good job of arguing his case, I found his theme almost funny. If Mr. Hard did in fact have a vendetta against the Whites, he still would not have known they would be at O’Malley’s Tavern the night the incident took place. He would not have had time to plan an assault on the Whites with his car.

He did though, have time to sit in his barstool and watch as the Whites came into the tavern which made him mad as he consumed more and more alcohol. This is where I believe the bartender, Mr. Daniels, served Mr. Hard the large amounts of alcohol; he got intoxicated and lost control of his judgment and unfortunately caused the accident involving the Whites. The fact that he was more inclined to be irate at the Whites because of their past coupled with the consumption of large amounts of alcohol did not make for a good mix. Regardless of Mr.

Hard’s intentions against the Whites, the bartender should have known that any patron who consumes that much alcohol could potentially harm

themselves as well as others. As I discussed early, Mr. Daniels had “ ample opportunity” to observe Mr. Hard’s intoxication and should have stopped serving him or at least got him a ride home. The fact that he failed to do so led to this accident and would have been: “ An act from which an injury results as a natural, direct, uninterrupted consequence and without which the injury would not have occurred. ” Therefore, Mr.

Daniels continuing to serve and allow Mr. Hard to become further intoxicated would have been enough to show “ proximate cause. ” At the very least the Court should rule that it is a question that should be asked by a jury and deny the motion on those grounds. BIBLICAL WORLD VIEW I believe as Christians that God has provided guidance to resolve our “ legal issues. ” I don’t feel that the Bible does not say a Christian can never go to court. The question before the court is whether or not this case should be heard by a jury? or should the court rule in favor of the defendant?

In arguing my point I tried to use the Bible as guidance and came up with the following: There are several instances in the Bible that show that we should be able to defend ourselves. In Romans 13 Paul speaks of God establishing laws that protect us from being wronged and therefore establishing times when legal action through the court system is ok. For this, Thou shalt not commit adultery, Thou shalt not kill, Thou shalt not steal, Thou shalt not bear false witness, Thou shalt not covet; and if there be any other commandment, it is briefly comprehended in this saying, namely,