THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-20-55

Caitlin Elizabeth Braun, Appellant,

v.

The Ben Arnold Sunbelt Beverage Company of South Carolina, L. P., Two Heels, Inc. d/b/a State Street Pub and Sunbelt Golf Development, Inc., d/b/a Indian River Golf Course, Defendants,

Respondent.

Of whom The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P. is the Respondent.

INITIAL BRIEF OF APPELLANT

H. Ronald Stanley
Post Office Box 7722
Columbia, SC 29202
(803) 799-4700

Jerry Leo Finney
2117 Park Street
Columbia, SC 29201
(803) 254-7408
Attorneys for Appellant

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATEMENT OF THE ISSUES ON APPEAL

I. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO BEN ARNOLD BASED UPON SOUTH CAROLINA'S PROHIBITION AGAINST FIRST PARTY CLAIMS BY INTOXICATED ADULTS AGAINST COMMERCIAL HOST AND SOCIAL HOST.

II. THE LOWER COURT ERRED IN HOLDING THAT THE APPELLANT'S SOLE REMEDY AGAINST THE RESPONDENT, BEN ARNOLD, WAS AN ACTION BROUGHT PURSUANT TO THE SOUTH CAROLINA WORKER'S COMPENSATION ACT.

III. THE LOWER COURT ERRED IN HOLDING THAT THE ADDITIONAL GROUNDS RAISED BY BEN ARNOLD IN ITS MOTION FOR SUMMARY JUDGMENT SUPPORTED THE GRANTING OF SUMMARY JUDGMENT.

STATEMENT OF THE CASE

The appellant filed suit against Ben Arnold, State Street Pub and Sunbelt Golf Development, Inc., alleging negligence on the part of the said defendants. Specifically, the appellant alleged that the respondent, Ben Arnold, was negligent in requiring, encouraging and insisting that the appellant consume an unreasonable amount of alcoholic beverages in the furtherance of its business thereby creating an unreasonable risk of harm and injury to the appellant. The appellant also alleged that Ben Arnold was negligent in permitting her to drive a motor vehicle after she became grossly intoxicated during the course and scope of her employment.

The appellant alleged that the defendants, Sunbelt Golf Development and State Street Pub, were negligent in failing to monitor and control the prolific consumption of alcoholic beverages during the golf tournament and failing to safeguard the appellant from harm after she became intoxicated.

The appellant reached an out of court settlement with State Street Pub. Ben Arnold and Sunbelt Golf Development moved for summary judgment upon the following grounds:

1. Plaintiff has admitted her legal responsibility for the automobile accident on May 16, 2011 from which her alleged injuries and damages arise. Therefore, she is estopped judicially and collaterally from now denying her liability for this accident and the damages she alleges result therefrom.
2. Having admitted her fault and liability for the accident of May 16, 2011 which ives rise to her damage claims, Plaintiff Braun is negligent as a matter of law and to such a degree that her claims are barred.

3. In pleadings previously filed with this court, Plaintiff Braun denied that these Defendants were negligent as she now alleges. Therefore, she is estopped judicially and collaterally from pursuing these identical negligence claims against these Defendants, which she previously denied.
4. The Releases and Stipulations of Dismissal executed in "Shumate vs. Ben Arnold, et. al.", Fairfield County Civil Action No.: 2011-CP-20-301 and "Shumate vs. Ben Arnold, et. al.", Fairfield Civil Action No.: 2011-CP-20-302, bar the claims of Plaintiff Braun against these Defendants.
5. Plaintiff Braun cannot recover as a matter of law, for her claim of "loss of liberty and freedom due to her incarceration of (sic) Felony DUI resulting from the death of an occupant in the vehicle that was struck by the Plaintiff" because the Plaintiff Braun voluntarily pled guilty to Felony DUI, admittedly knowing that incarnation would be a mandatory element of her sentence.
6. South Carolina does not recognize the cause of action plaintiff purports to assert against defendant, Ben Arnold for injuries she sustained as a result of intoxication claimed to have been facilitated by defendant and, therefore, plaintiff's complaint should be dismissed with prejudice.
7. In the alternative, and assuming as true the allegations of plaintiff's complaint which allege that her relationship with Ben Arnold was that of employee-employer, plaintiff's sole and exclusive remedy against defendant Ben Arnold is a Workers' Compensation claim and, therefore, this Complaint should be dismissed.

The lower court granted summary judgment to both Ben Arnold and Sunbelt Golf Development. The appellant filed a motion for reconsideration as to the granting of summary judgment to the defendant, Ben Arnold only. The motion for reconsideration was denied and this appeal followed.

STATEMENT OF THE FACTS

This action arises from an automobile accident that occurred on May 16, 2011, when the appellant, while in an intoxicated condition, drove her vehicle left of the center line and crashed head on into an oncoming vehicle driven by Devin Shumate.

Just prior to the accident, the appellant was working for the respondent, Ben Arnold, at a golf tournament that was being sponsored by State Street Pub and was being held at Indian River Golf Course which was owned by Sunbelt Golf Development. State Street Pub had solicited some of its beverage suppliers to donate alcoholic beverages for the golfers participating in the golf tournament while at the same time giving the beverage suppliers the opportunity to promote the consumption of their products by participants in the golf tournament and by the public at large. Ben Arnold, who for many years has operated as a wholesale supplier of alcoholic beverages, principally hard liquors, agreed to provide free samples of its product to participants in the golf tournament. Ben Arnold hired the appellant to give away the free samples of hard liquors that it had donated and to promote its product.

The appellant alleged in her complaint that as a condition of her employment by Ben Arnold, she was expressly and impliedly encouraged and required to proactively engage in frolicking with the tournament participants including drinking shots of Three Olive vodka with tournament players. The appellant alleged that in the furtherance of her work at the tournament and at the encouragement, insistence and requirement of respondent, Ben Arnold, she drank a considerable amount of alcoholic beverages during and at the end of the golf tournament, specifically Three Olives Vodka, with the

tournament participants and with other employees of Ben Arnold including supervisory employees of Ben Arnold.

By the end of the tournament, the appellant had become very intoxicated and she was on her way home from work driving her own private vehicle when the accident with the Shumate vehicle occurred. As a result of the appellant's head on crash with the Shumate vehicle, Mr. Shumate's 4 year old daughter was killed and Mr. Shumate was severely injured. The appellant also suffered severe injuries to various parts of her body.

After the accident, a blood sample was taken from the appellant and it was determined that her blood alcohol level was .16. The appellant was arrested and charged with Felony DUI with great bodily injury and Felony DUI resulting in death. She pled guilty to the charge of Felony DUI resulting in death and was sentenced to a prison term of 18 months with a fine of $10,100.00.

The Shumate family filed suit against the appellant, Ben Arnold, State Street Pub and Sunbelt Golf Development, Inc. The appellant and the other three defendants reached an out of court settlement with the Shumate family.

ARGUMENTS

I. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO BEN ARNOLD BASED UPON SOUTH CAROLINA'S PROHIBITION AGAINST FIRST PARTY CLAIMS BY INTOXICATED ADULTS AGAINST COMMERCIAL HOST AND SOCIAL HOST.

The lower court based its order granting summary judgment to the respondent, Ben Arnold, in part upon the ground that South Carolina does not recognize a first party cause of action by intoxicated adults against commercial host predicated on an alleged violation of South Carolina Code Sections 61-5-30 and/or 61-9-410. The court further premised its ruling upon the ground that South Carolina does not recognize a first party cause of action against social host for injuries suffered by intoxicated adults.

The court below relied upon the ruling of ***Tobias v. Sportsclub, Inc.,*** **323 S.C. 345 (Ct. App 1996)** for the prohibition of first party claims against business establishments selling alcohol and the court relied upon ***Garren v. Cummings & McCrady, Inc.,*** **289 S.C. 348 (Ct. App. 1986)** as support for the prohibition against first party claims against social host. Neither of these case are applicable to the case at bar. The instant case does not involve a commercial host or a social host. This case involves an employer – employee relationship and the duty of an employer to provide a safe workplace environment for its employees and to refrain from requiring, encouraging and insisting that its employees engage in unreasonably dangerous activities, such as consuming an unreasonable amount of alcohol to the point of severe intoxication, all for the benefit of the employer, without providing a safe harbor for the employee.

The ruling in *Tobias* is limited to cases against a commercial host where there is an alleged violation of South Carolina Code Sections 61-5-30 and/or 61-9-410. There is

no allegation or argument in the case at bar that Ben Arnold was a commercial host or that Ben Arnold violated either of these statutes. The ruling in *Garren* is limited to cases against social host. There is no allegation or argument in this case that Ben Arnold was a social host as to the appellant.

We believe that public policy requires an employer to provide a safe workplace environment for its workers and to refrain from requiring, encouraging and insisting that its employees engage in unreasonably dangerous activities, all for the benefit of the employer, without providing a safe harbor for the employee.

While we acknowledge that there is no case law in South Carolina authorizing a first party claim if and when an employer negligently causes the intoxication of an employee who subsequently injures herself after she leaves work while still suffering from the effects of the intoxication, there is likewise no case law in South Carolina prohibiting such a first party claim. When we consider the inherent, apparent and actual authority that an employee holds over its employees, there is no inequity in allowing a first party claim against an employer such as Ben Arnold when it requires, encourages and insist that an employee consume an unreasonable amount of alcohol resulting in her becoming intoxicated and then failing to provide her with safe transportation to her home after the work day has ended.

We encourage this court to carve out an exception and hold that an employer has a duty to provide a safe workplace environment for its workers and to refrain from requiring, encouraging and insisting that its workers engage in unreasonably dangerous activities such as consuming an unreasonable amount of alcohol to the point of severe

intoxication, all for the benefit of the employers business interest, without providing a safe harbor for the employee.

II. THE LOWER COURT ERRED IN HOLDING THAT THE APPELLANT'S SOLE REMEDY AGAINST THE RESPONDENT, BEN ARNOLD, WAS AN ACTION BROUGHT PURSUANT TO THE SOUTH CAROLINA WORKER'S COMPENSATION ACT.

In its order granting summary judgment to Ben Arnold, the lower court stated that the plaintiff in her complaint consistently and repeatedly asserted that she was an employee of Ben Arnold and the lower court held that, as an employee of Ben Arnold, the plaintiff's sole remedy against Ben Arnold was a worker's compensation claim. This ruling by the court disregarded the fact that at the time the appellant suffered the injuries and damages that resulted from the alleged negligent acts of Ben Arnold, she was traveling home from her employment with Ben Arnold and was not in the course and scope of her employment.

It is well settled in South Carolina under the case of ***Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E. 2d 333 (2008)*** that under the going and coming rule, an employee who is injured while going to or coming from the place where his work is to be performed or was performed is not covered by the South Carolina Worker's Compensation Act.

III. THE LOWER COURT ERRED IN HOLDING THAT THE ADDITIONAL GROUNDS RAISED BY BEN ARNOLD IN ITS MOTION FOR SUMMARY JUDGMENT SUPPORTED THE GRANTING OF SUMMARY JUDGMENT.

The lower court granted summary judgment pursuant to grounds 6 and 7 which are setforth in the statement of the case and which have been specifically addressed hereinabove in this brief. The lower court also held, however, that grounds 1 through 5 that were argued by Ben Arnold also supported the granting of summary judgment.

In ground #1, the respondent asserted that the appellant had admitted her legal responsibility for the automobile accident that occurred on May 16, 2011 and that she was estopped judicially and collaterally from denying her liability for the accident and her damages resulting therefrom. In ground #2, the respondent asserted that the appellant, having admitted her fault and liability for the accident, was negligent as a matter of law and to such a degree that her claims were barred.

The appellant admits that she crossed the centerline and crashed head on into the vehicle operated by Devin Shumate. The appellant argues and maintains, however, that there were intervening acts of negligence on the part of the respondent that caused or contributed to her act of negligence in crossing the centerline and crashing head on into the vehicle operated by Devin Shumate.

It is well settled under our law that there may be more than one proximate or legal cause of an accident. **Player v. Thompson, 259 S.C. 600, 193 S.E. 2d 531 (1972).** Although the appellant admits that she crossed the centerline and struck the vehicle operated by Devin Shumate, the plaintiff is asserting that but for the negligence of Ben Arnold in requiring, encouraging and insisting that she consume an unreasonable amount of alcoholic beverages while in the course and scope of her

employment with Ben Arnold, all in the furtherance of the business of Arnold, she would not have been intoxicated, she would not have crossed the centerline and the accident with the Shumate vehicle would not have occurred.

A jury may very well find that the appellant was negligent but that Ben Arnold was also negligent in its actions towards the appellant and that the negligence of Ben Arnold outweighed or was greater than the negligence of the appellant.

In ground #3, the respondent asserted that in an answer filed by the appellant in the lawsuit filed by the Shumate family, the appellant denied that Ben Arnold was negligent and that she is now estopped judicially and collaterally from pursuing a negligence claim against Ben Arnold when she previously denied the negligence of Ben Arnold.

The answer that was filed by counsel for the appellant in the previous action was not a verified answer and, therefore, the appellant is not bound by the contents of the unverified answer in a new or different action such as the case at bar. John M. Grantland of the Richland County Bar was hired by the appellant's automobile insurance carrier to defend her in the action filed by Shumate and Mr. Grantland filed a customary general denial on behalf of the appellant. Had the appellant sworn to the contents of the answer by verifying the said pleading, the appellant may have been bound by the contents of the answer. Without the verification of the answer by the plaintiff, however, the argument of Ben Arnold is without merit.

In ground #4, the respondent argued that the releases and stipulations of dismissal executed in the Shumate cases bar the claims of the appellant in this case.

Clearly, the releases and stipulations of dismissal that were signed in the Shumate cases were intended to and did release all of the defendants, including the appellant, from any and all claims that were asserted or could have been asserted against the appellant and the other three defendants by the Shumates. These documents did not, nor were they intended to, absorb Ben Arnold from any liability that it may have had toward the appellant. The appellant did not execute any of the releases that were executed in the Shumate case. Therefore, it cannot be legally stated or claimed that when the releases were signed by Shumate and the Stipulations of Dismissal were signed by the attorneys and/or the Court, these documents constituted a complete bar to any and all claims of the appellant against Ben Arnold although none of the documents were executed by the appellant.

In ground #5, Ben Arnold argued that the appellant could not recover on her claim for loss of liberty due to her incarceration since she pled guilty to Felony DUI with the knowledge that incarceration would be a mandatory element of her sentence.

The appellant pled loss of liberty and freedom due to her incarceration as an element of damages. It is certainly arguable to a jury that although the appellant knew that her guilty plea would result in a term of incarceration, the appellant was justified in doing so in hopes of reducing her prison term rather than risking a longer prison term if she went to trial and was found guilty. Ben Arnold may certainly argue to a jury that the appellant is not entitled to compensation for loss of liberty but it is certainly a jury question as to whether loss of liberty due to the appellant's incarceration is a compensable element of damages.

CONCLUSION

For the reasons stated herein, we believe the ruling of the lower court should be reversed and remanded.

Respectfully Submitted

H. Ronald Stanley
Post Office Box 7722
Columbia, SC 29202
(803) 799-4700

August 20, 2014

Jerry Leo Finney
2117 Park Street
Columbia, SC 29201
(803) 254-7408

Attorneys for Appellant