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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0387**

Elecia Larson, as natural mother of Cassandra Larson, et al.,  
Appellants,

vs.

Mitch's, Inc., d/b/a Mitch's Bar,  
Respondent.

**Filed July 1, 2008  
Affirmed  
Schellhas, Judge**

St. Louis County District Court  
File No. 69DU-CV-06-2113

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Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Schellhas,  
Judge.

**UNPUBLISHED OPINION**

**SCHELLHAS, Judge**

Appellants challenge the district court's determination that as a matter of law,  
respondent is not liable under the Minnesota Dram Shop Act for injuries sustained by a

person who was assaulted after respondent served him alcohol. Because the chain of causation that led to the victim's injuries was severed by an independent actor, the victim's intoxication as a matter of law was not a proximate cause of his injuries, and we affirm.

## **FACTS**

On August 15, 2004, David G. Larson (Larson) was served alcohol at respondent Mitch's Bar, and then went to Curly's Bar, where he was served more alcohol. At Curly's Bar, Larson was involved in an altercation with David Sharp, during which Sharp struck Larson in the head and face multiple times and rendered Larson unconscious. The record contains no evidence that respondent served alcohol to Sharp.

Appellants Elecia Larson, as natural mother of Cassandra Larson, and Cassandra Larson, individually, sued Mitch's Bar claiming that it served Larson alcohol when he was obviously intoxicated in violation of the Minnesota Dram Shop Act, Minn. Stat. § 340A.801. Appellants claim that Larson's intoxication was the direct and proximate cause of the assault on him and his resulting injuries. Appellants also claim that Larson remained in a coma for one-and-one-half weeks following the incident and sustained brain injuries that rendered him permanently disabled and unable to return to gainful employment. The district court dismissed appellants' claims, concluding that Sharp's assault upon Larson, not the sale of alcohol to Larson by Mitch's Bar, was the proximate cause of Larson's injuries. This appeal follows.

## DECISION

In reviewing an order of dismissal under rule 12.02(e), the only question before this court is whether the complaint sets forth a legally sufficient claim for relief. *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). If no relief could be granted under any set of facts consistent with the allegations that could be proved, dismissal is appropriate. *Noske v. Friedberg*, 670 N.W.2d 740, 743 (Minn. 2003). We review an appeal from a dismissal on the pleadings de novo. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). In reviewing the legal sufficiency of a pleading, this court accepts all facts alleged in the complaint as true and makes all reasonable inferences in favor of the non-moving party. *Id.*

The Minnesota Dram Shop Act (the act) allows a spouse or child who incurs a pecuniary loss “by an intoxicated person” to recover damages from the party that “caused the intoxication of that person by illegally selling alcoholic beverages.” Minn. Stat. § 340A.801, subd. 1 (2006). A party sued under the act is liable to a plaintiff if: (1) there was an illegal sale of alcohol under section 340A; (2) the illegal sale of alcohol was “substantially related” to the objectives of the act; (3) the illegal sale of alcohol was a cause of the intoxication; and (4) the resulting intoxication was a cause of the plaintiff’s injury. *Rambaum v. Swisher*, 435 N.W.2d 19, 21 (Minn. 1989). Central to the district court’s decision, and thus at issue here, is the absence of the fourth element, i.e., whether Larson’s intoxication caused his injury. *See Weber v. Au*, 512 N.W.2d 348, 350 (Minn. App. 1994) (stating that the act requires “a causal connection between the intoxication and the injury, not just the sale and the injury”). In order to satisfy this element, the

plaintiff bears the burden of showing that the intoxication was a *proximate* cause of the injury. *Kryzer v. Champlin Am. Legion No. 600*, 494 N.W.2d 35, 36-37 (Minn. 1992).<sup>1</sup>

A proximate cause of an injury is the act or omission that “directly or immediately” causes the injury through a “natural sequence of events” without another “independent . . . cause.” *Lennon v. Pieper*, 411 N.W.2d 225, 228 (Minn. App. 1987) (citing *Medved v. Doolittle*, 220 Minn. 352, 356-57, 19 N.W.2d 788, 790 (1945)). Where another cause creates “a break in the chain of causation” between the intoxication and the injury, the dram shop is not liable for the injury. *Crea v. Bly*, 298 N.W.2d 66, 66 (Minn. 1980). In *Crea*, the supreme court ruled as a matter of law that a dram shop was not liable when a woman to whom it served alcohol convinced a man to assault the plaintiff. *Id.* The court stated that “[w]hile the duties of dram shops to the public are and should be onerous,” they did not extend to “protecting the public from the excesses of” the third-party assailant. *Id.* In *Kunza v. Pantze*, the supreme court refused to hold a dram shop responsible for the independent actions of a third-party victim, holding that a dram shop was not liable as a matter of law for the injuries of a woman who jumped from a moving car to escape the abuse of her intoxicated husband. 531 N.W.2d 839, 839 (Minn. 1995), *rev’g* 527 N.W.2d 846, 847 (Minn. App. 1995).

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<sup>1</sup> Larson was served alcohol at another bar, Curly’s Bar, after he left Mitch’s Bar and before he was assaulted. The district court did not rely on this fact in its decision that Mitch’s sale of alcohol was not a proximate cause of Larson’s injuries, and cited *Kryzer*, in which the supreme court stated that “the liquor illegally sold need not be the sole cause of intoxication, . . . it is enough if it [is] a *proximately* contributing cause.” 494 N.W.2d at 36 (quotation omitted).

While the facts in *Crea* are distinguishable from the facts in the present case, we agree with the district court that the distinction is irrelevant. In *Crea*, the intoxicated person caused a third party to assault and injure someone else. Here, the intoxicated person, Larson, was assaulted by third-party Sharp and the district court ruled as a matter of law that third-party Sharp's actions were an independent cause of Larson's injuries and broke the chain of causation. The district court correctly observed that in both cases, the actions of a third-party assailant directly caused the injuries. The district court's dismissal of appellants' complaint is consistent with *Crea* and is also consistent with the supreme court's reasoning in *Osborne v. Twin Town Bowl, Inc.*, \_\_ N.W.2d \_\_, 2008 WL 2229473, at \*6 (Minn. May 30, 2008), that when third-party actions break the chain of causation, the injured person's intoxication is not the proximate cause of his injury as a matter of law. In *Osborne*, the supreme court reversed this court and held that when an intoxicated man jumped from a bridge into a river and drowned after being pulled over by a state trooper, it was inappropriate to rule as a matter of law that his intoxication was not the proximate cause of his death. *Osborne*, 2008 WL 2229473, at \*13. But the *Osborne* court distinguished its holding from cases like *Kryzer*, *Crea*, and *Kunza* where third parties caused the injuries, concluding that in those cases, "summary judgment was appropriate because as a matter of law the intoxicated party's faculties, which were impaired by alcohol, could not have directly caused an injury that resulted from the actions and choices of another person." *Osborne*, 2008 WL 2229473, at \*7.

Here, appellants argue that their claim should be allowed to proceed because Larson's intoxication affected his actions, which in turn led to his assault and injury by

Sharp. Appellants request that we apply a “but for” causation test to their claims; yet, the *Osborne* court explicitly emphasized that the injured person’s intoxication must be “a proximate cause, not merely a ‘but for’ cause,” of the person’s injury. *Id.* Therefore, we decline to apply a “but for” causation test here. Based upon the supreme court’s reasoning in *Osborne*, *Kryzer*, *Crea*, and *Kunza*, the district court’s dismissal of appellants’ claims in this case was proper.

**Affirmed.**