

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) FOR THE ELEVENTH JUDICIAL  
CIRCUIT

Constance Mayers as Personal )  
Representative for the Estate of Darrius ) CASE No.: 2020CP3200146  
"George" Dreher, )

Plaintiff, )

v. )

**ORDER GRANTING DEFENDANT  
AYDEN PHILLIPS' RENEWED  
MOTION FOR SUMMARY JUDGMENT**

Logan Bird; Samuel Bird; James Coleman )  
Hunter; Ayden Phillips; Kenneth Cole )  
Godley; Dominion Energy South Carolina, )  
Inc.; Mark McMillan; Kimberly McMillan, )

Defendants. )



Heard: June 14, 2022 via Webex Virtual Courtroom  
Plaintiff's Attorney: Roy T. Willey  
Attorney for Ayden Phillips: Catharine Garbee Griffin  
Attorney for Kenneth Cole Godley: Chad E. Poteat  
Attorney for James Coleman Hunter: William E. Hesse

This is a renewed motion for summary judgment filed by defendant, Ayden Phillips. The motion is granted. The court previously denied summary judgment on February 15, 2022, based on there being outstanding discovery. The discovery deadline has now passed.

**STANDARD OF REVIEW**

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Rule 56(c), South Carolina Rules of Civil Procedure. “In determining whether a genuine question of fact exists, the court must view all inferences which can be reasonably drawn from the evidence in the light most favorable to the nonmoving party.” *Bishop v. South Carolina Dep’t of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). In order to resist a motion for summary judgment, the nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts, but must come forward with specific facts showing that there is a genuine issue for trial.” *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991) (internal quotations deleted) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356 (1986)). Rule 56 “specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings.” *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990).

### **FACTS**

Viewed in the light most favorable to the plaintiff, this lawsuit arises from allegations that Logan Bird, who was nineteen years old at the time of the incident, became intoxicated by consuming alcohol at various locations throughout the day of June 17, 2027, then drove a vehicle striking and killed a pedestrian, the plaintiff’s decedent, during the early morning hours of June 18. Initially, there were claims against other defendants related to alleged provision of alcohol to an underaged person and her alleged consumption of alcohol surrounding and following a charitable event known as a poker run. There were also allegations against a restaurant and an employee concerning overserving the decedent and taking the decedent to a location other than his home.

This poker run involved participants who would make various stops at houses located on Lake Murray, collect a playing card, with a winner determined at the last location. Alcohol was available for participants. Ms. Bird was not registered for the poker run, but there is evidence that she went to various locations at the lake during the poker run. There is also alleged misconduct concerning other persons who were not involved in the poker run, but who had contact with Ms. Bird during the applicable times, including people at homes where Ms. Bird went on that day.

The moving party in this motion, Ayden Phillips, was twenty-one years of age. He was living for the summer at the home of his mother, Lisa Phillips (the “home”). She was out of town during the relevant times. There is no evidence that Lisa Phillips or Ayden Phillips participated in any way in the poker run.

On the night before the poker run, Ayden and a friend, Lee Prater, had been in Columbia celebrating another friend’s birthday and consuming alcoholic beverages. Ms. Bird was not present at that party. Ayden and Prater left the party to go to the home during the early morning hours of June 17, and they went to sleep. Ayden awoke around 1:00 p.m. He and Prater then went to get something to eat. The poker run was already in progress by the time that Ayden got out of bed, and the home was not a stop for the event.

They returned home after eating lunch, played video games, and enjoyed the pool at the residence. Two of their other friends, Jenna Sills and Haley Davis, were invited to come to the home. Depositions have been taken from all the people who were arguably at the Phillips’ home, and the court recognizes some disparity between the depositions as set forth below.

There is no evidence that these four friends consumed alcohol at the home. The evidence basically indicates that the people who had attended the birthday party the night before were not interested in consuming additional alcohol on the 17<sup>th</sup>. Testimony in that regard is recited below.

These four friends ultimately left to go to the El Paso restaurant for dinner. They came across Ms. Bird in the parking lot of the restaurant as they were exiting to return home. Ms. Bird went to the home. Ayden testified that he and Prater went upstairs to play video games, while Jenna and Haley stayed at the pool. They then were invited by the defendant, Cole Godley, to come to his home.

Ayden testified that none of the four had anything to drink at his house after dinner. He believes they had been at his house for approximately thirty minutes after dinner and that it was around 9:00 p.m. when they departed separately and arrived at Cole Godley's house.

Ayden said that he did not drink at all on the day of June 17, 2017, nor that night at Cole Godley's house, because he "was still trying to recover from" the night before, and was going to be golfing the next day for Father's Day. He testified that he did not want to "be hung over for that." He did not recall seeing Logan Bird at Cole Godley's house. Ayden remembers leaving Godley's home around 11:00 p.m. Bird apparently remained at Godley's until the early morning hours.

Ayden testified that when he did purchase alcohol, he would only buy for himself because he did not want "anybody mooching off" him, and that he was "tight with his money." He stated the beer he typically drinks and purchases is Michelob Ultra, and that the same was true in June of 2017. Ayden further testified the only person who would regularly hang out at his parents' home was Prater, and that they never drank alcohol at his house until after he and his friends were 21 because his mother did not approve of underage drinking. He additionally testified that he has never provided alcohol to anyone under the age of 21 and has never provided alcohol to Logan Bird.

Prater was twenty-one years old at the time. He testified that he and Ayden were recovering from the birthday party while hanging out at Ayden's house. He stated that they were playing video games in Ayden's room and then sitting by the pool, "not doing anything special."

Prater stated that he did not remember who came to Ayden's house that day and "barely remembered" seeing Jenna Sills and Hayley Davis. He stated that he did not remember Logan Bird coming over to the house. He stated that he did not remember Ayden having any alcohol at the house on that Saturday after they woke up. He testified that Ayden Phillips would not have provided alcohol to Logan Bird because Phillips did not share his alcohol with anyone. Prater testified that he did not remember drinking at Ayden's house at any time.

Jenna Sills, a twenty-year-old woman, testified that she was present at the home on June 17, 2017, and she remained by the pool. She stated that they had been at Cody Lattimore's birthday party the night before, but they did not go out on the lake on June 17, 2017. She testified that they were not drinking by the pool. She stated that she recalled that there were only five people there that afternoon: Lee Prater, Ayden Phillips, Haley Davis, Olivia Hewitt, and herself. She stated that she did not remember Ayden providing any alcohol for people to drink that afternoon. She did not recall Ayden drinking any alcohol at his house. She did not recall anyone drinking alcohol at Ayden's house until Logan Bird arrived. She stated that the only alcohol she saw at the home that night was brought to the home by Logan Bird.

Sills recalled that after sitting by the pool at the home they went to El Paso for dinner. She stated that she could not recall when they went to El Paso, but testified that she first saw Logan Bird at El Paso. She testified that they were not drinking by the pool. Sills recalled that Logan drove her car to Ayden's house. She stated that when Logan arrived at Ayden's house that they were near the pool or in the pool house. She stated that Logan brought alcohol to Ayden's house

because she saw her carrying it onto his property. She recalled that Bird had a particular alcoholic drink, Straw-Ber-Ritas, at Ayden's house. She stated that she did not know how many of those Ms. Bird drank., but knows at least one was consumed using a "chambong funnel." Sills stated that she did not know who purchased the alcohol for Logan Bird, but specifically stated that Ayden Phillips did not buy any alcohol for Ms. Bird. She stated that they did not stop to buy any alcohol on the way back from El Paso. She confirmed that no one at Ayden's house provided any alcohol to Ms. Bird. She stated explicitly that Ayden Phillips did not provide any alcohol for Bird to drink at his house and that there was no alcohol there for others to drink.

Sills did not know how much alcohol Ms. Bird consumed, but believed that she was intoxicated after it was dark outside. She stated that after they left Ayden's house, she went to look at her brother's puppies and then went to Godley's house.

Haley Davis, another guest at the home, testified that she was hanging out with friends at Ayden's house. She described that they were just swimming that afternoon. She stated that the night before that they had been in Five Points so they were not going out on the lake on Saturday. She stated that she recalled that Lisa Phillips was not home. She stated that it was very common to hang out together with Ayden and Lee Prater because they were friends, but it was not common to hang out at Ayden's house. She recalled that only Ayden, Logan, and Jenna were present at the home. She confirmed that they went to El Paso for dinner, she did not recall anyone drinking before they went to El Paso, and that they first saw Ms. Bird in the parking lot and Ms. Bird was alone. Davis described Bird's condition at El Paso to be that "she was fine." She stated that there was nothing that made her believe that Bird was intoxicated. She stated that they all went back to Ayden's house after El Paso. She stated that they did not stay long at Ayden's house after dinner

before they went to Cole Godley's house. The court acknowledges that there is evidence in this record that can be construed as Ms. Bird being intoxicated by drinking throughout the day.

Davis stated that when Logan Bird arrived at Ayden's house that she had a bag of alcohol with her. She recalled that she brought tall boys in a brown bag. She stated, after listening to the statement she gave to the police in 2017, that she told the police that Logan was chugging a tall boy or Straw-Ber-Rita. She stated that she did not recall where Ayden was when she saw Logan drinking alcohol.

Davis also does not know where Bird purchased the alcohol or who provided it to her. Neither Lisa Phillips nor Ayden were serving alcohol to anyone that day. She stated that Ayden has never provided alcohol to her.

The other string of events relates to the intoxication of the plaintiff's decedent, which had no connection to the facts recited above. The plaintiff's decedent was at the Frayed Knot Bar and Grill, where he began drinking the afternoon of June 17, 2017. Mr. Dreher was served beverages over the course of hours at the Frayed Knot. Between the hours of 11:00 p.m. and 1:30 a.m., an employee of the bar, Alex Downs, provided Dreher a ride to what Mr. Downs believes to have been Mr. Dreher's home.<sup>1</sup> Sometime later, it is alleged that Ms. Bird struck or ran over Mr. Dreher along the roadway a distance from Mr. Dreher's home. There is an issue of fact as to whether Mr. Dreher was lying in the roadway and run over, or whether he was struck while upright, either in or alongside the road. The blood alcohol level of Dreher was measured to be .326 at the time of his autopsy.

## **DISCUSSION**

### **I. PLAINTIFF'S CLAIMS OF NEGLIGENCE AGAINST PHILLIPS**

---

<sup>1</sup> The court has previously dismissed Mr. Downs from this lawsuit by summary judgment.

## **A. Social Host Liability**

### **1. There is no evidence Phillips Breached Any Duty Owed as a Social Host**

In cases involving a duty to third parties for the actions of intoxicated adult underage drinkers, liability may only be found where 1) the host knowingly and intentionally served, or caused to be served, alcoholic beverages; 2) the host knew or reasonably should have known that the adult was not of legal age to be served alcohol; and 3) the damages alleged are the proximate result of the host having served that underage drinker. *Marcum v. Bowden*, 372 S.C. 452, 457, 643 S.E.2d 85, 87 (2007) (holding that “an adult social host who knowingly and intentionally serves, or causes to be served, an alcoholic beverage to a person he knows or reasonably should know is between the ages of 18 and 20 and is liable to the person served and to any other person for damages proximately resulting from the host’s service of alcohol.”). A finding of liability under this “very narrowly limited” duty requires “affirmative, intentional action by the owner of the duty to create or exacerbate the diminished abilities of the party who actually inflicts harm on the third party.” *Hoskins v. Snipes-King*, 2009 U.S. Dist. LEXIS 135624.

Summary judgment is required because there is no evidence that Ayden served, or caused to be served, alcohol to Ms. Bird. In the light most favorable to the plaintiff, Bird stopped by Ayden Phillips’ home, where other friends were present. They all then departed for Godley’s home. Each witness has testified that Phillips did not share alcohol with others during any relevant time. While the court understands the plaintiff’s arguments about credibility and the province of the jury to disbelieve testimony, the court must decide this motion based on the evidence in this record. The only evidence is that Logan Bird brought her own alcohol to the home and drank it herself. The use of a funnel is not enough to create a genuine issue of fact where there is no evidence that Ayden supplied the funnel to Bird.

Assuming that Ms. Bird consumed alcohol at the home, there is no genuine issue of material fact towards showing that Ayden knowingly and intentionally caused Bird to be served, an essential element to prove social host liability. Twenty-two depositions have been taken in this case, but they do not provide evidence that Ayden served alcohol to Bird.

Furthermore, this court finds that there is no evidence in the record supporting the contention that Ayden Phillips “caused” Ms. Bird to be served alcohol. The only evidence presented is that Bird brought her own alcohol to Phillips’ house and served herself.

The Oregon Supreme Court has found that the phrase “served or provided” relies heavily upon “whether the social host has control over the alcohol that was supplied.” *Baker v. Croslin*, 376 P.3d 267, 271 (2016). The Court reinforced its holding that “where a defendant has no control over the supply of alcohol, the defendant cannot be liable for permitting a person” to consume that alcohol. *Id.* Additionally, the Supreme Judicial Court of Massachusetts applies its common law social host liability “only in cases where the host had actually served alcohol or made it available.” *Juliano v. Simpson*, 962 N.E.2d 175, 181 (2012). That court distinguished the host who “lacked the obligation, or the means, effectively to control the supply” of alcohol from the host who “furnishes liquor to guests,” finding that the latter host is more “like a bartender in a licensed establishment who is well situated to shut off guests who should not be drinking because of age or intoxication.” *Id.*, at 182. In the present case, there is no evidence Ayden Phillips exercised control over any alcohol consumed by Bird, nor that he actually served it to her.

Plaintiff has further argued that the Ayden provided a “safe haven” for Ms. Bird as an underage drinker. First, there is no evidence to support this contention. Secondly, the courts of this State have applied the safe haven doctrine only to Alcohol Beverage Control (ABC) licensees and have rejected those same standards as to social hosts as those standards are based upon regulations

inherent to the licensure itself. See *Norton v. Opening Break*, 313 S.C. 508, 443 S.E.2d 406 (Ct.App. 1994). There is no case law in South Carolina supporting the plaintiff's theory that there is liability for a social host who provides a "safe haven" to an adult underaged drinker.

The plaintiff has failed to prove that Ayden knowingly and intentionally served or caused to be served alcohol to Bird and, therefore, the plaintiff has failed to establish a breach of duty related to Ayden.

**2. The Court Rejects Ayden Phillips' Argument that Summary Judgment Would Have to Be Entered on the Issue of Proximate Cause, if There Were Evidence of Providing Alcohol**

Having found that there is no evidence to support liability against Ayden, his conduct cannot be determined to have been a contributing proximate cause of the death of the plaintiff's decedent. To be subject to liability under the social host doctrine, the damages complained of must have been proximately caused by the defendant's actions, specifically, the service of alcohol to an underage adult. *Marcum*, 372 S.C. 452, at 457, 643 S.E.2d at 87. "Proximate cause requires proof of (1) causation in fact and (2) legal cause." *Whitlaw v. Kroger Co.*, 306 S.C. 51, 54, 410 S.E.2d 251, 253 (1991). The Supreme Court of South Carolina has held that "causation in fact is proved by establishing the injury would not have occurred 'but for' the defendant's negligence," and that "legal cause is proved by establishing foreseeability." *Id.*, citing *Bramlette v. Charter-Medical Columbia*, 302 S.C. 68, 74, 393 S.E.2d 914, 916 (1989). Further, a plaintiff only proves legal cause by "establishing the injury in question occurred as a natural and probable consequence of the defendant's negligence." *Id.*

It is argued that the court must accept that no act or omission by Ayden Phillips was a contributing proximate cause of the decedent's death. The pathologist, Dr. Timothy Seybt, testified

the decedent had a blood alcohol level of .326 at the time samples were collected. He additionally testified that this level may have been higher at the time of the incident, and that this amount of blood intoxication can be enough to cause an individual to stop breathing, though he could not say conclusively if this was the case for the decedent. He further testified that the decedent was laying prone in the road at the time he was struck by Bird's vehicle, indicating he may have already been deceased when Bird was driving home. Finally, Ayden asserts that the plaintiff has not provided evidence that Bird was intoxicated when she left Defendant Godley's home. Proximate cause is almost always a question for the jury, and if summary judgment were not denied on other grounds, it would be denied on the proximate cause argument.

Several intervening factors are alleged between the time Ms. Bird spent at the home and the time of the accident. Primarily, there is an approximately seven-hour time gap between when Ms. Bird was alleged to have consumed alcohol at the home and when the decedent was allegedly struck by Bird's vehicle. If there were evidence of a duty owed by Ayden that was breached, there would be issues of fact as to the cause of death and any superseding acts.

#### **Plaintiff's Claims of Negligence *Per Se***

In order to show that the defendant owes him "a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect." *Whitlaw*, 306 S.C. 51, 53, 410 S.E.2d 251 at 252. Once the plaintiff has established a duty of care, he must then show that the defendant violated the statute, and only then does this "constitute [] proof of negligence *per se*." *Id.*

Plaintiff alleges a violation of statutory provisions §§ 61-4-90 and 61-6-4070 of the South Carolina Code. These claims fail as a matter of law, as the Courts of this state have expressly

determined “no civil cause of action is created by these statutes,” and there “exists no duty in the[m]”. *Marcum v. Bowden*, 372 S.C. 452, 461, 643 S.E.2d 85, 89 (2007). Absent a duty, the defendant is entitled to judgment as a matter of law. *See Simmons v. Tuomey Regional Med. Ctr.*, 341 S.C. 32, 533 S.E.2d 212 (2000).

The plaintiff attempts to argue negligence *per se* where the courts of this State have already found that none exists. The Supreme Court explicitly enumerated social host liability for underage adult drinkers as an exclusively common law duty. Therefore, plaintiff cannot show “a duty of care arising from the statute[s]” which would bind this defendant, and plaintiff’s claims of negligence *per se* on S.C. Code §§ 61-4-90 and 61-6-4070 fail as a matter of law.

Plaintiff additionally claims that Ayden Phillips violated S.C. Code § 56-5-6110, by “committing, attempting to commit, conspiring to commit, or aiding or abetting in” the commission of a crime. S.C. Code Ann. § 56-5-6110. Specifically, plaintiff contends that Ayden was an accomplice to Bird’s alleged criminal act of underage drinking (S.C. Code § 61-6-4070) and of driving while under the influence of alcohol (S.C. Code § 61-4-90). Plaintiff essentially attempts in these manners to criminalize the acts of civil defendants, and to insert statutory accomplice theory in place of joint and several liability. There is no evidence in the record which supports any contention that Ayden Phillips committed, conspired to commit, or aided or abetted Bird in her operation of a motor vehicle while under the influence of alcohol, assuming she was driving under the influence. There is no competent evidence that Ayden provided alcohol to, nor caused alcohol to be served to, Ms. Bird, so there is no basis for finding that Ayden violated any statute prohibiting the transfer of alcohol to an underage person. Further, such statutes have been held by the court to carry no duty for the purposes of civil litigation.

On the second matter, Ayden's alleged aiding or abetting of Bird's driving while under the influence of alcohol forms no basis to hold him liable under a theory of negligence *per se*. Ayden had no obligation to ensure that Bird did not drive her own vehicle nearly seven hours after leaving his home. Ayden cannot be deemed an accomplice to an act of which he has no connection, and certainly cannot be found liable for civil damages under negligence *per se* for such act. For these reasons, this Court grants this motion for summary judgment on all negligence *per se* claims brought by the plaintiff.

## **II. Comparative Negligence of the Plaintiff's Decedent**

Ayden asserts that summary judgment should be granted based on the comparative negligence of the plaintiff's decedent. If it were possible for this evidence to give rise to any claim of negligence on the part of Ayden, such determinations would be matters for the jury. Since there is no evidence that Ayden supplied alcohol to an underaged person or that he can be held responsible under any other theory advanced by the plaintiff, this issue is moot. There can be no liability on the part of Ayden under these facts.

### **CONCLUSION**

For the reasons stated above, this Court GRANTS defendant Ayden Phillips' motion for summary judgment and dismisses the plaintiff's claims against Ayden Phillips with prejudice.

**AND IT IS SO ORDERED.**

[Electronic signature follows on separate page]



Lexington Common Pleas

**Case Caption:** Constance Mayers Personal Representative , plaintiff, et al VS Logan Bird , defendant, et al  
**Case Number:** 2020CP3200146  
**Type:** Order/Summary Judgment

Circuit Judge (Code #2050)

s/ William P. Keesley