IN THE SUPREME COURT OF FLORIDA

APPEAL NO. 74,404

LOWER TRIBUNAL NO. 88-1231

KIMBERLY DOWELL,

Petitioner,

-vs-

GRACEWOOD FRUIT COMPANY,

Respondent.

REPLY BRIEF OF PETITIONER IN RESPONSE TO ANSWER BRIEF OF RESPONDENT

NOLAN CARTER, ESQUIRE
LAW OFFICE OF NOLAN CARTER, ESQUIRE
Suite 1245, 200 East Robinson St.
Orlando, Florida 32802
Telephone: (407) 425-1621
Florida Bar No. 103730

TABLE OF CONTENTS

TABLE OF CITATIONS

INDEX OF OTHER AUTHORITIES

RESPONSE

The sole issue before this Court is the proper interpretation of the exception set forth in Florida Statute 768.125 as that statute is to be applied to serving a known alcoholic intoxicating liquor.

This Court is not being asked to recede from Bankston v. Brennan, 507 So.2d 1385 (Fla. 1987), although Petitioner would certainly have an easier case if this Court were to adopt the dissenting opinion of Justice Adkins in Bankston.

Neither is Petitioner asking this Court to create a new common law cause of action nor adopt case law reasoning from another jurisdiction. There is no need for this Court to do that since Florida has a statute right on point. That being the case, it is this Court's duty to interpret that statute.

Petitioner has already delineated her many reasons as to why this Court should adopt her view of that statute in her original Brief. For that reason, those points will not be reargued here.

Petitioner would make two points though in reply to the issue raised by Respondent.

First, it is clear that Florida Statute 768.125 does not distinguish whether the **"alcoholic"** is sixteen (16) or sixty (60). It establishes liability for serving **all** persons known to be habitually addicted to alcohol. By using such all inclusive language, it is clear, at least to Petitioner, that the legislature meant for this prohibition to apply to **all** persons who would

serve the known alcoholic, be they vendors or social hosts.

Second, by carving out this exception in the same statute dealing with minors, it seems evident that the legislature meant to address an entirely separate and distinct class of individuals, to-wit: alcoholics. That being the case, to reach a proper interpretation of the legislative intent, Petitioner submits that the criminal statute must be viewed. As argued in the Initial Brief, the language in 768.125 is much broader and encompassing because there the legislature left out the requirement of "prior written notice" that is a prerequisite to criminal responsibility in 562.50.

Lastly, the cases cited by Respondent have absolutely nothing to do with vendor liability for serving a known alcoholic.[1] As noted in Petitioner's main Brief, there have been no decisions addressing the issue of civil liability for serving a kwown alcoholic by either a vendor or social host since the passage of Florida Statute 562.50. Indeed, there has only been one decision dealing with vendor liability since the passage of Florida Statute 768.125. That decision clearly held that to meet the requirements of 768.125, Plaintiff need only allege that the bar owner knowingly served a person habitually addicted to alcohol.

---

1. United Services Automobile Association V. Butler, 359 So.2d 498 (Fla. 4th DCA 1978) dealt soley with the issue of liability for serving a minor.

Pritchard v. Jax Liquors, Inc., 499 So.2d (Fla. 1st DCA 1987), rev. den., 511 So.2d 298 (Fla. 1987).

For the foregoing reasons, and the reason set forth in Petitioner's Initial Brief, it is respectfully submitted that the correct interpretation of the exception in Florida Statute 768.125 is to impose liability on a social host for knowingly serving one who is habitually addicted to the use of any and all alcoholic beverages. Therefor, Petitioner's Complaint should be reinstated.

Respondent argues that this Court should never reach the certified question due to the fact that it proved conclusively at trial level that the individual in question was not an alcoholic. The trial record is clear that the trial judge ruled against Respondent on that issue. Respondent then raised the same argument to the Fourth District and was again ruled against. It is unclear how Respondent now contends that this issue is presently before
this Court since the two lower courts have already ruled that the proof in this regard has failed. For that reason, Petitioner chooses not to address that issue.

CONCLUSION

This Court is being asked by Petitioner and the Fourth District Court of Appeals to interpret Florida Statute 768.125 as to whether said statute imposes liability upon a social host for serving alcoholic beverages to a known alcoholic. Petitioner submits that the most logical interpretation, and the one most easily supported by policy reasons, is to impose liability on a social host in the very limited situation wherein he knowingly serves one habitually addicted to the use of alcohol, be that "one" a minor or an adult.

For these reasons, Petitioner submits that her Complaint should be reinstated against Defendant herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies of the foregoing Petitioner's Brief have been mailed on this 26th day of September, 1989 by First Class U.S. Mail to Janet DeLaura Harrison, Esq., Post Office Box 695, Rockledge, Florida 32955 and Larry Klein, Esq., 501 South Flagler Drive, Suite 503, Flagler Center, West Palm Beach, Florida 33401.

NOLAN CARTER, ESQUIRE
Attorney for Petitioner