2014 IL App (2d) 131330-U
No. 2-13-1330
Order filed July 31, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

VASFIJE OSMANI,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12-L-577
	)	
AMERICAN DRUG STORES, LLC,	)	
AMERICAN STORES COMPANY, LLC,	)	
NEW ALBERTSON'S, INC.,	)	
SUPERVALU, INC.,	)	
GALENA-KINGWAY PROPERTIES, and	)	
DONALD HARKER,	)	Honorable
	)	F. Keith Brown,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted defendants' motion for summary judgment and did not err in denying plaintiff's cross-motion for summary judgment. Affirmed.

¶ 2 Plaintiff, Vasfije Osmani, filed suit against defendants, American Drug Stores LLC, American Stores Company, LLC, New Albertson's, Inc., Supervalu, Inc., and Galena-Kingway Properties, asserting a cause of action under the Dram Shop Act (Act) (235 ILCS 5/6-21 (West 2010)) for injuries and damages that she sustained in an automobile collision with Donald

Harker. The parties filed cross-motions for summary judgment. The trial court granted summary judgment to defendants and denied summary judgment to plaintiff. It explained that there was no material question of fact, because both parties agreed that defendants did not directly sell to, know, or otherwise have reason to know that the alcohol would be consumed by the allegedly intoxicated person. Plaintiff concedes that the trial court correctly applied the existing law to the undisputed facts. That is, Illinois appellate courts, by which the trial court was bound, have consistently limited liability under the Act to situations where the sale of alcohol: (1) was made directly to the allegedly intoxicated person; or (2) where, if sold to someone other than the allegedly intoxicated person, the seller knew or had reason to know the alcohol would be consumed by the allegedly intoxicated person. *Taylor v. Village Commons Plaza, Inc.*, 164 Ill. App. 3d 460 (1987); *Welch v. Convenient Food Mart No. 550*, 106 Ill. App. 3d 131 (1982); *Tate v. Coonce*, 97 Ill. App. 3d 145 (1981); *Peterson v. Jack Donelson Sales Co.*, 4 Ill. App. 3d 792 (1972). Plaintiff appeals, asking us to reconsider the existing case law. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 27, 2011, Harker's friend, Ron (last name unclear), purchased for Harker a half-gallon of Smirnoff's vodka from defendants' store, a Jewel-Osco. Harker provided Ron with money but did not go into the store; instead, he waited in the car.

¶ 5 The next day, on October 28, 2011, Harker consumed about half of the half-gallon bottle of vodka. The only alcohol Harker consumed that day was the vodka purchased the previous night by Ron. That night, at around 10 p.m., Harker, after failing to obey a stop sign while driving, collided with plaintiff's vehicle. At the time of the collision, Harker was intoxicated. Harker did not have insurance or a valid driver's license. Harker later pleaded guilty to a DUI

charge.

¶ 6 Subsequently, plaintiff filed a complaint against defendants asserting a cause of action under the Act.[1] Defendants moved for summary judgment, arguing that no material question of fact existed as to whether defendants did directly sell to, know, or otherwise have reason to know that Harker would consume the alcohol. Both parties agreed that defendants did not directly sell to, know, or otherwise have reason to know that Harker would consume the alcohol. Plaintiff filed a cross-motion for summary judgment, on the same point, essentially asking the trial court to change the existing case law. Following oral arguments, the trial court granted summary judgment to defendants and denied plaintiff's cross-motion. This timely appeal followed.

¶ 7 II. ANALYSIS

¶ 8 On appeal, plaintiff argues that the trial court erred in granting defendants' motion for summary judgment and in denying her motion for summary judgment on the same point. Summary judgment is appropriate when the pleadings, depositions, and affidavits on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012); *City of Oakbrook Terrace v. Suburban Bank & Trust Co.*, 364 Ill. App. 3d 506, 510 (2006). We review *de novo* the circuit court's decision to grant or deny a motion for summary judgment. *Id.*

¶ 9 Here, the trial court, bound by appellate court precedent, properly applied existing law to undisputed facts. It was required to grant summary judgment to defendants, because trial courts are required to follow the decisions of appellate courts. See, *e.g.*, *O'Casek v. Children's Home & Aid Soc. of Illinois*, 229 Ill. 2d 421, 440 (2008). We, however, are bound only by the supreme

[1] Although not an issue on appeal, the complaint also asserted a negligence claim against Harker, which later was voluntarily dismissed.

court, not our own appellate court. *Id*. The supreme court has neither affirmed nor reversed our appellate court precedent limiting liability to scenarios where the defendants either directly sold to, knew, or had reason to know that the allegedly intoxicated person would consume the alcohol. Thus, we address the issue.

¶ 10 Plaintiff is asking us to reconsider established case law. As will be discussed, she asserts that liability under the Act should be interpreted to include any party licensed to sell alcohol whose selling or gifting of alcohol causes the intoxication of any person, no matter how far removed from the original purchaser or recipient, who injures the plaintiff. The question of whether to depart from established law invokes the doctrine of *stare decisis*. The doctrine of *stare decisis* "expresses the policy of the courts to stand by precedents and not to disturb settled points." *People v. Sharpe*, 216 Ill. 2d 481, 519 (2005)(quoting *Neff v. George*, 364 Ill. 306, 308-09 (1936)(overruled on other grounds by *Tuthill v. Rendelman*, 387 Ill. 321 (1944))). The doctrine of *stare decisis* "is the means by which courts ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." *Chicago Bar Ass'n v. Illinois State Board of Elections*, 161 Ill. 2d 502, 510 (1994). "*Stare decisis* permits society to presume that fundamental principles are established in the law rather than in the proclivities of individuals." *Id*. However, a court will "detour from the straight path of *stare decisis* only for articulable reasons, and only the court must bring its decisions into agreement with experience and newly ascertained facts." *Id*. "Decisions that have been established for a long period of years should, in the orderly administration of justice, be deemed controlling unless and until the General Assembly provides otherwise." *Charles v. Seigfried*, 165 Ill. 2d 482, 492 (1995) (concerning social hosts).

¶ 11 Plaintiff asserts that, here, there are valid, articulable reasons to depart from the doctrine of *stare decisis*. Specifically, plaintiff points to the plain language of the statute and to policy considerations. Plaintiff's policy considerations concern both the proper role of the judiciary *vis-a-vis* the legislature and the Act's purpose.

¶ 12 Here, the statute provides in relevant part:

> "Every person who is injured within this State, in person or property, by any intoxicated person has a right of action in his or her own name, severally or jointly, against any person, licensed under the laws of this State or of any other state to sell alcoholic liquor, who, by selling or giving alcoholic liquor, within or without the territorial limits of this State, causes the intoxication of such person." 235 ILCS 5/6-21 (West 2010).

The primary rule of statutory interpretation is to ascertain and give effect to the intent of the legislature. *In re Marriage of Rogers*, 213 Ill. 2d 129, 136 (2004). "The best evidence of legislative intent is the language of the statute, and[,] when possible, the court should interpret the language of a statute according to its plain and ordinary meaning." *In re Donald A.G.*, 221 Ill. 2d 234, 246 (2006). In determining the plain and ordinary meaning, "[c]ourts should consider the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it." *People v. Davis*, 199 Ill. 2d 130, 135 (2002). Courts are not at "liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations[,] or conditions that the legislature did not express." *Petersen v. Wallach*, 198 Ill. 2d 439, 446 (2002).

¶ 13 Plaintiff notes that the plain language of the statute does not include a requirement that: (1) the sale of alcohol be made directly to the allegedly intoxicated person; or that (2) the seller

knew or should have known that, as a result of a third-party purchase, the allegedly intoxicated person would be the ultimate consumer of the alcohol. In plaintiff's view, the courts should not place these limits on liability because the statute does not expressly delineate them.

¶ 14 Plaintiff further notes that the primary expression of Illinois policy should come from the legislature. *Charles*, 165 Ill. 2d at 493. This is especially true regarding issues where a new rule is warranted. *Id*. The members of our General Assembly are "best able to determine whether a change in the law is desirable and workable." *Id*.

¶ 15 Plaintiff contends that reading such limitations into the statute contravenes the purpose of the Act, which is "to place responsibility for damages caused by the intoxication from the consumption of alcohol on those who profit from its sale." *Walter v. Carriage House Hotels, Ltd.*, 164 Ill. 2d 80, 86-87 (1995) (concerning a plaintiff's complicity). The Act is to be "liberally construed to protect the health, safety, and welfare of the people from the dangers of traffic in liquor." *Nelson v. Araiza*, 69 Ill. 2d 534, 538 (1978) (same). Therefore, in plaintiff's view, limiting liability fails to adequately protect the health, safety, and welfare of the public.

¶ 16 We reject plaintiff's arguments, and we conclude that the established case law is well reasoned. Again, to establish liability, a plaintiff must prove either a direct sale requirement or a knowledge requirement. *Welch*, 106 Ill. App. 3d at 132. The first scenario under which a defendant may incur liability, known as the direct sale requirement, dates back to the decision in *Austin v. Bass*, 206 Ill. App. 435, 441-42 (1917), when the appellate court held that "the selling of liquor is treated as a contract, and the saloon keeper has the right to sell to whomsoever he [or she] chooses or may refuse to sell." Under the direct sale requirement, a seller was required to make a direct sale of alcohol to the allegedly intoxicated person. *Welch*, 106 Ill. App. 3d at 132.

¶ 17 Under the direct sale requirement, however, a seller would escape liability even when, for example, the seller knew that someone other than the purchaser would consume the alcohol. *Welch*, 106 Ill. App. 3d at 133. To avoid this result, another line of cases has imposed liability when the seller knew or should have known that the allegedly intoxicated person would be a consumer of the alcohol. *Id*.; see also *Taylor*, 164 Ill. App. 3d at 466; *Tate*, 97 Ill. App. 3d at 149; *Peterson*, 4 Ill. App. 3d at 795; *Albertina v. Owens*, 3 Ill. App. 3d 703 (1971); *Anderson v. Dale*, 90 Ill. App. 2d 332 (1967); *Rittmeyer v. Anderson*, 49 Ill. App. 2d 71 (1964); *McCoy v. Spalding*, 41 Ill. App. 2d 292 (1963); *Stinson v. Edlen*, 27 Ill. App. 2d 425 (1960); *Blackwell v. Fernandez*, 324 Ill. App. 597 (1945). This second scenario may be thought of as the knowledge requirement. *Welch*, 106 Ill. App. 3d at 133. The knowledge requirement "requires more than knowing merely that unspecified, absent persons will be drinking: the dramshop must have actual or constructive knowledge that a particular person will be drinking." *Id.* The direct sale requirement and the knowledge requirement were created to limit the group of persons for whom a seller is liable since "dramshops should not be required to insure the consumption of alcohol in general." *Id*. at 132.

¶ 18 We are not persuaded by plaintiff's argument that these cases are based on a weak foundation because *Austin*, the first case, relied on the criminal portion of the Act rather than the civil portion (*Siegel v. People*, 106 Ill. 89 (1883)). As noted above, the direct sale requirement has not only consistently been upheld, it has also been expanded to include scenarios where the seller knew or should have known that the allegedly intoxicated person would be consuming the alcohol. Therefore, the common law has developed with the thought that, among other reasons, dramshops should not insure the consumption of alcohol in general. Thus, we reject the suggestion that the case law is merely based on one old criminal case.

¶ 19 More critically, over the years, the legislature has amended the Act more than a dozen times (*Charles,* 165 Ill. 2d at 492), but has never altered the appellate court's interpretation of the direct sale or knowledge requirements. "The legislature is presumed to have been aware of judicial decisions interpreting the statute and to have acted with this knowledge." *Bruso by Bruso v. Alexian Brothers Hospital*, 178 Ill. 2d 445, 458 (1997). We presume that the legislature is aware of our interpretation of the Act. By choosing not to change it, the legislature has implicitly endorsed our interpretation.

¶ 20 Finally, we reject plaintiff's policy argument. To carry the policy of the Act to the extreme position that plaintiff urges would lead to absurd results. In interpreting a statute, we must also presume that "when the legislature enacted a law, it did not intend to produce absurd, inconvenient, or unjust results." *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 134 (2005). If the plain language, when read in the context of the statute, points to an absurd result, courts are not considered bound by the plain meaning. *People v. Hanna*, 207 Ill. 2d 486, 498-99 (2003). Under plaintiff's suggested interpretation of the Act, there are numerous scenarios that could result in liability for a seller even if there was no established relationship with the intoxicated person. For instance, an individual may purchase alcohol. The purchaser may give that alcohol to someone as a gift; many years later, that person brings the alcohol to a party; and at the party, another person consumes that alcohol, becomes intoxicated, and causes an automobile accident. Under plaintiff's proposed interpretation, an injured party would be allowed to sue the original seller, even though the seller never had a relationship with the intoxicated party. This scenario is not all-inclusive, and numerous other scenarios exist. The point is that plaintiff's proposed interpretation would produce unlimited exposure to sellers and produce absurd and unjust results.

Such results would be an inevitable consequence of the interpretation of the Act urged by plaintiff in this case. Accordingly, we conclude that the current interpretation of the Act is consistent with well-established precedent and policy considerations.

¶ 21 In sum, to sustain a cause of action under the Act, defendants had to directly sell alcohol to Harker, or defendants had to know or have reason to know that Harker would be the ultimate consumer of the alcohol. *Taylor*, 164 Ill. App. 3d at 466. Here, the facts are undisputed. It is undisputed that Harker did not directly purchase the alcohol from defendants. Instead, while Harker waited outside, Harker's friend purchased the alcohol. Plaintiff failed to offer any evidence that defendants knew or should have known that Ron purchased the alcohol for Harker. Therefore, the trial court properly granted summary judgment to defendants and denied plaintiff's cross-motion for summary judgment.

¶ 22 III. CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 24 Affirmed.