

4/25/01

SUPREME COURT OF LOUISIANA

No. 2000-C-1699

MATTHEW BERG

VERSUS

PHILIP ZUMMO, ET AL.

CALOGERO, Chief Justice, dissents and assigns reasons.

I respectfully disagree with the majority's conclusion that the bar owner in this case is liable under Louisiana's duty/risk analysis. As the majority notes, to prevail in his action under La. Civ. Code arts. 2315 or 2316 the plaintiff must prove five separate elements, one of which is that the defendant's substandard conduct was a legal or proximate cause of the plaintiff's injuries. *Ante*, p. 11 (citing Roberts v. Benoit, 605 So. 2d 1032, 1051 (La. 1991)(on rehearing)). However, the legislature has specifically declared in La. Rev. Stat. 9:2800.1(A) that the sale, serving, or furnishing of alcohol is not conduct that may be deemed the proximate cause of any injury inflicted by the intoxicated person; rather, it is "the *consumption* of intoxicating beverages" that is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or another person. La. Rev. Stat. 9:2800.1(A) (emphasis supplied).

Furthermore, contrary to the majority's reasoning at pages 8-9, *ante*, La. Rev. Stat. 9:2800.1(A) is not restricted to persons of the age for the lawful purchase of intoxicating beverages simply because the legislature in La. Rev. Stat. 9:2800.1(B) appears to grant immunity from liability for damages occurring off-premises to certain permitted vendors who sell or serve intoxicating beverages to persons of the age for lawful purchase. It is illogical to conclude that under La. Rev. Stat. 9:2800.1(A) the

sale or service of alcoholic beverages to a person of the age for lawful purchase cannot be the proximate cause for any injury he inflicts, but that the sale or service of alcoholic beverages to a person under the age for lawful purchase can be the proximate cause of any injury she inflicts. The majority's error is in assuming for purposes of analysis that La. Rev. Stat. 9:2800.1(A) grants across the board immunity from liability when it does not. La. Rev. Stat. 9:2800.1(A) is clearly directed to the acts of selling, serving, or furnishing of intoxicating beverages. Thus, the mere selling, serving, or furnishing of alcoholic beverages to a person under the age for lawful purchase, or any age for that matter, cannot result in liability under the duty/risk analysis because those acts cannot be deemed the legal or proximate cause of the damages, as the legislature has declared.

However, the legislature has left open whether other acts or omissions by the person selling, serving, or furnishing the alcoholic beverages to a person of any age could result in liability under the duty/risk analysis, except to the extent that it granted immunity from liability in certain cases to certain persons in La. Rev. Stat. 9:2800.1(B) (permitted vendors) and La. Rev. Stat. 9:2800.1(C) (social hosts). Thus, there is no need to import into La. Rev. Stat. 9:2800.1(A) the restrictions set forth in La. Rev. Stat. 9:2800.1(B) and La. Rev. Stat. 9:2800.1(C).

I would hold that, applying La. Rev. Stat. 9:2800.1(A) under our duty/risk analysis, the sale, serving, or furnishing of alcoholic beverages to a person under the age for lawful purchase, without any other act or omission on the part of the person selling, serving, or furnishing the alcoholic beverages that could be the legal cause of any injury inflicted by the intoxicated person, is not sufficient to impose liability on the person selling, serving, or furnishing the alcoholic beverage. Here, the plaintiff has not alleged that any other act of The Boot or breach of any other duty, other than selling

Zummo a pitcher of beer, caused his damages. Consequently, I would affirm the appellate court's holding that The Boot is not liable for general damages under La. Civ. Code arts. 2315 or 2316.