UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0834

September Term, 2013

MANAL KIRIAKOS

v.

BRANDON PHILLIPS

Eyler, Deborah S.,
Woodward,
Berger,

JJ.

Opinion by Woodward, J.

Filed: December 30, 2014

In the early morning of January 25, 2011, Manal Kiriakos, appellant, was badly injured after being struck by a car driven by an intoxicated eighteen-year-old. The driver had been drinking at the home of Brandon Phillips, appellee. On October 7, 2011, appellant brought suit against appellee, among others, in the Circuit Court for Baltimore County. Appellant alleged negligence on the part of appellee, because appellee had provided alcohol to the underage driver.

On May 2, 2012, appellee filed a motion for summary judgment on the grounds that Maryland does not recognize dram shop or social host liability. The circuit court granted the motion on August 31, 2012. After the other defendants were dismissed, this appeal followed. Appellant presents two issues for our review, which we have consolidated into one question:[1]

> Did the circuit court properly grant appellee's motion for summary judgment on the grounds that Maryland does not hold social hosts liable for the injuries caused by their intoxicated guests under a common law theory of negligence?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

---

[1] Appellant's original issues read as follows:

1. Whether the trial court erred in finding that the acts of [appellee] failed to satisfy a prima facie claim for ordinary negligence[.]

2. Whether Maryland should recognize a narrowly tailored definition of social host liability for negligently providing significant amounts of alcohol to an underage person who the ap[p]ellee knew was underage and knew would later drive[.]

BACKGROUND[2]

Appellee and two teenagers, Shetmiyah Robinson and Wilson Buchi Nwafor, were working in appellee's home music studio in Essex, Maryland on January 24, 2011. Robinson and Nwafor were eighteen years old at the time; appellee was approximately twenty-six years old. Around 10:00 p.m., appellee opened a half-gallon bottle of vodka and began serving drinks. Appellee personally served Robinson vodka mixed with orange juice. Appellee also gave Robinson and Nwafor champagne.

Appellee knew that Robinson had driven to appellee's apartment that night. Around midnight, appellee told Robinson to "watch" his drinking, because the latter would be driving home. At approximately 4:00 a.m. on the morning of January 25, appellee told Robinson that he could sleep at appellee's apartment, but "if [Robinson] was sure that he was going to be able to drive and stuff, then he could leave whenever he was ready to." Robinson informed appellee that "he'd be fine," and then waited at appellee's apartment for approximately one hour to allow the alcohol to dissipate.

Robinson left appellee's apartment with Nwafor around 5:00 a.m. and drove for approximately forty-five minutes to the Cockeysville area, where he dropped off Nwafor at the latter's home. Robinson then set off for his own house, which was located nearby.

---

[2] In reviewing the grant of a motion for summary judgment, we consider the facts in a light most favorable to the non-moving party. *Tyler v. City of College Park*, 415 Md. 475, 498 (2010). Although there are some disputed facts, they are not material to our decision.

At approximately 6:00 a.m., Robinson fell asleep behind the wheel. His car crossed the centerline, jumped the curb, and struck appellant, who was walking her two dogs on the sidewalk. The impact projected appellant more than seventy feet onto the front yard of a house. Appellant suffered a fractured vertebrae, a lacerated kidney, a dissected cartoid artery, a hematoma on the brain, and additional internal bleeding and lacerations.

Robinson took a preliminary breathalyzer test at the scene of the accident, which registered a blood alcohol content ("BAC") of .088, and another test thirty minutes later, which indicated a BAC of .08. Robinson was arrested at the scene and later pled guilty to the charge of life-threatening injury by motor vehicle while under the influence of alcohol.

On October 7, 2011, appellant filed a complaint in the circuit court, alleging negligence on the part of Robinson, Robinson's family, and appellee.[3] On May 2, 2012, appellee filed a motion for summary judgment on the grounds that Maryland does not recognize dram shop or social host liability. On August 31, 2012, Judge Kathleen G. Cox granted appellee's motion after a hearing. Appellant eventually settled with Robinson and his family. On June 11, 2013, the case against Robinson and his family was dismissed with prejudice, and on June 24, 2013, appellant noted an appeal of the circuit court's order granting summary judgment to appellee.

[3] Appellee was named as "John Doe." Appellant filed an amended complaint on January 12, 2012, identifying appellee by name.

STANDARD OF REVIEW

The trial court may grant a motion for summary judgment if (1) no dispute as to a material facts exists, and (2) the party seeking summary judgment is entitled to the judgment as a matter of law. *Tyler v. City of College Park*, 415 Md. 475, 498 (2010). We perform an independent review of the record to determine whether there is a dispute of material fact. *Id*. Whether a trial court's grant of summary judgment was proper under Rule 2-501 is a question of law subject to *de novo* review. *Walk v. Hartford Cas. Ins. Co.*, 382 Md. 1, 14 (2004).

DISCUSSION

The Court of Appeals recently addressed dram shop liability in *Warr v. JMGM Group, LLC*. 433 Md. 170 (2013). Dram shop liability refers to the "civil liability of a commercial seller of alcoholic beverages for personal injury caused by an intoxicated customer." *Id*. at 173 n.1 (quoting Black's Law Dictionary 568 (9th ed. 2009)). In *Warr*, the appellants filed suit against JMGM Group, owner of the Dogfish Head Alehouse, to recover for their injuries and for their daughter's death resulting from an auto collision with an intoxicated Dogfish Head patron. 433 Md. at 174. The Court of Appeals declined the opportunity to recognize dram shop liability on the grounds that Dogfish Head owed no duty to the appellants. *Id.* at 177.

The Court of Appeals gave various reasons for its holding that no duty was present. First, the Court noted that, although a tavern owner owes a duty to an injured third party by

"actually placing the patron in the transport and starting it home," such duty does not imply that a tavern owner owes a duty to a third party "to refuse to serve an intoxicated patron." *Id*. at 182. Second, the Court stated that a duty in this case would be premised on "the inherent assumption that the third party, to whom alcohol was served, . . . will drive, which is obviously not an absolute." *Id*. at 183. Third, the Court reiterated the rule that "in the absence of control or a special relationship, there can be no duty to an injured person for harm caused by a third party," and stated that no such special relationship or control was asserted by the appellants in *Warr*. *Id*. at 189, 190. The Court emphasized that "human beings, drunk or sober, are responsible for their own torts." *Id*. at 190 (citation and internal quotation marks omitted). Finally, the Court rejected the appellants' invitation to look to various provisions of the Restatement of Torts, as well as a criminal statute prohibiting the sale of alcohol to visibly intoxicated persons, as a foundation for dram shop liability, declaring that the General Assembly is in a better position than the Court to impose such liability. *Id*. at 190-95, 199.

Closely related to dram shop liability is social host liability. The concept of social host liability is that hosts who furnish alcohol to their social guests are liable for the harm caused by the negligence of the intoxicated guests. *Wright v. Sue & Charles, Inc.*, 131 Md. App. 466, 476-77, *cert. denied*, 359 Md. 670 (2000). In *Warr*, the Court of Appeals noted that the rationale behind its rejection of dram shop liability applied equally to social host liability:

> **The theory of liability advanced by the Warrs and embraced by the dissent would not be limited to commercial vendors of alcohol. A social host who provides alcohol to his or her guests engages in exactly the same conduct as a commercial vendor, and would, presumably, be exposed to the same liability**. Any provider of alcohol, such as social hosts, church groups, charitable organizations would be subject to liability. **In essence, all providers of alcohol would be responsible for the conduct of all the persons to whom they dispense alcohol . . . .**

433 Md. at 189 n.14 (emphasis added) (internal citation and quotation marks omitted). The Court of Appeals cited with approval this Court's decision in *Kuykendall v. Top Notch Laminates, Inc.*, 70 Md. App. 244, *cert. denied*, 310 Md. 2 (1987), in its observation that imposing dram shop liability would presumably impose social host liability as well. *See Warr*, 433 Md. at 189 n.14.

In *Kuykendall*, the plaintiffs brought a wrongful death action against Top Notch Laminates ("TNL") after a family member died in a head-on collision with a car driven by a drunk TNL employee, who had been engaged in "horse play" with a vehicle driven by another drunk TNL employee. 70 Md. App. at 246. Both employees had attended a Christmas party hosted by TNL, where they were served alcohol. *Id*. Attendance at the party was not required. *Id*.

The plaintiffs alleged that TNL "knew that [the employees] were intoxicated but continued to serve alcoholic beverages to them." *Id.* This Court declined the plaintiffs' "invitation" to "judicially impose liability on an employer who provides alcoholic beverages to an employee who subsequently, in an intoxicated state, injures another person." *Id.* at 251-

52. We reasoned that imposing social host liability would convert a "party host" into "his 'brother's keeper,'" which would be a major policy shift best left to the General Assembly. *Id*. at 247, 251; *see also Hebb v. Walker*, 73 Md. App. 655, 659, 661 (noting that "social host liability is a near relative of a Dram Shop action," and that, although there may be a "societal demand for the creation of a social host liability," it is up to the General Assembly, not the courts, to address that demand), *cert. denied*, 312 Md. 601 (1988); *Wright*, 131 Md. App. at 478 ("Maryland does not recognize a cause of action for social host liability. Whether such a cause of action is necessary or desirable is, in our democratic scheme of things, a decision for the people themselves to make, speaking through their properly accountable legislative representatives."). Given that the General Assembly has never enacted a Dram Shop Law, we reasoned that it would be

> totally illogical to hold that liquor licensees, those in the business of dispensing alcoholic beverages, who serve intoxicated patrons are not civilly liable to injured third persons, and yet, on the other hand, declare liable an employer whose employee voluntarily becomes intoxicated at a company party and then while driving home injures a third party.

Kuykendall, 70 Md. App. at 251 (citations omitted).

The instant case is similar to the facts of *Kuykendall*, where an employer's intoxicated employees injured a third person after driving away from the employer's party, because Robinson injured appellant driving home after appellee served Robinson drinks in appellee's home. *See* 70 Md. App. at 246. The instant case is also similar to *Warr*, where the Dogfish Head bartender knew that the intoxicated person would likely be driving, because the patron

had refused the bartender's offer to call a taxi. *See* 433 Md. at 183. Here, appellee knew that Robinson would be driving, and told Robinson that he could stay the night to avoid driving while intoxicated, but Robinson refused the offer. Our precedent makes clear that Maryland law does not distinguish between social host and dram shop liability—neither are viable causes of action. Accordingly, we conclude that there is no factual basis on which we can distinguish the matter *sub judice* from the precedent foreclosing social host or dram shop liability.

Appellant nevertheless argues that appellee is liable because his "active conduct—buying, opening and pouring alcohol into the cup of a teenager, when he knew the teenager was underage and knew the teenager would be driving—created an active risk of harm." As a result, appellant argues that appellee had a duty to "avoid unreasonable risks of harm to others," including a duty to protect foreseeable third parties from a car accident caused by a drunk driver.

Appellant's argument fails, because Maryland courts have already addressed a dram shop's or social host's "active conduct" of serving alcohol to guests in *Warr* and *Kukyendall*, and held in each case that the server owed no duty of care to third parties under ordinary negligence principles. For example, in *Warr*, the Court of Appeals concluded "that Dogfish Head did not owe a duty to the Warrs because of its provision of alcohol to [the patron]." 433 Md. at 182-83. The Court noted that "[w]hen the harm is caused by a third party, rather than the first person, as is the case here, our inquiry is . . . whether the person or entity sued

had control over the conduct of the third party who caused the harm by virtue of some special relationship." *Id*. at 183. The Court determined that a "tavern owner who provides alcohol to an intoxicated patron does not exercise control over the conduct of the patron, in driving or walking, for example." *Id*. at 183-84. As a result, Dogfish Head was not negligent because it owed no duty of care to the Warrs, despite its "active conduct" of serving alcohol to its patrons. *See id*. at 189-90.

The same result occurred in *Kuykendall*. In *Kuykendall*, this Court noted that TNL "had no acquaintance or any other known relationship with the decedent prior to the impact. Ergo, the relationship and duty of care owed by [TNL] to the decedent was the same as that due any other member of the general public." 70 Md. App. at 248-49. We determined that no "special relationship" existed between TNL and its employees at the holiday party, because TNL had no "right to control [the employees'] actions after business hours." *Id*. at 249. Finally, we rejected the argument that TNL assumed any duty by serving alcohol to its employees, because TNL "took no affirmative act with respect to [the employees'] operating a motor vehicle." *Id*. at 251.

Finally, in *Warr* the Court of Appeals reaffirmed "'the general rule that there is no duty to control a third person's conduct so as to prevent personal harm to another, unless a "special relationship" exists either between the actor and the third person or between the actor and the person injured.'" 433 Md. at 183 (quoting *Remsburg v. Montgomery*, 376 Md. 568, 583 (2003)). In the instant case, no special relationship existed (1) between appellee

and appellant, or (2) between appellee and Robinson, the third party who caused appellant's injuries. Appellant does not assert any "special relationship" between appellant and appellee. Thus there can be no duty owed by appellee to appellant on that basis. In addition, in *Kuykendall*, we held that no special relationship existed between an employer and its employees after business hours, because there was nothing in the record to suggest the employer had the right of control at that time. 70 Md. App. at 249. It logically follows that no special relationship exists in this case, where no employment relationship existed between appellee and Robinson, and appellee had no right to control Robinson's behavior regarding Robinson's decision to get behind the wheel.[4] *See Warr*, 433 Md. at 183-84; *Kuykendall*, 70 Md. App at 251. Therefore, we hold that appellee is not liable to appellant for negligence as a matter of law, because appellee did not owe a duty of care to appellant under the circumstances of the instant case.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; APPELLANT TO PAY COSTS.

[4] Alternatively, appellant urges this Court to recognize social host liability in circumstances where an adult buys and serves alcohol to an underage adult, knowing that such person is underage and will be driving. We need not reach this argument, because the adoption of such argument would be a dramatic change to the common law for which there exists no Maryland precedent.