

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**LESTER NOKES**

**APPELLANT,**

**NORMA ROBINSON, TONY GUTIERREZ, JACKSON GUTIERREZ  
AND EUSTOLIO GUTIERREZ**

**APPELLANTS,**

**v.**

**HMS HOST USA, LLC, HMS HOST CORPORATION,  
HOST INTERNATIONAL, INC., LJA ENTERPRISES, INC.,**

**RESPONDENTS.**

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**DOCKET NUMBER WD73055 cons/WD73056  
MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE: September 13, 2011**

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Appeal From:  
Jackson County Circuit Court  
The Honorable Joel F. May, Judge

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Appellate Judges:  
Special Division: James M. Smart, Jr., P.J., James E. Welsh, J., and Zel M. Fischer, Sp.J.

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Attorneys:

Randall L. Rhodes, Bradley D. Kuhlman, and Chad C. Lucas, Kansas City, MO, for **appellants**.  
Paul L. Wickens and Robert Harold Houske, Kansas City, MO, for **respondents**.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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No. WD73055 cons/WD73056

Jackson County

Before Special Division: James M. Smart, Jr., P.J., James E. Welsh, J., and Zel M. Fischer, Sp.J.

Jeffrey Chiarelli was served four "double" cocktails at the Bud Stadium Club in the Kansas City airport before boarding a flight to Dallas. He consumed one drink while on the flight to Dallas. Once in Texas, Chiarelli was involved in a collision with another vehicle. Two passengers, Sandra Nokes and Diana Gutierrez, were killed and the other driver, Eustolio Gutierrez, was injured. After the collision, the responding officer noted that Chiarelli was visibly drunk and that Chiarelli failed a field sobriety test. Chiarelli's blood alcohol concentration level was established to be .169% four hours after he left the Bud Stadium Club. Expert deposition testimony established that, at the rate and amount of alcohol Chiarelli ingested, anyone in Chiarelli's position would have demonstrated visible signs of intoxication during the time Chiarelli was in the Bud Stadium Club. The families of Nokes and Gutierrez brought suit against HMS Host Corporation, owner of Host International, Inc., and LJA Enterprises, Inc., as well as HMS Host USA, LLC. Plaintiffs sued Host defendants alleging dram shop liability under § 537.053 RSMo. The circuit court entered summary judgment in favor of all of the Host defendants and against Nokes.

**AFFIRMED IN PART; REVERSED AND REMANDED IN PART.**

**Special Division holds:** The sole issue on appeal is whether or not plaintiffs present a genuine issue of material fact that would preclude summary judgment. Missouri's dram shop statute requires three elements to establish liability: 1) the claim must be brought by or on behalf of persons who have suffered personal injury or death; 2) against a person licensed to sell intoxicating liquor by the drink for consumption on the premises and; 3) such licensed person

must be proven by clear and convincing evidence to have knowingly served intoxicating liquor to a visibly intoxicated person. The court affirms the summary judgment as to defendants HMS Host USA, LLC and HMS Host Corporation because they are not persons licensed to sell intoxicating liquor by the drink for consumption on the premises. However, the court reverses summary judgment as to Host International and LJA Enterprises, Inc.

The Host defendants argue that the evidence presented is insufficient to create a genuine issue of material fact as to whether Chiarelli was visibly intoxicated at the time he was served alcohol at the Bud Stadium Club because no testimony was presented from anyone who observed Chiarelli to be visibly intoxicated. At summary judgment, the court does not test the weight of the evidence, but rather determines whether there is a genuine issue of material fact. The court holds that, while evidence of Chiarelli's blood alcohol level alone was insufficient to create a genuine issue of material fact in order to survive summary judgment in this case, when coupled with the drink receipts, the police report including field sobriety tests, and the expert testimony that such a level of intoxication would produce outward manifestations of intoxication, the evidence presented is sufficient to demonstrate the existence of a genuine issue of material fact as to whether the remaining Host defendants knowingly served intoxicating liquor to a visibly intoxicated person.

Opinion by Zel M. Fischer, Special Judge

September 13, 2011

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