

Dram Shop & Tort Liability: New Jersey Supreme Court's Decision In Bauer v. Nesbitt (New Jersey)

Generally, dram shop and tort liability laws are of limited state interest.

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After all, like alcohol regulation generally, every state sets its own standards in terms of whether to have a dram shop law and if so how to define it. Every once in a while, though, a case comes along that has relevance for all of us, no matter where we live, work or drink. The New Jersey Supreme Court's recent decision in Bauer v. Nesbitt is such a case.

Nesbitt (who was under 21) and Hamby had been drinking in the afternoon, and then went to the C-View Inn for Wing Nite with several friends. While at the C-View, waiters brought numerous pitchers of beer and plates of wings to the friends' table; however, Nesbitt was known to be only 19 by the venue's staff, and therefore was served only soft drinks.

The staff testified that while Nesbitt's behavior at times was loud and boisterous, he was not obviously intoxicated; moreover, the evidence showed that none of the staff were aware that Nesbitt had been drinking earlier that day. However, what the C-View's staff did not know, but evidence produced at trial showed, was that Hamby surreptitiously spiked Nesbitt's soft drinks under the table with rum from a personal flask during the wing nite festivities.

Nesbitt and Hamby drove off together when the friends finally left the C-View after several hours. Unfortunately, they were both drunk when Nesbitt crashed their car on the Garden State Parkway later that night. Hamby was killed, and Nesbitt was found to be legally intoxicated after the accident. Hamby's mother, Bauer, sued the C-View seeking to hold the licensee liable for Hamby's wrongful death under New Jersey's dram shop act.

However, a lower-court judge decided there was no evidence that the C-View served Nesbitt alcohol, and dismissed the case due to the lack of a legal duty owed by the licensee to Nesbitt. In effect, the lower court ruled the C-View was not responsible for Hamby's decision to "secretly serve" Nesbitt alcohol he had brought into the licensee's premises.

However, a New Jersey appellate court reversed the trial court, arguing that an alcohol beverage licensee does have a common law duty to safeguard its patron from the effects of intoxication, whether or not the licensee actually served alcohol to that patron. Although the appellate court found that the C-View could not be held liable for Hamby's acts in secretly spiking Nesbitt's soft drinks, it determined that the C-View had a duty to protect Nesbitt from the foreseeable risk of injury to himself and others by insuring that he did not drive while intoxicated. How could that duty have been foreseeable?

The appellate court reasoned that the C-View could be held liable under a theory that it negligently supervised Nesbitt who, according to the plaintiff's toxicology expert, "would have been showing obvious physical signs of intoxication in the C-View." Taking an expansionist view of the licensee's duty that went beyond the language of New Jersey's dram shop law, the appellate court determined that any licensee who had reasonable notice of a patron's intoxication, whether or not the licensee had served alcohol to that patron, was responsible for taking steps to keep the drunkard from hurting him/herself or others.

The justices of the New Jersey Supreme Court yesterday reversed the appellate court's decision. "Every license holder, whether a diner or tavern, would be potentially liable if a person ate nothing more than chicken wings on the premises, but had consumed alcohol earlier off-premises to the point of intoxication," Justice Barry Albin wrote for the unanimous state supreme court. In its ruling, the Supreme Court also noted that the New Jersey Dram Shop Act provides that a licensed server "shall be deemed to have been negligent only when the server served a visibly intoxicated person, or served a minor."

Because the C-View never served alcohol to Nesbitt, it was not liable for his actions. "Permitting a negligent-supervision cause of action to proceed in this case would fly in the face of the liability limits that the Legislature put in place in the Dram Shop Act and would impose on alcoholic beverage servers the duty to monitor every guest, including those to whom no alcohol was served, for signs of possible intoxication," the high court stated.

This recent decision also is important for its position on evidence of intoxication. According to Justice Albin's decision, which reflected the unanimous opinion of all the justices, the plaintiff's expert engaged in speculation by concluding that Nesbitt would have shown signs of intoxication before he left the C-View. "In this case, Nesbitt left the Inn on his own power; he was not stumbling or falling down and did not give any indication that he would be an imminent menace once he left the premises," the supreme court's decision stated.

Based on this reasoning, the New Jersey Supreme Court reversed what has been a very concerning decision for the hospitality industry. After the appellate court decision was issued last year, many industry observers cautioned that activist judges were expanding dram shop and tort liability standards to unprecedented and unsustainable levels. Apparently, the New Jersey Supreme Court agreed.

"It is one thing, under the Dram Shop Act, to be accountable for serving a visibly intoxicated patron an alcoholic beverage, it is another thing to serve that same person a Coca-Cola and still be responsible for his conduct once he leaves the premises.

Because the Inn did not serve alcohol or allow alcohol to be served to Nesbitt, under the Dram Shop Act it had no duty to monitor Nesbitt to ensure that he was not intoxicated.

We therefore reverse the Appellate Division and reinstate the trial court's summary-judgment dismissal of plaintiff's negligent- supervision cause of action against the Inn."

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