2017 IL App (2d) 160746-U
No. 2-16-0746
Order filed July 17, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KAREN MILLER, as Parent, Guardian, and Administrator of the Estate of Kailee Miller, Deceased, Plaintiff-Appellant, v. JAMES MANNELLA and CHRISTINE MANNELLA, Defendants-Appellees.	)	Appeal from the Circuit Court of Du Page County. No. 15-L-1009 Honorable Ronald D. Sutter, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court properly dismissed plaintiff's complaint for social-host liability: by statute, because the person who consumed the alcohol was over 18, defendants could not be civilly liable for her injuries.

¶ 2 A few months after she turned 18, Kailee Miller was invited to a friend's house for a party. While there, defendants, James and Christine Mannella, the adults who owned the home, allegedly provided vodka to Kailee, and she drank until she became intoxicated. Kailee left defendants' home with other partygoers, and at some point, Kailee exited the car in which she

was a passenger and was killed. Kailee's mother, plaintiff Karen Miller, sued defendants, claiming that they were negligent in providing Kailee alcohol. Defendants moved to dismiss, noting that social hosts who serve alcohol to people older than 18 are not liable for any injuries those people sustain. See 740 ILCS 58/5(b) (West 2014). The trial court granted the motion, and plaintiff timely appealed. We affirm.

¶ 3 In her complaint, plaintiff alleged that Kailee, who was born on November 11, 1996, went to defendants' home in Woodridge on March 28, 2015. Defendants, who had provided Kailee alcoholic beverages in the past, provided Kailee with vodka that night. Kailee drank that alcohol and became intoxicated. Thereafter, Kailee got into a car as a passenger with other partygoers and left defendants' home. At 10:45 p.m., Kailee exited that car and sustained severe injuries.[1] Those injuries led to Kailee's death.

¶ 4 Based on these facts, plaintiff claimed that defendants acted negligently. More specifically, she asserted that defendants had a duty to exercise ordinary care for the safety of Kailee and to not provide her with alcohol. Plaintiff contended that defendants breached that duty when they provided Kailee with vodka. Moreover, plaintiff claimed that, as a proximate result of defendants' negligent conduct, Kailee sustained the injuries that caused her death.

¶ 5 Defendants moved to dismiss (735 ILCS 5/2-615 (West 2014)), noting that, under section 5 of the Drug or Alcohol Impaired Minor Responsibility Act (Impaired Minor Responsibility

[1] According to an article written about the incident, Kailee was hanging out of the rear passenger-side window when she jumped out of the car. *Woodridge Police: Downers Grove South Student Jumped from Moving Vehicle Before Dying*, MySuburbanLife.com (Apr. 4, 2015), http://www.mysuburbanlife.com/2015/04/01/woodridge-police-downers-grove-south-student-jumped-from-moving-vehicle-before-dying/a651zyv/ (last visited July 5, 2017).

Act) (740 ILCS 58/5 (West 2014)), Illinois does not recognize civil liability against social hosts for injuries that result from their providing alcohol to people over 18. Plaintiff responded that, under section 6-16(a-1) of the Liquor Control Act of 1934 (Liquor Act) (235 ILCS 5/6-16(a-1) (West 2014)), it is illegal for a parent to knowingly permit his or her residence to be used by people under 21 as a place to consume alcohol. Thus, plaintiff claimed that, at least as to people between 18 and 21, section 5 of the Impaired Minor Responsibility Act (740 ILCS 58/5 (West 2014)) was inconsistent with section 6-16(a-1) of the Liquor Act (235 ILCS 5/6-16(a-1) (West 2014)). Plaintiff also argued that, although our supreme court has refused to find social hosts liable for injuries resulting from their supplying minors with alcohol, that position is outdated and needs to be modified.

¶ 6 The trial court granted the motion to dismiss. In doing so, the court agreed that section 5 of the Impaired Minor Responsibility Act (740 ILCS 58/5 (West 2014)) did not make sense in light of the fact that the legal drinking age is 21 (see 235 ILCS 5/6-20(e) (West 2014)). However, be that as it may, the court found that it was bound by the Impaired Minor Responsibility Act and our supreme court's decisions refusing to recognize social-host liability outside of the laws that the legislature enacts.

¶ 7 At issue in this appeal is whether plaintiff's complaint was properly dismissed. As noted, defendants moved to dismiss plaintiff's complaint under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)). We review the denial of such a motion *de novo*. *Phelps v. Land of Lincoln Legal Assistance Foundation, Inc.*, 2016 IL App (5th) 150380, ¶ 11. Under *de novo* review, we perform the same analysis as the trial court. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 8 Generally, a section 2-615 motion to dismiss challenges the legal sufficiency of a complaint by alleging that the complaint contains defects apparent on its face. *In re Estate of Powell*, 2014 IL 115997, ¶ 12. A section 2-615 motion admits as true all well-pleaded facts, but not conclusions of law or factual conclusions that are not supported by specific factual allegations. *Phelps*, 2016 IL App (5th) 150380, ¶ 11. In analyzing a section 2-615 motion, the court must determine whether the allegations in the complaint, when viewed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Id.*

¶ 9 In examining whether plaintiff's complaint was properly dismissed, we first review what plaintiff alleged in her complaint. Plaintiff asserted that defendants owed a duty to 18-year-old Kailee not to give her alcohol, that defendants breached that duty when they provided vodka to Kailee, and that Kailee's death was proximately caused by defendants' providing her vodka.

¶ 10 We now consider whether these allegations present a viable cause of action. In doing so, we note that, in *Charles v. Seigfried*, 165 Ill. 2d 482 (1995), our supreme court considered whether adults who permit minors to drink in their homes can be held liable for injuries the minors sustain from consuming alcohol. In examining that issue, the court noted that it "has consistently refused to recognize any cause of action for alcohol-related liability beyond those explicitly provided for [by statute]." *Id.* at 489. The court observed that this "[l]egislative preemption in the field of alcohol-related liability extends to social hosts who provide alcoholic beverages to another person, whether that person be an adult, an underage person, or a minor." *Id.* at 491. Thus, because the legislature did not provide a cause of action against social hosts, the court found that the plaintiffs' complaints were properly dismissed. *Id.*

¶ 11 In 2003, our supreme court reaffirmed the rule that social hosts cannot be held liable for furnishing alcohol to minors. See *Wakulich v. Mraz*, 203 Ill. 2d 223, 226 (2003). In doing so, the court rejected the plaintiff's claim that the social hosts should be liable for the minor's death because they negligently supplied alcohol to the minor and induced her to drink to a point well past mere intoxication.[2] *Id.* at 239-40. The court reiterated that the legislature has preempted the field of regulating alcohol-related social-host liability. *Id.* at 232. Thus, the court found that it was up to the legislature, not the courts, to correct any failure to adequately address circumstances like those presented in that case. *Id.*

¶ 12 In response to *Wakulich*, the legislature passed the Impaired Minor Responsibility Act, which significantly changed the law on social-host liability. Section 5(a) of the Impaired Minor Responsibility Act (740 ILCS 58/5(a) (West 2014)) provides that any person at least 18 years old who willfully supplies alcohol or an illegal drug to a person under 18 that impairs the minor shall be liable for the injuries or death of another that resulted from the minor's intoxication. The Impaired Minor Responsibility Act also permits people at least 18 years old who are injured, or parents of minors who are injured, to bring a cause of action against all people (1) who, by willfully selling or giving alcohol or illegal drugs, caused or contributed to the impairment of the person under 18 or (2) who, by willfully permitting the consumption of alcohol or illegal drugs on nonresidential property they own or control, caused or contributed to the impairment of the minor. 740 ILCS 58/5(b) (West 2014).

[2] Although the court in *Wakulich* did not find that the defendants could be accountable for the minor's death based on social-host liability, it did determine that the plaintiff adequately pled liability under a voluntary-undertaking theory. *Id.* at 246. Plaintiff here admitted that she was not making any claim under a voluntary-undertaking theory.

¶ 13 Given this backdrop, we must conclude that plaintiff failed to state a cause of action. Specifically, not only has plaintiff failed to allege that defendants "willfully" gave alcohol to Kailee while she was in their home, but the allegations in her complaint reveal that Kailee was not under 18 when the incident occurred. Given that the Impaired Minor Responsibility Act, which provides the only grounds for finding social hosts civilly liable, does not cover the circumstances surrounding Kailee's death, we must conclude that plaintiff's complaint was properly dismissed.

¶ 14 Plaintiff urges this court to create an exception for social-host liability based on present-day society and proximate cause. Plaintiff asks us to disregard our supreme court's decisions, adopt Justice McMorrow's dissent in *Charles*, and recognize that section 5 of the Impaired Minor Responsibility Act (740 ILCS 58/5 (West 2014)) conflicts with section 6-16(a-1) of the Liquor Act (235 ILCS 5/6-16(a-1) (West 2014)). We decline plaintiff's invitation.

¶ 15 First, we cannot disregard *Charles*. There, over Justice McMorrow's dissent, our supreme court noted that "the rationale underlying the rule [against imposing liability on social hosts] is that the drinking of the alcohol, not the furnishing of it, is the proximate cause of the intoxication and the resulting injury." *Charles*, 165 Ill. 2d at 486. In so concluding, our supreme court expressly declined to recognize an exception when the person consuming alcohol is underage. See *id.* at 491. Thus, we cannot adopt plaintiff's theory of proximate cause. Also, although more states are recognizing that social hosts should be liable for injuries caused by underage guests who consume alcohol (compare *id.* at 516 (McMorrow, J., dissenting, joined by Harrison, J.) (by 1995, 26 states adopted social-host liability) with Krystyna D. Gancoss, *"I'm Not a Regular Mom … I'm a Cool Mom": An Argument for Broader Civil Social Host Liability in Connecticut*, 35 Quinnipiac L. Rev. 351, 368 (2017) (35 states impose civil liability on social

hosts)), as defendants note, Illinois legislators are currently considering relaxing the law on social-host criminal liability when those under the legal drinking age drink alcohol under the direct supervision of their parents or guardians. See 100th Ill. Gen. Assem., House Bill 494, 2017 Sess. ("[T]he consumption by a person under 21 years of age under the direct supervision and approval of the parents or parent or those persons standing in loco parentis of such person under 21 years of age in the privacy of a home, is not prohibited by this [Liquor] Act."). Further, although we certainly recognize the public-policy concerns Justice McMorrow raised in her dissent in *Charles*, we cannot create a cause of action for social-host liability that is broader than that which the legislature provided. See *Wofford v. Tracy*, 2015 IL App (2d) 141220, ¶ 41 ("[I]t is the province of our supreme court and/or the General Assembly, not the appellate court, to create new causes of action."). Finally, although an initial examination might suggest that the Impaired Minor Responsibility Act and the Liquor Act conflict, as the laws seek to limit the consumption of alcohol by people under different ages, we cannot conclude that they are in fact conflicting. As defendants note, section 5 of the Impaired Minor Responsibility Act addresses the *civil* liability a person faces when he serves alcohol to someone under 18, while the Liquor Act is concerned with *criminal* liability for serving alcohol to someone under 21. "[T]he fact that the civil and criminal positions on this topic conflict is a function of the different considerations on which the rules are based and is not telling." *People v. Marker*, 233 Ill. 2d 158, 175 (2009). Given the different interests the laws protect, we find plaintiff's argument unavailing.

¶ 16 In conclusion, we hold that plaintiff failed to allege facts sufficient to establish defendants' liability for Kailee's death and that, thus, the trial court properly granted defendants' motion to dismiss. We recognize that this result may be harsh, especially when we consider that

yet another family has had to face the tragic loss of a child. See *Charles*, 165 Ill. 2d at 511 (McMorrow, J., dissenting, joined by Harrison, J.) (acknowledging "present-day reality of the needless carnage and destruction wrought by underage drunk driving"). However, given the Impaired Minor Responsibility Act and our supreme court's decisions on social-host liability, we cannot conclude that the trial court reached the wrong result. Any change in the status of the law must come from the legislature or our supreme court, not this court. See *Kevin's Towing, Inc. v. Thomas*, 351 Ill. App. 3d 540, 549 (2004).

¶ 17 For these reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 18 Affirmed.