Oregon Supreme Court Holds Employer Not Completely Immune Under Social Host Statute

Wednesday, March 20, 2019

Oregon's highest court has held that although the state’s “social host” law protects certain persons from liability related to their actions taken as “hosts,” there is no similar insulation from liability for alleged tortious conduct committed while acting in another role, such as employer. *Schutz v. La Costita III, Inc.*, 364 Or. 536 (March 14, 2019).

Ashley Schutz worked for construction firm O’Brien Constructors, LLC, as a receptionist. Over the course of her three months on the job, she had declined multiple invitations by her supervisor (the owner’s son) to join him and other employees for after-work drinks. Despite her previous refusals, she felt pressured to accept an invitation so that her growth in the company would not be negatively impacted. Ultimately, she agreed to leave work early one evening to join her supervisor and coworkers at a nearby bar and restaurant. At the gathering, the supervisor encouraged the employees to drink and even teased another employee for attempting to leave after only two drinks. Schutz became extremely intoxicated and was later involved in a car accident, resulting in severe injuries.

Schutz brought a civil action for negligence against the restaurant (which was quickly dismissed under the social host statute), the supervisor, and the employer. Oregon's social host law provides that a person who consumes alcoholic beverages does not have a cause of action against the person serving the alcoholic beverages, even when the person is visibly intoxicated. The law specifically does not bar claims “caused by negligent or intentional acts other than the service of alcoholic beverages to a visibly intoxicated patron or guest.”

The employer argued that Schutz’s claims were barred by the social host statute. Schutz, however, argued that her claims related to negligent acts other than the service of alcoholic beverages. Specifically, she alleged that the supervisor and had been negligent in: organizing an employee function where alcoholic beverages would be purchased and served; in pressuring her to attend the function by creating the impression that her advancement depended on the supervisor liking her; and, failing to warn her that excessive amounts of alcoholic beverages would be purchased and served. Schutz also alleged that the employer had been negligent in allowing the supervisor to arrange work-related activities that included the excessive consumption of alcohol; and, failing to adequately train the supervisor in terms of proper methods of improving work and employee relationships.

The Oregon Supreme Court framed the issue as whether “a server or social host is immune from liability only when alleged to be acting as a server or social host or also when alleged to be acting in another role, such as property owner or employer.” Schutz argued that the applicable statute extended immunity to social hosts only for acts involving the purchase or service of alcohol and permitted all other negligence claims. Conversely, the supervisor and employer argued that the statute extended immunity to all claims in which a plaintiff’s intoxication caused her injury, even when it is alleged that the social host committed a tortious act “other than the service of alcoholic beverages.”

To determine the intent of the statute, the Court conducted an extensive review of its text, the context, and its legislative history. The Court held that the statute precludes claims against servers and social hosts only for actions taken in their roles as such, but does not preclude claims for intentional or negligent acts in other roles. While immune from liability for their role as social host, the employer and supervisor were not immune from Schutz’s claims that they acted negligently in performing their roles as employer and supervisor.
Although the Court did not determine the merits of Schutz’s underlying negligence claims, Oregon employers should exercise caution and not assume they are immune in all respects when hosting an official or unofficial company function where alcohol is being served.

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