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NEWSLETTER

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Parents are not liable for negligence in voluntarily undertaking to monitor underage drinking

by Victoria R. Benson

Plaintiff filed suit individually and on behalf of her minor son's estate seeking damages resulting from her son's death. Plaintiff's underage son died in an automobile accident after consuming alcoholic beverages while at a party at Defendants' residence. Plaintiff alleged that Defendants voluntarily undertook the duty to prohibit underage drinking at the residence and negligently performed that duty.

Defendants' son had a party at the home of his parents, the Defendants. According to Plaintiff, Defendants voluntarily undertook a duty to prohibit their son and his party guests who were under the age of 21 from drinking alcoholic beverages of any kind at the residence. Plaintiff alleges Defendants also undertook to monitor and supervise to ensure that none of the guests who were under 21 would consume alcoholic beverages.

The Court held that Plaintiff's allegations that Defendants had a duty to Plaintiff and her minor son were insufficient. In Illinois, one who undertakes to render services to another "which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of harm, or (b) the harm is suffered because of the other's reliance on the undertaking." Restatement (Second) of Torts § 323.

The Court noted that in order for there to be a substantial step in pursuit of an alleged undertaking in this case, there must have been some affirmative action taken in attempt to prohibit possession and consumption of alcohol. Plaintiff, however, has not alleged any affirmative action on the part of Defendants. According to the Court, the facts alleged do not support an inference that Defendants commenced substantive performance of the intended undertaking, but rather that the intent was abandoned.

The Court went on to discuss that even if the allegations of duty were sufficient, the facts alleged did not provide a basis for liability. In other words, the Defendants' intent and subsequent inaction did not increase the risk of harm to Plaintiff's minor son or other partygoers. There was no evidence of reliance by anyone upon Defendants' intended actions.

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According to Plaintiff, Defendants expressed their intention to prohibit underage possession and consumption of alcoholic beverages only to their son. There was no allegation that Defendants' intentions were communicated to anyone else. Therefore, there were no facts alleged that would support an inference of reliance or change of position on the part of any of the guests.

Because the Defendants in this case took no affirmative action to prohibit underage drinking, and no one changed their position as a result of the Defendants alleged statements to prohibit underage drinking, relied upon those statements, or was placed in an increased risk of harm because of it, the factual allegations of the case did not support a basis for finding Defendants had undertaken any duty nor is there support for a finding of liability for the violation of any such duty. The Court even went so far as to state that it would be "illogical" and "unsound policy" to hold that the Defendants could be liable.

Bell v. Hutsell, 2011 Ill. LEXIS 777 (Ill. 2011)

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Statute of limitations defense denied in products liability action where Plaintiff could not have known of second cause of injury

by Victoria R. Benson

Plaintiff filed a medical malpractice suit in October 2003 after experiencing severe pain in her shoulder following surgery performed in October 2001. As part of the surgery, a pain pump was installed in Plaintiff's shoulder. During the course of discovery, Plaintiff's expert testified that pain pumps, similar to that used in Plaintiff's care, have been "highly associated" with loss of articular cartilage. At a second deposition of the expert, he testified that recently published medical literature suggested a link between pain pumps and Plaintiff's condition. Thereafter, Plaintiff voluntarily non-suited her medical malpractice action. She re-filed her malpractice action within the time provided by statute; however, she added two product liability counts sounding in strict liability and negligence against the manufacturers of the pain pumps. The manufacturers sought dismissal on the basis that the statute of limitations expired. The Court rejected Defendants' argument on the basis that the statute of limitations began to run around the time of the second deposition of Plaintiff's expert because there was no way for Plaintiff to know of her potential claim prior to that time.

The Court characterized the issue as being the application of the "discovery rule" where a plaintiff is aware that her injury might have been wrongfully caused by one source, but unaware that it may have been caused by another source and could not have been aware of that source because the causal link was as yet unknown in science. In applying a statute of limitation, Illinois courts have adopted a "discovery rule", which serves to "postpone the commencement of the relevant statute of limitations until the injured plaintiff knows or reasonably should have known that he has been injured and that his injury was wrongfully caused." Mitsias v. I-Flow Corporation, 2011 Ill. App. LEXIS 1028, *12 (citations omitted).

Defendants argued that as soon as an injured plaintiff becomes aware that his injury might have been wrongfully caused by any source, the plaintiff is under a duty to inquire as to all potential sources, and that statute of limitations, therefore, begins to run as to all causes of action. The Court, however, disagreed, instead examining the issue from the standpoint of the discoverability of the claim.

In reaching its decision, the Court relied upon the U.S. Supreme Court decision United States v. Kubrick, 444 U.S.111, 100 S. Ct. 352 (1979), in which the Court "implied" that the beginning of the period of limitations depends upon the discoverability of the claim at issue.

Using this concept as a guide, the Court held that the plaintiff did not "slumber on her rights", but rather that she brought her products liability claim as soon as practicable after she became aware of the potential claim. The Court went on that the plaintiff's delay in bringing the products liability suit was not due to any lack of diligence on the plaintiff's part. Instead, it was due to the fact that the scientific community was not aware of the dangers associated with pain pumps until the summer of 2007. As such, the Court concluded that there was no way for the plaintiff to know of any potential products liability cause of action against the pain pump manufacturers because the causal link "was not scientifically discoverable".

Mitsias v. I-Flow Corporation, 2011 Ill. App. LEXIS 1028 (1st Dist. 2011)

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If you would like a full copy of any opinion discussed in our newsletter, please contact Victoria R. Benson (vbenson@cfblaw.net).

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RECENT WINS

VICTORIA R. BENSON obtained dismissal of claims of sexual harassment and retaliation for opposing sexual harassment as well as forced resignation for opposing sexual harassment pending before the Illinois Department of Human Rights ("IDHR"). Plaintiff claimed she was sexually harassed by a supervisor and was later retaliated against when she complained to the store manager. The IDHR made a finding of lack of substantial evidence on the basis that there was no evidence that the complaints of harassment did not rise to the level of harassment, that plaintiff was treated any differently than any other employee and that plaintiff was forced to resign.

VICTORIA R. BENSON obtained summary judgment in a case alleging construction negligence and premises liability. Our client performed a feasibility study in connection with the construction of a lower level parking garage. Plaintiff claimed to have suffered serious injuries, including a total knee replacement, as a result of a slip and fall while working on the project.

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