IN THE SUPREME COURT OF FLORIDA

Tallahassee, Florida

CASE NO. 68,281

FILED
SID J. WHITE
APR 14 1986
CLERK, SUPREME COURT
By Chief Deputy Clerk

EDMUND CARL BANKSTON and
MARY BANKSTON, his wife, and
LORI BANKSTON, a minor child,

Petitioners,

vs. (DCA-4 NO. 85-427)

FRANCIS J. BRENNAN, JR.,
BRIAN FRANCIS BRENNAN and
STEVEN LADIKA,

Respondents.

________________________________/

ON CERTIFIED QUESTION FROM THE DISTRICT
COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

PETITIONER'S REPLY BRIEF ON THE MERITS

ARNOLD GREVIOR CHARTERED
100 Southeast Sixth Street
Fort Lauderdale, FL 33301
(305) 462-8394
and
RALPH PELAIA, JR.
633 South Andrews Avenue
Fort Lauderdale, FL 33301
(305) 525-1700
and
LARRY KLEIN, of
KLEIN & BERANEK, P.A.
Suite 503 - Flagler Center
501 South Flagler Drive
West Palm Beach, FL 33401
(305) 659-5455

TABLE OF CONTENTS

	Page
Certified Question	
DOES SECTION 768.125, FLORIDA STATUTES, CREATE A CAUSE OF ACTION, AGAINST A SOCIAL HOST, AND IN FAVOR OF A PERSON INJURED BY AN INTOXICATED MINOR WHO WAS SERVED ALCOHOLIC BEVERAGES BY THE SOCIAL HOST?	1
Argument	1-4
Conclusion	4
Certificate of Service	5

TABLE OF CITATIONS

Cases	Page
Hoffman v. Jones, 280 So.2d 431 (Fla. 1973)	1
Lawson v. State, 231 So.2d 205 (Fla. 1970)	3
Other Authorities	
Chapter 562, Florida Statutes	3
Chapter 768, Florida Statutes	2

CERTIFIED QUESTION

DOES SECTION 768.125, FLORIDA STATUTES, CREATE A CAUSE OF ACTION, AGAINST A SOCIAL HOST, AND IN FAVOR OF A PERSON INJURED BY AN INTOXICATED MINOR WHO WAS SERVED ALCOHOLIC BEVERAGES BY THE SOCIAL HOST?

ARGUMENT

Defendant admits in his summary of argument that "forceful arguments can be made" for expanding liability, but argues that the Legislature should do it, not this court. In Hoffman v. Jones, 280 So.2d 431 (Fla. 1973), this court changed the common law rule that contributory negligence was a complete bar, stating on page 436:

> ... The Legislature of Florida has made great progress in legislation geared for accident prevention. The prevention of accidents, of course, is much more satisfying than the compensation of victims, but we must recognize the problem of determining a method of securing just and adequate compensation of accident victims who have a good cause of action.
>
> The contemporary conditions must be met with contemporary standards which are realistic and better calculated to obtain justice among all of the parties involved, based upon the circumstances applying between them at the time in question. ... (emphasis added)

As we argued in our main brief, allowing recovery against a social host who serves alcohol to minors is based on traditional principles of negligence. All of the

elements of negligence are present. The fact is that the common law contains an exception for people who put drunks on the highways. In order to establish common law liability it is only necessary for this court to dispense with this exception. A person who allows another to drive his car on the highway is liable for the negligence of the driver. A person who furnishes liquor and makes drunk someone who is going to drive on the highway is not liable. Whose conduct is more reprehensible?

Defendant's arguments demonstrate the weakness of defendant's position. For instance, on page 4 defendant suggests that the Legislature's failure to define "key terms" makes the statute ambiguous. We assume the defendant refers to the terms "person" and "furnishes". They are clearly not ambiguous.

On page 11 defendant argues that the House eliminated an amendment expressly stating that the law applied to private party hosts, and argues this is indicative of the intent of the Legislature. The problem with this argument is that this additional sentence would have been redundant because the language of the statute as passed makes it clear that it is not limited to vendors. Moreover the fact that the statute is in Chapter 768 dealing with general tort

liability, instead of Chapter 562, the beverage licensing statute, is also indicative of intent.

As we pointed out in the main brief, legislative history is irrelevant where the wording of a statute is clear, and defendant has admitted on pages 2 and 3 that the wording of the statute does "at first blush, appear to authorize a cause of action against social hosts".

In response to our argument that this court can eliminate the common law prohibition against liability under these facts, as well as construing the statute to authorize it, defendant says this court can only answer the certified question. On the contrary, this court's review is not limited to the certified question. Lawson v. State, 231 So.2d 205 (Fla. 1970), and cases cited therein.

In conclusion, and at the risk of being redundant, we would make two points. First, this case does not involve liability for serving alcohol to adults. The language of the statute creates liability for unlawfully furnishing alcohol to minors. Thus a reversal of the decision of the Fourth District will only expand the liability of a person who unlawfully furnishes alcohol to a minor. Second, doing away with the common law prohibition against suits of this

nature will not change the law of negligence. It will simply eliminate an exception which was carved out for innkeepers in England long before the invention of the automobile. If a manufacturer is liable to third persons injured by a defective automobile, why should we insulate a person who puts a drunk driver on the highway? There are many more lives lost each year because of drunk drivers than defective vehicles.

CONCLUSION

The certified question should be answered in the affirmative.

ARNOLD GREVIOR CHARTERED
100 Southeast Sixth Street
Fort Lauderdale, FL 33301
(305) 462-8394
and
RALPH PELAIA, JR.
633 South Andrews Avenue
Fort Lauderdale, FL 33301
(305) 525-1700
and
LARRY KLEIN, of
KLEIN & BERANEK, P.A.
Suite 503 - Flagler Center
501 South Flagler Drive
West Palm Beach, FL 33401
(305) 659-5455

By
LARRY KLEIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing has been furnished, by mail, this 10th day of April, 1986, to:

JAMES M. HENDERSON
One Financial Plaza
Suite 1318
Fort Lauderdale, FL 33394

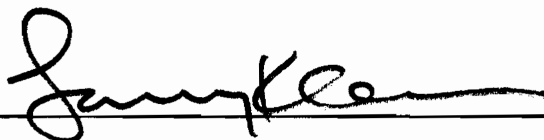
H. JACKSON DORNEY
450 N. Park Road
4th Floor
Hollywood, FL 33021

REX CONRAD, and
VALERIE SHEA, of
CONRAD, SCHERER & JAMES
P. O. Box 14723
Fort Lauderdale, FL 33302

ARNOLD GINSBERG, of
HORTON, PERSE & GINSBERG
401 Concord Building
66 West Flagler Street
Miami, FL 33130

TOM CAREY
622 Bypass Drive
Clearwater, FL 33546

MARJORIE GADARIAN GRAHAM
JONES & FOSTER, P.A.
P. O. Drawer E
West Palm Beach, FL 33402



LARRY KLEIN