
State of Minnesota
In Court of Appeals

JEAN CLARK, Individually and as Trustee for the Next of Kin of
TINA GROVE, Deceased, MICHAEL JUETTEN as Parent and
Natural Guardian of CHELSEA GROVE AND CHAD LINDBERG,
as Parent and Natural Guardian of CODY LINDBERG,
Respondents,

vs.

ROY JORGEN MUNKHOLM PETERSON,
Defendant,
GORDON WHEELER d/b/a CAMP RIPLEY STORE/BAR/CAFÉ
AND KRAZY RABBIT,
Appellant,
STATE OF MINNESOTA DEPARTMENT OF TRANSPORTATION,
Defendant.

APPELLANT’S REPLY BRIEF

BLACKWELL BURKE, P.A.
Britton D. Weimer (#182035)
33 South Sixth Street
Suite 4600
Minneapolis, Minnesota 55402
(612) 343-3200

McCULLOUGH, WILLIAMS,
BOWDEN & CYR, P.A.
Susan Bowden, Esq. (#284610)
905 Parkway Drive
Saint Paul, Minnesota 55117
(651) 772-3446

Attorneys for Appellant

Attorneys for Respondents

TABLE OF AUTHORITIES

Page

CASES

<u>Beck v. Groe,</u> 70 N.W.2d 886 (Minn. 1955).....	1
<u>Bob Useldinger & Sons, Inc. v. Hangsleben,</u> 505 N.W.2d 323 (Minn. 1993)	3
<u>Rambaum v. Swisher,</u> 435 N.W.2d 19 (Minn. 1989)	1, 2

ARGUMENT

Clark has not met her burden of proving an illegal sale. Her claim is defective on two levels.

First, Clark concedes that an “illegal sale” must be based upon a 340A provision that **“directly governs the dispensing of alcohol to patrons.”** (Respondent’s Brief at 10) Clark cannot avoid this elementary standard. All six existing categories of illegal sale adhere to it. All six are based upon statutes that directly and specifically regulate the *customers* who purchase alcohol or the *time* when they consume it. No other rule is possible, because civil-damages liability must begin with statutory language that is “clear and explicit” and substantially related to the statutory purpose of reducing public intoxication. See Beck v. Groe, 70 N.W.2d 886, 891 (Minn. 1955) (“clear and explicit”); Rambaum v. Swisher, 435 N.W.2d 19, 21-22 (Minn. 1989) (substantial relationship).

Having acknowledged this standard, Clark then proceeds to ignore it. She tries to shift the focus from the specific statutory language to the general statutory purpose. According to Clark, the statute need only have the “purpose” of “control[ling] the dispensing of alcohol to patrons.” (Page 10) But to route the analysis through the “purpose” of the statutes would render the specific statutory language irrelevant. **All** provisions of 340A presumably have the general “purpose” of controlling the dispensing of alcohol, since they are all collected in the same legislative chapter. Thus, Clark’s formulation would abolish all statutory constraints, allowing civil-damages suits for *any* violation of 340A. This is

contrary to Minnesota law. See Rambaum v. Swisher, 435 N.W.2d 19, 21-22 (Minn. 1989) (not all 340A violations are illegal sales).

Thus, we return to the basic formulation that Clark originally accepted. An “illegal sale” must be based upon a 340A provision that “directly governs the dispensing of alcohol to patrons.”

Consequently, the issue here is not the statute’s general purpose, but its specific function in regulating the dispensing of alcohol. Vendors may have civil-damages liability if they violate the specific alcohol-dispensing statutes, causing intoxication. But they can have no civil-damages liability for violating statutes governing other aspects of the liquor business.

Here, the district court found *only one* 340A violation by the Camp Ripley Bar. Because the bar had no public walkway to the new Krazy Rabbit building, it violated the “compact and contiguous” requirement of 340A.410, and the license did not extend to that building. Such a statute, governing the shape of the licensed premises, is a classic example of a 340A provision that does *not* support civil-damages liability. The building’s configuration might indirectly affect the dispensing of alcohol. But it does not “directly govern the dispensing of alcohol to patrons.” Therefore, under the case law and the plain statutory language, Clark cannot meet her burden of proof, and her claim fails as a matter of law.

Second, Clark ignores her factual burden of demonstrating that the statutory violation (no public walkway) was “substantially related” to increased public alcohol consumption. She fails to address the factual record in this case,

which shows the *exact opposite*. The undisputed evidence was that (1) Peterson consumed no more at the Camp Ripley Bar than he would have elsewhere, and (2) the Camp Ripley Bar's building design likely reduced alcohol consumption by patrons. (Appellant's Brief at 19-20)

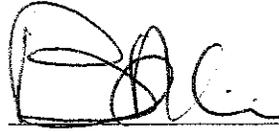
At the district court level, Clark might have submitted factual or expert testimony claiming that the closed walkway led to increased alcohol consumption. (It is unclear why Clark did not do this. Either she had no such evidence, or she had some tactical purpose in not submitting it. In any event, she did not do so.)

As a result, the undisputed evidence established that the bar's specific violation was *not* "substantially related" to increased alcohol consumption. All Clark can do on appeal is speculate about potential abuses, such as the creation of a hypothetical strip mall consisting of "20 different bars." (Page 10) Such speculation is not substantive evidence in a summary judgment motion. Bob Useldinger & Sons, Inc. v. Hangsleben, 505 N.W.2d 323, 328 (Minn. 1993) ("Mere speculation, without some concrete evidence, is not enough to avoid summary judgment"). Therefore, summary judgment should have been granted in favor of the Camp Ripley Bar.

CONCLUSION

Both legally and factually, Clark failed to meet her burden of showing an illegal sale. Therefore, summary judgment for Clark should be reversed, and judgment ordered in favor of the Camp Ripley Bar.

Respectively submitted,

A handwritten signature in black ink, appearing to read 'B. D. Weimer', written over a horizontal line.

Dated: December 28, 2006

Britton D. Weimer (# 182035)
BLACKWELL BURKE, P.A.
33 South Sixth St., Suite 4600
Minneapolis, MN 55402
(612) 343-3200
Attorneys for Appellant