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## RECENT DEVELOPMENT

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### **WARR V. JMGM GRP., LLC: MARYLAND BUSINESSES SERVING ALCOHOL OWE NO DUTY TO MEMBERS OF THE GENERAL PUBLIC INJURED BY THE ACTIONS OF AN INTOXICATED PATRON.**

**By: Molly A. Nicholl**

The Court of Appeals of Maryland held that dram shop liability is not recognized as a cause of action for negligence. *Warr v. JMGM Grp., LLC*, 433 Md. 170, 199, 70 A.3d 347, 364 (2013). Specifically, the court held that absent a special relationship, a bar owner owes no duty to members of the general public injured by a third party's actions. *Id.* at 183-84, 70 A.3d at 354-55. The court added that the Maryland General Assembly is the appropriate authority to impose dram shop liability. *Id.* at 199, 70 A.3d at 364.

On August 21, 2008, Michael Eaton ("Eaton") allegedly spent an entire evening drinking seventeen beers and additional alcoholic drinks at the Dogfish Head Alehouse ("Dogfish Head") owned by the JMGM Group ("JMGM"). Eventually, Dogfish Head refused further service to Eaton. After declining an offer from a server to call a cab, Eaton allegedly drove from the premises in his vehicle. Shortly after leaving, Eaton's vehicle collided with the Warr family's vehicle. William Warr, Jr., Angela Warr, and their daughter Cortavia Harris, were injured in the collision, and their second daughter, Jazimen, was killed.

The Warrs filed suit in the Circuit Court for Montgomery County alleging that Dogfish Head breached its duty by serving alcohol to Eaton, a visibly inebriated patron. The circuit court granted summary judgment in favor of Dogfish Head, stating that existing Maryland law does not recognize liability against establishments serving alcohol to inebriated individuals, also known as dram shop liability. The Warrs appealed to the Court of Special Appeals of Maryland. Before the intermediate court addressed the issue, the Court of Appeals of Maryland granted the Warrs' petition for certiorari to consider whether Maryland should adopt dram shop liability.

After reviewing the holdings in previous dram shop liability cases, which focused on proximate cause, the court addressed the contention that Dogfish Head had a duty to protect the Warrs by not serving alcohol to intoxicated customers. *Warr*, 433 Md. at 180-82, 70 A.3d at 353-54. Previously, in *State v. Hatfield*, the court held that a widow could not recover wrongful death damages from the individual who provided the minor tortfeasor with alcohol because there was no proximate cause. *Id.* at 178, 70 A.3d at 351-52 (citing *State v. Hatfield*, 197 Md. 249, 254, 78 A.2d 754,756 (1951)). However, the court recognized the key issue in the instant case involved determining whether Dogfish Head had a duty to protect the Warrs from injury. *Warr*, 433 Md. at 180-81, 70 A.3d at 353.

Duty is established by examining a number of factors, including foreseeability. *Warr*, 433 Md. at 182, 70 A.3d at 354 (citing *Ashburn v. Anne Arundel Cnty.*, 306 Md. 617, 627, 510 A.2d 1078, 1083 (1986)). The Court of Appeals of Maryland rejected the notion that there was a causal relationship between the sale of alcohol to an inebriated individual, Eaton, and the death of the Warrs' daughter. *Warr*, 433 Md. at 183, 70 A.3d at 354-55. The court stated that a causal relationship required two assumptions. *Id.* First, that the intoxicated patron served liquor would drive. *Id.* Second, that the tavern or server could control the actions of that patron. *Id.* The court found that the harm was not caused directly by the bar, but by a third party. *Id.* at 183, 70 A.3d at 355. Consequently, the court stressed the issue of the bar owner's responsibility to control the actions of a third party, rather than examining the foreseeability of harm. *Id.*

The court recognized that generally no duty exists to control a third party's actions. *Warr*, 433 Md. at 184, 70 A.3d at 355. However, one exception to this rule is the existence of a special relationship between a defendant and the third party, or between a defendant and the injured party. *Id.* at 183-84, 70 A.3d at 355 (citing *Remsberg v. Montgomery*, 276 Md. 568, 583, 831 A.2d 18, 26-27 (2003)). The court did not elaborate on the existence of a special relationship in the instant case, as the Warrs did not argue that one existed between them and Dogfish Head or Dogfish Head and Eaton. *Warr*, 433 Md. at 189, 70 A.3d at 358. Instead, the court reiterated that, regardless of their state of sobriety, people are responsible for their own actions. *Id.* at 190, 70 A.3d at 359 (citing *Hatfield*, 197 Md. at 254, 78 A.2d at 756.)

The court acknowledged the Warrs' argument that other states used the special relationship definition specified in Section 315 of the Restatement (Second) of Torts in order to adopt dram shop liability laws to protect third parties. *Warr*, 433 Md. at 192, 70 A.3d at 360. However, in keeping with its precedent, the court declined to find that a special relationship exists between a bar owner and the public, and reiterated the common law rule that there is no duty owed to "an indeterminate class of people, known or unknown." *Id.* at 193, 70 A.3d at 361 (quoting *Valentine v. On Target, Inc.*, 353 Md. 544, 553, 727 A.2d 947, 951 (1999)).

The court concluded its analysis by rejecting the Warrs' arguments that Dogfish Head had a duty to deny service to intoxicated individuals because there are criminal penalties for serving alcohol to any person under the age of twenty-one or to any person who is visibly inebriated. *Warr*, 433 Md. at 195, 70 A.3d at 362. The court noted that other jurisdictions have attached civil liability to violations of criminal statutes, but asserted that historically Maryland has declined to infer civil liability this way. *Id.* at 195-97, 70 A.3d at 362-63. The court opined that civil liability based on a violation of a criminal statute could only attach when the criminal statute is designed to protect a specific class of persons. *Id.* at 197-98, 70 A.3d at 363-64. Here, however, the criminal statute cited by the Warrs' applied to the general public. *Id.* at 198-99, 70 A.3d at 364. As such, the court reiterated that the

General Assembly is the proper forum to enact laws establishing dram shop liability. *Id.* at 199, 70 A.3d at 364.

The dissent written by Judge Adkins, joined by Judge Harrell and Judge McDonald, elected to impose dram shop liability under common law, ultimately finding that proximate cause existed. *Warr*, 433 Md. at 249-50, 70 A.3d at 394-95 (Adkins, J., dissenting). The dissent disregarded the majority's duty-of-care analysis and argued that the general principles of common law negligence applied. *Id.* at 204, 70 A.3d at 367 (Adkins, J., dissenting). The dissent, focusing on the precedent proximate cause analysis, found that a duty existed for Dogfish Head to exercise a reasonable standard of care to ensure there was no risk to other individuals as a result of the bar's serving alcohol to an intoxicated person. *Id.* at 206-09, 70 A.3d at 368-70 (Adkins, J., dissenting). Judge Adkins declared that it was foreseeable that an establishment's affirmative conduct in serving alcohol to an inebriated patron would cause that third party to injure another person. *Id.* at 227-28, 70 A.3d at 381 (Adkins, J., dissenting).

In *Warr*, the Court of Appeals of Maryland held that Dogfish Head owed no duty to the Warrs for the actions of a third person, Eaton, as no special relationship existed among the parties. Noting that state public policy is shaped by legislation and societal concerns, the court demonstrated the judiciary's reluctance to establish common law in areas already tightly regulated by the legislature. Perhaps, with increased pressure from citizens who are concerned about liquor establishments being protected from civil liability, the legislature may eventually follow the trend of other states in enacting dram shop liability laws. Until then, absent any special relationship, civil liability will not exist for businesses serving alcohol to intoxicated patrons who cause harm to a member of the general public.