THE COURT OF APPEALS OF IOWA

No. 0-395 / 99-984
Filed August 30, 2000

NATHAN HAGEMAN,
Plaintiff-Appellant,

vs.

SPORTSMAN INN and LEWIS J. MEYER,
Defendants-Appellees,

MELANIE SABELKA,
Defendant.

FILED
AUG 30 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Winneshiek County, James L. Beeghly, Judge.

Nathan Hageman appeals the district court's order granting summary judgment in favor of the defendants, Sportsman Inn and Lewis J. Meyer, in his dram shop and negligence action. **AFFIRMED.**

Kevin E. Schoeberl of Story, Schoeberl & Kowalke Law Firm, Cresco, for appellant.

Edward L. Wintroub and Steven M. Renteria of Wintroub, Rinden, Sens, & McCreary Law Firm, Omaha, Nebraska, for appellees Sportsman Inn and Lewis J. Meyer.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

VAITHESWARAN, J.

On this appeal from a summary judgment ruling, Nathan Hageman contends the district court erred in dismissing his common law negligence claim against Lewis J. Meyer, doing business as Sportsman Inn. We hold that the dram shop act precludes Hageman's negligence count and, accordingly, we affirm.

I. Background Facts and Proceedings

The material facts are undisputed. Meyer, doing business as Sportsman Inn, is licensed by the State to serve liquor. Hageman, who had yet to reach the lawful drinking age, drank some beer, then went to Sportsman Inn to meet friends. Meyer was behind the bar and served him a beer, which he finished. Next, a high school classmate of Hageman named Melanie Sabelka went behind the bar and got Hageman one drink and then another, both of which he also finished. Meyer was in the vicinity but did not assist in preparing the drinks. Hageman woke up the next morning in a hospital and was told he had overdosed on alcohol.

Hageman sued Sportsman Inn, Meyer and Sabelka. He alleged the defendants (1) violated Iowa Code section 123.92 (1993), known as the dram shop act and (2) engaged in common law negligence. Sportsman Inn and Meyer (Sportsman) moved to dismiss both counts. The district court dismissed the dram shop count, concluding Iowa Code section 123.92 did not authorize intoxicated persons to sue the licensee. Hageman did not appeal that ruling. Sportsman later moved for summary judgment on the common law negligence count, relying on excerpts from Hageman's deposition. Although Hageman

generally resisted the motion, he did not file any documents controverting the statement of material facts attached to Sportsman's motion. Sabelka filed a "joinder" in the motion.

Following a hearing, the district court granted Sportsman's summary judgment motion and dismissed the common law negligence count against Sportsman. The court rejected Sabelka's effort to join the motion. Hageman moved to have the court reconsider its ruling pursuant to Iowa Rule of Civil Procedure 179(b). The district court overruled the motion. On appeal, Hageman contends the district court erred in (1) failing to consider deposition excerpts attached to his Rule 179(b) motion and (2) concluding he was foreclosed from bringing a common law negligence action against Sportsman.

II. Standard of Review

We review summary judgment rulings for errors of law. *Vigilant Ins. Co. v. Allied Property & Cas. Ins. Co.*, 609 N.W.2d 538, 539 (Iowa 2000). Summary judgment is only appropriate when there is no genuine issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law. *Kennedy v. Zimmerman*, 601 N.W.2d 61, 63 (Iowa 1999).

III. Refusal to Consider Attachments to Rule 179(b) Motion

Hageman contends the court should have considered deposition testimony contained on pages earlier cited by Sportsman but not by Hageman, and attached to his Rule 179(b) motion. He maintains those pages establish Sabelka acted as an agent of Sportsman and Sportsman was vicariously liable for the acts of Sabelka in serving him the two additional drinks. The district court declined to consider any portion of the transcript not expressly cited by Hageman

in his resistance to the summary judgment motion, notwithstanding that the contested pages were attached to Sportsman's motion and Hageman cited to those portions during oral arguments. We need not determine whether the district court's ruling was erroneous because, as we will discuss in the next section, Hageman's vicarious liability claim against Sportsman is precluded as a matter of law, whether or not Sabelka acted as an agent.

IV. Summary Judgment Ruling

Iowa Code section 123.92 provides that a person who is injured by an intoxicated person may sue a liquor licensee or permitee

> . . . who sold and served any beer, wine, or intoxicating liquor to the intoxicated person when the licensee or permittee knew or should have known the person was intoxicated, or who sold to and served the person to a point where the licensee or permittee knew or should have known the person would become intoxicated.

The district court found and concluded the following:

> Division II of the plaintiff's petition alleges negligence. Each act of alleged negligence involves the serving of intoxicated beverages at the Sportsman Inn.
>
> There is no common law action for negligence for serving alcoholic beverages at the premises of a licensee or permittee. The Dram Shop action is the exclusive remedy under the facts here asserted.

We agree with the district court's finding and conclusion. Under circumstances virtually identical to the facts in this case, the Iowa Supreme Court held the dram shop act preempts common law liability of licensees for furnishing liquor to minors. *Hoth v. Meisner*, 548 N.W.2d 152 (Iowa 1996); *Nutting v. Zieser*, 482 N.W.2d 424, 425 (Iowa 1992). These cases are controlling.

Citing *Haafke v. Mitchell*, 347 N.W.2d 381 (Iowa 1984), Hageman nevertheless argues the Iowa Supreme Court has retained a common law

remedy against agents or employees of liquor licensees who serve alcohol to underage people. Based on this premise, Hageman posits that a vicarious liability claim against Sportsman is still viable. We disagree. As of the time *Haafke* was decided, the court had not held the dram shop act preempted "the entire field of liability" or that it shielded "parties as to whom there is no statutory remedy." *Id.* (*rev'd on other grounds*, *Gail v. Clark*, 410 N.W.2d 662, 669 (Iowa 1987)). Since then, the court has held precisely that. *See, e.g., Eddy v. Casey's Gen. Store, Inc.*, 485 N.W.2d 633, 636 (Iowa 1992) (holding dram shop act precluded party from maintaining common law negligence actions against a convenience store); *Fuhrman v. Total Petroleum, Inc.*, 398 N.W.2d 807, 809 (Iowa 1987) (noting the legislature prescribed the extent and limits of dram shop liability). These cases, therefore, raise questions about the continued viability of the court's holding in *Haafke* that the dram shop act does not preempt common law negligence actions against employees. Additionally, *Haafke* is inapposite because, as Sportsman correctly points out, the opinion did not address the issue of vicarious liability raised here. Accordingly, we reject Hageman's arguments and affirm the district court's grant of summary judgment to Sportsman on Hageman's negligence count.

AFFIRMED.