



★ Visit www.udetc.org for the latest information on underage drinking. ★

UPDATES FROM THE FIELD

Is alcohol advertising harming girls?

Are there similar marketing strategies between companies who sell alcohol and those that sell cigarettes? Dr. Ken Flegel (Senior Associate Editor for the Canadian Medical Association Journal) thinks so, and is taking the industry to task for the advertising practices to young girls. In a recent editorial in the Canadian Medical Association Journal, Dr. Flegel makes the argument that like tobacco companies, the alcoholic beverage industry has recognized that a good way to increase profits is to target young female consumers – and this has left adolescent girls, who also see the ads, particularly vulnerable. Dr. Flegel offers some insight into responsibility and potential strategies. For a link to the entire article go to: <http://www.theglobeandmail.com/report-on-business/industry-news/marketing/is-alcohol-advertising-harming-girls/article12461259/>

LEGAL CASE

“What Duty is Owed a Person Under the Age of 21 Who Leaves a House Party and Dies in a Car Crash with a BAC of .19%?”

On May 14, 2013, the Louisiana Court of Appeals, 5th District, gave their opinion in the matter of *Stead v. Swanner, La: Court of Appeals, 5th Circuit 2013*. This case looks at the events of January 27, 2007, where Preston Stead, a high school student died in a car crash with a blood alcohol content (BAC) of .19% after leaving a house party. The trial court found that Ms. Swanner, homeowner and host of the party, had no duty to the deceased student. The family of Preston Stead asked the Court of Appeals to review the duty-risk analysis applied by the trial court for error.

The case is thought-provoking as the Court of Appeals analyzes the facts and circumstances that occurred on this tragic evening and duties and responsibilities of the adult homeowner to the deceased young man. Do you agree with the opinion of the Court of Appeals? The legal case can be read in its entirety by visiting the following link:

<http://www.udetc.org/documents/ResourceAlerts/July2013case.pdf>

SUCCESS STORY: TEXAS

Underage Drinking Violations in Texas, There's an App for That...

For years the Texas Alcoholic Beverage Commission (TABC) has been working with Texas community members, encouraging them to report underage drinking and other public safety violations that occur on a licensed premise. In March 2013, TABC made a significant leap forward in their reporting program by introducing the agency's first Smart Phone Application (smart phone app). This app allows people, even if they submit a complaint anonymously, to check the status using a smart phone. This Success Story describing TABC's innovative use of mobile technology can be read in its entirety by visiting the following hyperlink below:

http://www.udetc.org/documents/success_stories/TX0713.pdf

NLLEA's 27th ANNUAL CONFERENCE

The National Liquor Law Enforcement Association's 27th Annual Conference, *Advancing Liquor Law Enforcement to Meet the Challenges of Today's Society*, is being held July 31- August 2, 2013, in Phoenix, Arizona. For more detailed information, visit <http://nllea.org/conference.htm>.

NATIONAL ELECTRONIC SEMINARS/WEBINARS

July 2013

Youth Taking Action for Sustainable Changes on Underage Drinking

Date: Thursday, July 25, 2013

Time: 3:00-4:15 p.m. ET

Youth Empowered Solutions (YES!) explores effective ways that youth and adults can work together to create healthier environments. This National Electronic Webinar will focus on youth empowerment—its definition and components—as a means to involve youth as key players in advocacy that targets preventing youth access to alcohol. The presenters will give a description, an overview and the trends of alcohol use in the region, along with examples of how youth empowerment was implemented to counteract these trends. Examples include strategies that eliminate underage access to a group of products called “alcopops”, ways that youth can address the issue of securing and monitoring alcohol in the home, and how youth can be engaged in media and awareness. The message shared will be that by having adults consider how they engage and work with youth, partnerships can be formed that prevent youth access to alcohol and keep young people safe. Register online at: www.udetc.org/audioconfregistration.asp

“A NATIONAL CONVERSATION ON PROTECTING OUR YOUTH”

NOW IN PODCASTS

UDETCC now has podcasts! You can listen on our website at <http://www.udetc.org>. The podcast series, “A National Conversation on Protecting our Youth”, reaches out to parents, youth, community leaders and others to raise awareness of environmental strategies to address underage drinking-related issues in local communities, states and territories and reduce youth access to alcohol. Interviews are conducted with persons connected to the issues of underage drinking such as parents, researchers, law enforcement agencies, national, state and local community coalitions, youth groups, advocacy organizations, and others who are experts on the issue; and who help raise awareness of the public health and safety issues surrounding alcohol and share successful outcomes and strategies. The podcasts can be accessed on our website homepage at www.udetc.org.

To print a copy of this month's Resource Alert visit:

www.udetc.org/documents/ResourceAlerts/ResourceAlert0713.pdf

DOUGLAS STEAD AND CHARLOTTE BREMERMAN,

v.

SUSAN SWANNER, CHANDRA SEKHAR KORRAPATI, INDIVIDUALLY
AND AS THE ADMINISTRATOR OF THE ESTATE OF SRINIVAS
KORRAPATI A/K/A "BOBBY" KORRAPATI, KANAKA DURGA KORRAPATI,
SRINIVAS KORRAPATI A/K/A "BOBBY" KORRAPATI, AND SRI LAKSHMI
PROPERTIES, LLC.

No. 12-CA-727.

Court of Appeals of Louisiana, Fifth Circuit.

May 16, 2013.

TERRY B. LOUP, Attorney at Law, 909 Poydras Street, Suite 2000, New
Orleans, LA 70112, COUNSEL FOR PLAINTIFFS/APPELLANTS.

THOMAS G. BUCK, Attorney at Law, 3421 North Causeway Boulevard, Suite
900, Metairie, LA 70002, And W. PAUL ANDERSSON, Attorney at Law, 1100
Poydras Street, Suite 1700, New Orleans, LA 70163.

RUSSELL K. JARRETT, Attorney at Law, 701 Poydras Street, Suite 5000,
New Orleans, LA 70139, COUNSEL FOR DEFENDANTS/APPELLEES.

Panel composed of Judges Fredericka Homberg Wicker, Jude G. Gravois,
and Stephen J. Windhorst.

WICKER, J., CONCURS WITH REASONS

JUDE G. GRAVOIS, Judge.

Preston Stead, a seventeen-year-old high school student, drove while legally intoxicated and died after he crashed his SUV in a single-vehicle accident. His parents, plaintiffs Douglas Stead and Charlotte Bremermann, sued defendant Susan Swanner, the mother of Preston's friend, Chet Vaughn, at whose home Preston and other teens drank alcoholic beverages that evening. Plaintiffs alleged that Ms. Swanner provided inadequate supervision to the teens that evening by failing to prevent Preston from drinking, despite the fact that Ms. Swanner did not purchase or otherwise furnish alcohol to the teens. Plaintiffs alleged that Ms. Swanner breached her duty to the teens because she knew or should have known that they were drinking on her premises based on her knowledge of their past conduct in drinking at her and other teens' homes. Following a two-day bench trial, the trial court found that under the particular facts of this case, Ms. Swanner owed no legal or statutory duty to Preston or plaintiffs, and accordingly dismissed plaintiffs' suit with prejudice.

On appeal, plaintiffs argue that the trial court committed legal error in conducting its duty-risk analysis, and thus this Court should conduct a de novo review of the trial court's legal and factual conclusions, rather than applying the manifest error standard. Plaintiffs also argue that the trial court erred in its rulings on their pre-trial motion in limine. Finally, plaintiffs argue that the trial court erred in failing to award them damages on their survival and wrongful death claims.

Upon review, we find that the trial court did not commit legal error in its duty-risk analysis, and thus our appellate review of this matter will be conducted under the manifest error standard. Using this standard, we find no manifest error in the trial court's factual findings that Ms. Swanner had no actual or constructive knowledge that the teens were drinking alcoholic beverages that particular evening, and thus find no error in the trial court's conclusion that she owed no legal duty to Preston or plaintiffs under the particular facts of this case. We also find no error in the trial court's rulings on plaintiffs' motion in limine. Finally, because the trial court did not err in finding that Ms. Swanner owed no legal duty to Preston or plaintiffs, no survival and wrongful death damages are owed to plaintiffs.

FACTS AND PROCEDURAL HISTORY

On the night of January 27, 2007, Preston Stead, a high school student,[1] was driving his 1999 Tahoe SUV eastbound on Vintage Drive in Kenner, Louisiana, when he failed to negotiate a right turn from Vintage Drive onto

Power Boulevard and lost control of his vehicle.[2] Testimony revealed that immediately prior to the accident, Preston had sped up and passed another vehicle driven by a friend, Bobby Korrapati. The road was wet and Preston's SUV flipped over several times after striking a curb. Preston was not wearing a seat belt and was ejected from his vehicle. He died at the scene. His passenger, Maryclaire Manard,[3] was wearing a seatbelt and escaped from the accident with only minor injuries.

Earlier that evening, Preston and a group of friends had converged at the home of another friend, Chester "Chet" Vaughn, who lived with his mother, Ms. Swanner, in Chateau Estates in Kenner. Present at the Swanner home that evening were Chet Vaughn (age 16), Srinivas "Bobby" Korrapati (age 16), Stephen Gieger (age 16), Donald Muller, Jr. (age 17), Preston Stead (age 17), Maryclaire Manard (age 16), Doug Collins (age 15), Taylor Michaels (age 16), and Sarahbeth Eumont (age 16). Korrapati, Gieger, and Manard testified at trial. The gathering took place in an apartment attached to Ms. Swanner's house, accessible by a separate door and through an adjacent garage. Korrapati brought at least two cases of beer and a couple of gallons of daiquiris to the Swanner home that evening, admittedly purchased by him with the teens' pooled money. The testimony was uncontradicted that Ms. Swanner neither purchased alcoholic beverages for the teens nor otherwise furnished it to the teens that evening.

Previously, Chet Vaughn had been "grounded" by Ms. Swanner for approximately six weeks because she had found him drinking alcohol at another party. The night of this accident was the first time since then that Chet was allowed to have friends over at the Swanner home. Some of Chet's friends present that evening had also been present at the earlier drinking party at the other house.

The record shows that Preston arrived first, around 6:00 p.m., with gumbo. Gieger and Collins arrived between 7:00 and 7:30 p.m. Korrapati, Muller, Eumont, Manard, and Michaels arrived around 9:00 p.m. The teens hung out in the garage and in the apartment that was next to the garage.[4] Ms. Swanner stayed mostly in the main part of the house that evening. She testified that she checked on the teens several times during the evening, entering the garage and an adjacent laundry room to do laundry, and also around 9:15 p.m. to ask if they wanted pizza or something else to eat. She testified that some of her visits to the laundry room were also under the pretext of checking on the teens. She ordered pizza for the teens and brought it to the apartment around 9:45 p.m. She specifically testified that she did not see any evidence of alcohol or alcohol consumption by the teens that evening.

Her delivery of the pizza appears to have been the last time she entered the apartment or garage. A photograph taken that evening that was entered into evidence showed some beer cans stacked on a table in the garage. No testimony definitively established, however, exactly when during the evening this photograph had been taken.

Korrapati, Manard, and Gieger all testified that all of the teens actively concealed the presence of alcohol at the Swanner home that evening and evidence of their drinking from Ms. Swanner. They testified that they poured the beer into cups instead of drinking it straight from the cans. They said that they hid the beer in an ice chest instead of keeping it in a refrigerator in the apartment. They also testified that Ms. Swanner did not see the beer cans on the table in the garage. They took all of the empty beer cans and other evidence of their alcohol consumption with them when they left the Swanner home that evening.

Around 11:00 p.m. that evening, the teens decided to go to Sarahbeth Eumont's house. Right before they left, Preston went into the house and spoke briefly with Ms. Swanner, obtaining a cough drop from her for one of the girls. The teens then left in several vehicles. After stopping on the way at a gas station to purchase chewing tobacco for one of the boys, the vehicles proceeded down Vintage Drive towards Power Boulevard, at which time Preston began to "race" Korrapati's vehicle and proceeded to pass him. Preston then lost control of his vehicle when he arrived at Power Boulevard and hit a curb, causing his vehicle to flip over several times. Manard was able to crawl out of the vehicle. After the crash, the other teens stopped. One of them remained behind with Preston, while the others called 9-1-1 and went to the nearby home of one of the teens and alerted the parents.

Preston's blood alcohol concentration ("BAC") at the time of his autopsy was determined to be .119 grams percent. Dr. Gerald Liuzza, plaintiffs' expert forensic pathologist as to the effects of alcohol on the body, testified that the alcohol level in the vitreous fluid taken from Preston's eye measured .142 grams percent, which meant that Preston's BAC had been at least that high at some point earlier that evening. He also testified that Preston's alcohol consumption was a significant contributing factor to the accident.

Douglas Stead and Charlotte Bremermann, Preston's parents, filed this survival and wrongful death action against Ms. Swanner and her insurers.[5] The suit alleged that Ms. Swanner hosted the party at which alcoholic beverages were served to and consumed by the minors, including Preston; that Korrapati brought the alcohol to the Swanner home and served it to the

other minors with the implied, constructive, or actual knowledge, permission and/or consent of Ms. Swanner; and that Preston consumed enough alcohol at the party to become legally intoxicated, and that as a result thereof, died in the automobile accident. The petition stated the following bases of Ms. Swanner's liability: (1) allowing alcoholic beverages to be served to Preston at her home; (2) failing to exercise reasonable and proper adult supervision at a party which she hosted for minors to prevent, limit, or otherwise discourage the consumption of alcoholic beverages by the minors; (3) failing to observe the open and obvious consumption of alcoholic beverages by the minors at her home; and (4) other acts of non-specified negligence to be shown at the trial of the matter.

In response to the petition, defendants filed an exception of no cause of action, which was denied by the trial court. Defendants later reurged the same exception and arguments that Ms. Swanner had no duty to Preston or plaintiffs. Defendants also filed a motion for summary judgment, alleging that there was no evidence to support plaintiffs' claims that Ms. Swanner breached a duty to Preston or that such a breach was a cause-in-fact of damages. Additionally, defendants argued that the statutory immunity granted by La. R.S. 9:2798.4 applied to the facts of this case. The trial court granted defendants' motion for summary judgment, finding that La. R.S. 9:2798.4 granted immunity to Ms. Swanner. A judgment dismissing all of plaintiffs' claims was entered on January 11, 2010. Plaintiffs appealed.

On December 28, 2010, this Court reversed and remanded the case for trial, finding that the immunity statute was not applicable to this case and that a duty-risk analysis was required.[6]

Prior to trial, plaintiffs filed a motion in limine, seeking rulings that no fault could be assessed to Preston, and that there could be no references in the presence of the jury to any prior instances of Preston's drinking alcohol. Plaintiffs also argued that no fault could be assessed to plaintiffs, Douglas Stead and Charlotte Bremermann, for failure to properly supervise Preston. Finally, they sought a ruling prohibiting any reference to the immunity statute, La. R.S. 9:2798.4.

Ms. Swanner also filed a motion in limine, seeking a ruling denying the introduction into evidence of any photographs taken from the Swanner home other than those taken on the night of Preston's accident, on the basis that they were irrelevant to the issues before the court, were unreasonably prejudicial, and were not probative.[7] The trial court ruled on the motions that fault could be assessed to Preston and his parents, evidence of Preston's

drinking at locations other than the Swanner residence could be introduced, and photographs of Preston drinking taken at the Swanner residence could be introduced.

A bench trial was held on January 3 and 4, 2012,[8] followed by the filing of post-trial proposed findings of fact and conclusions of law and argument relating thereto by the parties. On May 10, 2012, the trial court issued a final judgment, dismissing plaintiffs' claims with prejudice. In extensive Reasons for Judgment issued that same day, the trial court found that Ms. Swanner owed no legal or statutory duty to plaintiffs under the factual circumstances of this case. Plaintiffs timely appealed this judgment.[9]

FIRST AND THIRD ASSIGNMENTS OF ERROR

Duty-risk analysis

In their first assignment of error, plaintiffs argue that the trial court committed legal error in conducting its duty-risk analysis. Plaintiffs argue that the trial court's failure to properly apply the duty-risk analysis requires this Court to now review the record using the de novo standard of review. They argue that had the trial court conducted the proper duty-risk analysis, it would have held Ms. Swanner liable. In their third assignment of error, plaintiffs argue that the trial court was manifestly erroneous in finding that Ms. Swanner had no actual or constructive knowledge of the underage drinking at her home on the evening in question. Due to the fact-intensive nature of the duty-risk analysis, these two assignments of error are closely related and will be discussed together.

When a prejudicial error of law skews the trial court's finding of a material issue of fact and causes it to pretermitt other issues, the appellate court must, if it can, render judgment on the record by applying the correct law and determining the essential material facts de novo. *Chambers v. Vill. of Moreauville*, 11-898 (La. 1/24/12), 85 So.3d 593, 597. Legal errors are prejudicial when they deprive a party of substantial rights and materially affect the outcome. *Id.*, citing *Evans v. Lungrin*, 97-0541 (La. 2/6/98), 708 So.2d 731, 735.

Plaintiffs argue that in its analysis, the trial court "ignored the civilian nature of Louisiana tort law," improperly surveyed common law instead, and concluded that "Ms. Swanner owed no duty under the facts at issue in this matter." Plaintiffs argue that the statutory basis for Ms. Swanner's duty is found in La.

C.C. arts. 2315[10] and 2316,[11] which make actors responsible for damages caused by their "imprudence." Plaintiffs argue that given Ms. Swanner's knowledge of past incidents of underage drinking at her home, plus her knowledge of underage drinking at other teens' homes, she should have known that the teens were drinking at her home on the evening in question, and taken appropriate steps to prevent the outcome. Plaintiffs also argue, in their third assignment of error, that the trial court's conclusion of fact that Ms. Swanner did not have actual or constructive knowledge that the teens were consuming alcohol at her home that night is manifestly erroneous.

Defendants counter that the trial court's findings of fact were not manifestly erroneous, and its conclusion, following an extensive analysis of Louisiana statutory law and jurisprudence, that while adults have affirmative duties not to purchase or furnish alcoholic beverages to minors, no affirmative duty exists under existing law for parents to provide "constant and unremitting" supervision of 16- and 17-year-olds to prevent them from engaging in an activity, drinking alcohol, when the adults do not furnish or purchase the alcohol for the teens, and when the adults have no actual or constructive knowledge of the drinking.

A duty-risk analysis for a negligence claim involves five elements which must be proved by the plaintiff, to-wit: (1) proof that the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) proof that the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) proof that the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) proof that the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) proof of actual damages (the damages element). *Long v. State ex rel. Dept. of Transp. & Dev.*, 04-0485 (La. 6/29/05), 916 So.2d 87.[12]

The nature of the duty-risk analysis is highly fact-intensive. *Roberts v. Benoit*, 605 So.2d 1032, 1056 (La. 1991). An answer of "no" to any one part of the analysis requires a finding of no liability. *Id.*

Upon review, we find that the trial court did not commit "legal error" in its duty-risk analysis. We also find no merit to plaintiffs' assertion that the trial court misapplied Louisiana law, resorting instead to common law. Our review of the trial court's extensive Reasons for Judgment shows that the trial court properly based its ruling on Louisiana law. Accordingly, our review of this matter will be under the manifest error standard.

Our thorough review of the testimony and evidence presented at trial leads us to the conclusion that the trial court's finding of fact, that Ms. Swanner did not know or should have known that the teens were drinking alcoholic beverages during the evening in question, is not manifestly erroneous. The evidence presented in this case shows that the teens took great pains to hide the alcohol and their consumption thereof from Ms. Swanner. Though a photograph taken that evening shows beer cans stacked on a table in the garage, the teens and Ms. Swanner specifically testified that Ms. Swanner did not see the cans. While Ms. Swanner did check on the teens several times during the evening, no conclusive testimony established the time that this photograph was taken.

The trial judge clearly found all of the testimony supporting Ms. Swanner's position credible. The trial court's factual findings and credibility determinations are entitled to great weight and will not be disturbed on appeal absent manifest error. When findings of fact are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings. *Tassin v. Crescent Paint And Varnish Co.*, 04-607 (La. App. 5 Cir. 11/30/04), 889 So.2d 1043, 1047, writ denied sub nom., *Tassin v. Crescent Paint & Varnish Co.*, 04-3043 (La. 2/18/05), 896 So.2d 39, citing *Rosell v. ESCO*, 549 So.2d 840, 844-45 (La. 1989).

After an extensive review of Louisiana statutory law and jurisprudence, coupled with a survey of the state of the law on this issue in other states, and mindful of the trial court's duty to ascertain and interpret the existing law, not to make new law, the trial court found no statutory or jurisprudential authority exists in Louisiana that establishes a duty for an adult to discover or prevent minors from drinking in the absence of the adult's actual or constructive knowledge of the alcohol consumption. We likewise have found no such statutory or jurisprudential authority in Louisiana. Accordingly, we cannot say that the trial court erred in finding the absence of a duty in this case.

Plaintiffs cite *Doe v. Jeansonne*, 97-795 (La. App. 3 Cir. 12/10/97), 704 So.2d 1240, to describe the general duty owed by an adult host of 16-year-old attendees of a party to observe risky behavior and take steps to control it. The Doe parents sued the hosts of the teenaged party, alleging that a breach of their duty to adequately supervise the teens resulted in their daughter having sexual intercourse with another party guest in a bathroom and becoming pregnant. The trial court granted summary judgment in favor of the defendants, which the Court of Appeal reversed, finding that reasonable

minds could differ as to whether the adult defendants had provided reasonable supervision given their observation of the two young teens, earlier in the evening, "making out" on a bed upstairs and obvious to the adults' presence, and also whether the girl herself had consented to the sexual encounter. In other words, given what the adults had seen, an issue of material fact remained as to whether their level of supervision (or the lack thereof) made foreseeable the risk that these young teens would later engage in sexual intercourse. Doe is clearly distinguishable from this case because in Doe, the adult chaperones witnessed the very behavior they were alleged to have had a duty to prevent. In this case, Ms. Swanner did not.

In this case, plaintiffs argue that Ms. Swanner's knowledge of past drinking at her home, coupled with her knowledge of past drinking parties at other homes, should have made her aware that the teens consumed alcoholic beverages on this particular occasion, and that her corresponding supervision of the teens was inadequate. Under the particular facts of this case, we decline to find that Ms. Swanner's supervision of the teens on that particular evening was inadequate. She was present at home the entire evening, the teens were aware of her presence, and she checked on them several times during the evening. Because they took great pains at concealing evidence of their alcohol consumption, Ms. Swanner did not see any evidence of such. She also spoke with Preston right before he left her home and did not detect any evidence of alcohol consumption. Though his BAC was shown to be .119 grams percent at the time of the accident, Ms. Swanner, Korrapati, Manard, and Gieger all testified that Preston did not appear to be impaired that evening. Admittedly Korrapati and Manard had also consumed alcohol that evening, which Dr. Liuzza testified could possibly have impaired their ability to assess another person's impairment, but Ms. Swanner and Gieger however had not.

In conclusion, given the evidence presented in this case and its particular factual circumstances, we find no manifest error in the trial court's finding of fact that Ms. Swanner had no actual or constructive knowledge of Preston's alcohol consumption that evening. As a result of its "no" answer to that part of the duty-risk analysis, the trial court was compelled to find as it did that Ms. Swanner owed no duty under existing Louisiana law to detect and prevent Preston's risky behavior. We are careful to state that the existence of no duty in this particular case does not hinge on the fact that Ms. Swanner did not purchase or otherwise furnish the alcohol consumed by the teens. The finding of no duty herein rests upon the factual conclusion in this case that Ms. Swanner had no actual or constructive knowledge that the teens were

drinking, and that under the evidence presented in this case, such a conclusion by the trial judge was not manifestly erroneous.

SECOND ASSIGNMENT OF ERROR

Motion in limine

Plaintiffs also argue that the trial court committed legal error in its ruling on their motion in limine, which allowed the admittance of evidence of Preston drinking at other locations and times, and that fault could be assigned to Preston and his parents, Douglas Stead and Charlotte Bremermann.

A trial court has great discretion in its consideration of motions in limine, which provide litigants with a procedural vehicle to have evidentiary matters decided prior to trial. *Shelton v. Hair*, 06-233 (La. App. 3 Cir. 9/27/06), 939 So.2d 685, 689. In this case, the motions in limine were ruled upon pre-trial at a point in the case where a jury trial was contemplated. As such, the trial judge heard detailed arguments regarding the substance of the evidence sought to be admitted and excluded. The matter proceeded, however, as a bench trial.

A trial judge, unlike a jury, is well versed in the rules of evidence, and is, therefore, trained to give the appropriate weight to evidence and to evaluate evidence without bias. Additionally, because of training and experience, a trial judge is in a far better position than a jury to disregard, and not consider, evidence that has been improperly admitted at a trial. *Raiford v. U.S. Indus. Ames Lawn & Garden Tools*, 05-0815 (La. App. 4 Cir. 5/3/06), 929 So.2d 288, 291-92, writ denied, 06-1615 (La. 10/13/06), 939 So.2d 366. Upon review, we find no errors in the trial court's rulings on plaintiffs' motion in limine, but more importantly, any such errors, if made, would in fact be harmless. The trial court's analysis concentrated almost exclusively on the facts of Ms. Swanner's actual or constructive knowledge of the teens' drinking that particular evening and whether the law conferred a heightened legal duty on the social hosts of teenagers, and did not focus on Preston's past drinking behavior.

We further note that plaintiffs relied upon Ms. Swanner's past knowledge of underage drinking both at her home and other homes, a few of which incidents also included Preston, in order to argue for the existence of a heightened duty on her part. Plaintiffs' position regarding the admission of this evidence, to allow its use to confer liability on Ms. Swanner, but to ask for its

exclusion when it could be applied to confer fault upon plaintiffs, is inconsistent.

We further note that the trial judge did not assign any fault to Preston or plaintiffs. Accordingly, there is no erroneous result in the trial court's ruling on plaintiffs' motion in limine.

FOURTH ASSIGNMENT OF ERROR

Survival and wrongful death damages

Plaintiffs also argue that the trial court erred in failing to award survival and wrongful death damages. Given that we have affirmed the trial court's dismissal of the case against Ms. Swanner, we likewise find no merit to this assignment of error.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court.

AFFIRMED.

WICKER, J., CONCURS WITH REASONS.

I agree with both the outcome and majority's analysis and write separately to emphasize that Louisiana law creates a duty upon the occupier of a premises to an invitee to exercise reasonable or ordinary care for an invitee's safety commensurate with the particular circumstances involved. *Doe v. Jeansonne*, 97-795 (La. App. 3 Cir. 12/10/97), 704 So.2d 1240, 1245. In situations in which minors are under the control and supervision of a person who has agreed to be responsible for them, that person must use reasonable care commensurate with a reasonably foreseeable risk of harm. *Id.* Furthermore, "[i]n situations where children are injured, the known characteristics and instincts of the children must be considered in determining whether the person has exercised reasonable care." *Id.* at 1246, citing *Freeman v. Wilcox*, 303 So.2d 840, 842 (La. App. 1 Cir. 1974), writ denied, 307 So.2d 630 (La.1975).

In this case, the trial judge heard testimony that Ms. Swanner had previously disciplined her child and had refused parties at her home after discovering that the group of minors had been drinking; that on this occasion, the minors took care to hide any evidence of consumption of alcohol; and that on this occasion, Ms. Swanner had remained at home all evening, checking on the minors in the garage apartment several times. Therefore, given the evidence presented at trial, the trial judge had a reasonable basis upon which to find that Ms. Swanner had no actual or constructive knowledge that the minors had been drinking at her home that evening. Furthermore, based upon the testimony and evidence presented at trial, the trial judge had a reasonable basis upon which to conclude that Ms. Swanner exercised reasonable care under the circumstances.

[1] Preston was born on November 17, 1989, which made him 17 years old at the time of the accident.

[2] According to the record, at the location in question, the eastbound lane Vintage Drive ends and the street continues with a relatively sharp turn to the right onto Power Boulevard.

[3] Maryclaire's name is spelled various ways throughout the record.

[4] The house, garage, and apartment were all under one roof line.

[5] Ms. Swanner and her insurers will sometimes be referred to herein collectively as "defendant" or "defendants."

[6] *Stead v. Swanner*, 10-371 (La. App. 5 Cir. 12/28/10), 52 So.3d 1149. The defendants applied for writs with the Louisiana Supreme Court, which were denied. *Stead v. Swanner*, 11-0335 (La. 4/8/11), 61 So.3d 684.

[7] Ms. Swanner also filed two other motions in limine, seeking rulings regarding evidence that have not been assigned as error in this appeal, and thus are not discussed herein.

[8] In the Joint Pre-Trial Order filed on December 20, 2011, it was stipulated that no party had posted a jury bond, and therefore the right to a trial by jury had been waived by the parties.

[9] Defendants filed an "answer" to the appeal, seeking the "preservation" of certain issues for appeal, but assigning no errors in the trial court's judgment and seeking no modification thereof. La. C.C.P. art. 2133 states that an

appellee shall not be obliged to answer the appeal unless he desires to have the judgment modified, revised, or reversed in part or unless he demands damages against the appellant. Because defendant's "answer" seeks none of these things, we will not separately address the issues raised therein.

[10] La. C.C. art. 2315(A) provides: Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

[11] La. C.C. art. 2316 provides: Every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, and his want of skill.

[12] The duty-risk analysis is also alternatively phrased as: (1) Was the conduct in question a substantial factor in bringing about the harm to the plaintiff, i.e., was it a cause-in-fact of the harm which occurred? (2) Did the defendant owe a duty to the plaintiff? (3) Was the duty breached? and (4) Was the risk, and harm caused, within the scope of protection afforded by the duty breached? *Roberts v. Benoit*, 605 So.2d 1032, 1041 (La. 1991). The trial court phrased its analysis this way in its Reasons for Judgment.



Success Stories

Enforcing the Underage Drinking Laws Program

NEWS FROM THE FIELD

www.udetc.org

July 2013

Underage Drinking Violations in Texas, There's an App for that...

For years, the Texas Alcoholic Beverage Commission (TABC) has been working with Texas community members, encouraging them to report underage drinking and other public safety violations that occur on a licensed premise. In the past citizens could report sale to minors, sales of alcohol to intoxicated persons, after-hour sales, and other violations of the Texas Alcoholic Beverage Code by e-mail, by telephone, or by mail (via the U.S. Postal Service). In March 2013, TABC made a significant leap forward in their reporting program by introducing the agency's first Smart Phone Application (smart phone app). The TABC smartphone app takes advantage of the developing trends in technology and enables citizens to report potential violations of state law or administrative rule both quickly and efficiently.

By tapping the TABC app, users are brought to the main screen where they can choose to visit the TABC Web site and learn more about the TABC complaint process or they can choose to tap on "create a report." Tapping on "create a report" brings the user to a complaint form. Users can create a report by entering onto the form the establishment's name, location, and the details of the incident they are reporting. The TABC app does require users making the report to provide an e-mail address but they do not have to provide any additional personal information. Once the form is complete, users can request that TABC notify them of the outcome or they can submit anonymously. If they submit anonymously, they will only receive an e-mail from TABC stating that the complaint has been received. Once the complaint is received, TABC will investigate and take appropriate action on the underage drinking complaint or other alcohol-related violation.

TABC is the Enforcing Underage Drinking Laws (EUDL) administrator for the State of Texas and is committed to providing cutting-edge technology in preventing youth access to alcohol and other alcohol-related harm. The new TABC app continues to build upon the technological advances developed using EUDL resources. In May 2013, Neubus Inc. created an app called "Spirits Texas" that incorporates the TABC Public Inquiry System into a mobile handheld application. The Public Inquiry System was featured in a EUDL 2010 Success Story. The application provides users with locations of alcohol-licensed/permitted locations based on their current location or by address. It incorporates GoogleMaps to map the location. When the specific location is selected, it provides the user with a street view image along with an address and the license/permit information, including the establishment's permit/license status and the number of underage or other alcohol-related violations it has received in a given year. If the user selects the violations, it will show them the violation type and current status. This app allows people, even if they submit a complaint anonymously, to check the status using just a smart phone. Released in March 2013, the complaint application available in Apple and Android formats is free of charge. Both the TABC Complaint app and Spirits Texas can also be downloaded from the Apple or the Google Play Store. The app is also available for download on TABC's Web site (www.tabc.state.tx.us).

For additional information please contact:
Mindy Carroll, Texas EUDL State Coordinator
(512) 2063293
Mindy.carroll@tabc.state.tx.us

The views expressed in this document do not necessarily represent the views of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) or the Underage Drinking Enforcement Training Center (UDETC) and are solely of the author/source.



11720 Beltsville Drive, Suite 900, Calverton, MD 20705
Phone: 877-335-1287. Fax: 301-755-2808

UDETc NATIONAL WEBINARS



ODAP Underage Drinking
Enforcement Training Center

REGISTER NOW— ONLINE OR BY PHONE!



To register, please visit www.udetc.org/audioconfregistration.asp and complete the online registration form, or

To register by phone, please call our toll-free number, 1-877-335-1287, and follow the prompts.

THURSDAY, JULY 25, 2013

3:00 – 4:15 pm Eastern

Youth Taking Action for Sustainable Changes on Underage Drinking

Youth Empowered Solutions (YES!) explores effective ways that youth and adults can work together to create healthier environments. This National Electronic Webinar will focus on youth empowerment—its definition and components—as a means to involve youth as key players in advocacy that targets preventing youth access to alcohol. The presenters will give a description, an overview and the trends of alcohol use in the region, along with examples of how youth empowerment was implemented to counteract these trends. Examples include strategies that eliminate underage access to a group of products called “alcopops”, ways that youth can address the issue of securing and monitoring alcohol in the home, and how youth can be engaged in media and awareness. The message shared will be that by having adults consider how they engage and work with youth, partnerships can be formed that prevent youth access to alcohol and keep young people safe.

SPEAKER

- **Aidil Ortiz Hill, MA**
YES! Team Leader
Raleigh, North Carolina

Webinar connection instructions will be sent immediately upon electronic registration. Please be sure to save that information as it is unique to you and is not generic.

Do you have an Underage Drinking Topic that would make a great National Webinar?

Send us your suggestions at udetc@udetc.org and put ‘NES Topic Suggestion’ in the subject line!