



Social Hosts Not Liable for Conduct of Guests: *Childs v. Desormeaux*

In a judgment delivered on May 5th, 2006, the Supreme Court of Canada held that social hosts of events where alcohol is served do not owe a duty of care to a person such as a highway user who is injured by an intoxicated guest. Writing for a unanimous Court, Chief Justice McLachlin upheld the judgment of the Ontario Court of Appeal and denied recovery by the injured person against the social hosts.

The social hosts had invited friends to a “BYOB” party. The only alcohol served by the hosts was a small amount of champagne at midnight. They knew the defendant (Desormeaux) to be a heavy drinker. Desormeaux, one of the party guests, consumed alcohol at the party and was heavily impaired when he left the party. He drove his vehicle into oncoming traffic, colliding with the car carrying the plaintiff (Childs), who was severely injured as a result of the accident.

McLachlin C.J. noted that social hosts are not analogous to commercial hosts for the purposes of establishing a duty of care. Commercial hosts have the ability to monitor alcohol consumption. The sale of alcohol is strictly regulated by legislation, placing commercial establishments in a different and more restrictive context than social hosts. Furthermore, the contractual nature of the relationship between a patron and a commercial host is much different from the range of possible social relationships between a guest and a social host.

McLachlin C.J. then declined to recognize a new duty of care in this instance for two reasons. First, based on the trial judge’s findings of fact, the injury to the plaintiff was not reasonably foreseeable. Second, the alleged wrong was a failure to act (nonfeasance), and the social hosts were under no positive duty to act.

On the issue of foreseeability, the trial judge did not find that the social hosts knew, or ought to have known, that Desormeaux was too intoxicated to drive. As a result, McLachlin C.J. reasoned that the injury to the plaintiff could not have been reasonably foreseen by the social hosts. The trial judge relied on Desormeaux’s reputation as a heavy drinker to conclude that the social hosts should have foreseen that he would become intoxicated and attempt to drive. McLachlin C.J. rejected this as “problematic reasoning” (para. 29), noting that a history of alcohol consumption and impaired driving does not make impaired driving and its associated risks reasonably foreseeable.

Even if the injuries were reasonably foreseeable, McLachlin C.J. notes that this is a case of nonfeasance. In such cases, foreseeability alone may not establish a duty of care if the defendants were under no positive duty to act. Three situations are recognized as creating a positive duty of care: attracting and inviting third parties to a risky situation, a paternalistic relationship of supervision and control, and defendants who exercise a public function or engage in a commercial enterprise that entails implied responsibilities to the public. Common to each situation is the defendant’s “material implication” (i.e. participation) in the creation or control of a risk to which others have been invited, and a concern for personal autonomy.

The Supreme Court held that none of these situations was analogous to the present case. Hosting a party is not an inherently risky activity, no paternalistic relationship existed, and private social hosts do not act in a public capacity. The social hosts were not sufficiently implicated in the creation of a risk so as to establish a duty of care. Furthermore, as McLachlin C.J. notes at para. 45, an individual who attends a private party “does not park his autonomy at the door”. The guest remains responsible for his or her own conduct, and the host is entitled to respect this autonomy. No positive duty existed in this case.

The Court does not completely foreclose the possibility of finding social hosts liable in different factual circumstances. McLachlin C.J. notes in para. 44 that it “might be argued” a social host who serves alcohol to a visibly intoxicated person knowing that he or she will drive home may have become implicated so as to give rise to a *prima facie* duty of care to third parties. However, the Court specifically declined to decide the issue in the present case.

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