IN THE MISSOURI COURT OF APPEALS
WESTERN DISTICT

COMPLETE TITLE OF CASE

MELISSA A. RASMUSSEN,

Respondent,

v.

ILLINOIS CASUALTY COMPANY,

Appellant.

DOCKET NUMBER WD83806

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: June 15, 2021

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Janet Sutton, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Ahuja and Mitchell, JJ. CONCURRING.

ATTORNEYS

Larry D. Wright, Kansas City, MO, Attorney for Respondent.

Derek H. MacKay and James M. Gretter, Kansas City, MO, Attorneys for Appellant.

John M. Reeves, St. Louis, MO, Attorney for Amicus Curiae Missouri Organization of Defense Lawyers.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MELISSA A. RASMUSSEN, Respondent,
v.
ILLINOIS CASUALTY COMPANY, Appellant.

WD83806 **Clay County**

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and Alok Ahuja and Karen King Mitchell, Judges

Illinois Casualty Company ("ICC") appeals from the judgment of the Circuit Court of Clay County, Missouri ("trial court"), in favor of Melissa A. Rasmussen ("Rasmussen") in her claims against SRJS, Inc., d/b/a BoJo's Bar & Grill ("SRJS") and Tyler Rivera ("Rivera") (jointly, "Defendants") for violating Missouri's Dram Shop Act. Rasmussen sustained personal injuries when a vehicle driven by a customer who had consumed large quantities of intoxicating liquors served by SRJS's employee, Rivera, struck the front of Rasmussen's vehicle in a head-on collision. ICC, SRJS's liability insurer, denied SRJS's request for coverage on the grounds that it was barred by the insurance policy's Liquor Liability Exclusion. ICC intervened in the proceeding below and raises two points on appeal, asserting that (1) the trial court erred in restricting ICC's discovery and (2) the trial court erred in awarding punitive damages because the Dram Shop Act does not permit the recovery of punitive damages.

AFFIRMED.

Division Two holds:

1. After being allowed to intervene, ICC became a party to the lawsuit with the same rights as any other party, including the right to conduct discovery. Even though the status of the pleadings at the time of ICC's intervention was that liability and causation for Rasmussen's damages were *not* contested by any party (including ICC), the *amount* of Rasmussen's damages was still an unresolved factual issue and ICC should not have been restricted by the trial court in conducting discovery on that issue. Nevertheless, at trial, ICC was permitted the opportunity to examine *any* of the witnesses called by Rasmussen but chose not to do so. Further, ICC was given the opportunity to present evidence of its own, but again, chose not to do so. ICC's point on appeal is devoid of any argument that the trial court's discovery ruling resulted in prejudice. Having not *argued* that it was prejudiced by the trial court's ruling, nor demonstrated in its point on appeal that it was prejudiced by the trial court's discovery ruling, ICC's point on appeal must fail.

2. In 2002, the legislature, in full recognition and knowledge of Missouri's history of common law on dram shop liability, amended the Dram Shop Act by deleting section 537.053.2, RSMo 1985. By so doing, the legislature was attempting to assert itself into the common law

arena to *modify* the common law standards (*i.e.*, the 2002 amendment added a requirement that proof of the tavern owner's sale of alcohol to an obviously intoxicated patron must be proven by "clear and convincing evidence") for imposing dram shop liability as opposed to *abrogating* dram shop liability under the common law in its entirety and creating a *new* or *sui generis* statutory cause of action. And, though the legislature could have also changed or otherwise expressly limited the damages available for dram shop liability, it chose *not* to do so.

The common law that existed prior to both the 1985 Missouri Dram Shop Act and the 2002 amendment to the Act recognized that punitive damages were a recoverable remedy on a dram shop liability claim. The 2002 amendment does not mention punitive damages, but is instead silent on the topic of punitive damages. Because the legislature did not clarify a different interpretation on the allowance of punitive damages than established by common law in the dram shop liability context, punitive damages are recoverable in a statutory dram shop cause of action.

Opinion by: Mark D. Pfeiffer, Presiding Judge June 15, 2021

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