ORAL ARGUMENT – 04/04/01
00-0523
REEDER V. DANIEL

BOYD: We're before this court today because the 9th CA has gone where neither this court nor the Texas legislature has gone before and created social host liability in Texas.

This case arises out of a party that Tyler Reeder had with his high school friends, at his parents home, while they were out of town. This court would note that the Reeder parents are not before this court.

There is no social host liability in Texas. It's important to look at decisions by this court in reaching that conclusion.

PHILLIPS: We've never reached the decision on when the person served was under 18. So this is an open case(?)?

BOYD: That is correct. But it's important when determining that there is no social host liability to look at previous decisions of this court.

ABBOTT: But what the legislature has done is they've made it unmistakably clear that it would be a criminal violation for somebody to provide or make available alcohol to someone who is a minor.

BOYD: That is absolutely correct.

ABBOTT: And so it's clear that the legislature has unequivocally established a policy against that kind of conduct.

BOYD: That's absolutely correct.

ABBOTT: And it's also clear that in our prior decisions, we said we look to what the policy was that was established by the legislature. And if we were to hold civil liability, which of course is a lesser standard than criminal liability, that would be consistent with the policy established by the legislature.

BOYD: Correct. But in looking at the opinion that you authored in Smith v. Merritt, what the analysis was was that under negligence per se as opposed to common law that there was no legislative intent to create social host liability in Texas, and ultimately reach the conclusion that that was limited to persons 18 years or older.

ABBOTT: What we looked at in Smith v. Merritt was the clear unequivocal language that

that particular statute governed civil liability for providing alcohol to persons 18 years of age and older. And the legislature clearly picked out the age 18. And in that statute, the legislature didn't say anything at all about providing alcohol to people under the age of 18.

BOYD: Correct. But it's important to go back and look at the history of ch. 2. When the legislature was considering the enactment of ch. 2, as the bill was originally written, the word 'host' appeared in the definition of provider. So as it is currently enacted, ch. 2 creates a civil scheme for commercial providers - licensees. And that's important because it does not...

ABBOTT: _____ there's something that's almost _____ about that argument? There's potential liability for providing alcohol 18 years of age and older, but no potential liability for providing alcohol to persons under the age of 18. And that of course could be the cause for even more _____.

BOYD: By way of clarification, are you talking about under ch. 2 for commercial providers?

ABBOTT: Chapter 2.

BOYD: Actually I respectfully disagree. There is liability under ch. 2 if a commercial provider sells alcohol to a person under 18. And I think that's the point and where this court needs to go and focus. The fact of the matter is ch. 2 creates a civil scheme for commercial providers if they provide alcohol to a person of any age. It doesn't just say from 18 and above. What ch. 2 does is it creates a heightened standard to the benefit of the commercial provider if the recipient of the alcohol is 18 years or older.

If the recipient is under 17, the commercial provider under the commercial scheme in place enacted by the legislature they would not get the benefit of that heightened standard. They would not have the benefit of the heightened standard that the legislature created for persons who sell to persons 18 or older.

And looking at the legislative history why that is so important in this case is that the legislature when it initially drafted the bill, the word 'host' appeared in the definition of provider. Had that been left alone and had that bill been passed what we would have in the State of Texas is a social host liability scheme completely defined by the legislature that would be virtually identical to the scheme that's in place for commercial providers today.

ABBOTT: You agree that the legislature has established a clear fair policy against providing alcohol to minors?

BOYD: Correct.

ABBOTT: Well why should we not follow up with that and say that there is a civil

liability for providing alcohol to minors?

BOYD: There are several reasons. First off, what this court did wisely in Smith was defer to the legislature. And under the facts of that case determined that there would be no social host liability when service was to a guest who was 18 or older. The analysis is the same if the guest is under 18. It does not change.

HANKINSON: But it's not the same in that there is no requirement under 106.06, a limitation that serving alcohol to someone who is obviously intoxicated. There's a difference in the statutory scheme in terms of this being an absolute prohibition and part of the balancing that went on with the commercial liability statute as well as this court's decision not to extend it to social host was the factor that it would have put it in a situation of an individual of making that ascertainment of whether someone was intoxicated. That is a distinction with this statute isn't it?

BOYD: It certainly is.

HANKINSON: Why isn't that critical to the analysis?

BOYD: First off, ch. 106 does not distinguish on the age of the recipient except to say that under 21, you're going to be liable under the criminal statute. And so in order to go with the respondent's argument in this case there has to be a blending of ch. 2 and ch. 106. But there are numerous reasons why this court should continue to defer to the legislature to create social host liability.

HANKINSON: My point though is, why aren't we deferring to the legislature if we look at 106.06? And you would agree that minors and those that minors _____, you are among a protected class that would exist underneath that statute?

BOYD: Correct.

HANKINSON: If that's the case, then why aren't we deferring to the legislature when we look at the absolute prohibition by allowing a negligence per se action to be brought under there?

BOYD: Because this court then would have to fashion the duty to the social...

HANKINSON: The legislature has. It's right there: Don't do it.

BOYD: Right. But what that would then do is create an inconsistent result between Smith v. Merritt and this case. It really...

What Smith did was say that despite the fact that 106.06 makes it a crime to serve alcohol to anybody under 21. This court determined for purposes of civil liability that the negligence per se would not exist to anyone over 18. And so here's where the inconsistency - see

this is important. This is where the inconsistency would come in. For example, if my client, Tyler Reeder had a party, just as he did, and he serves to a person who is 17 years and 11 months old, such as Mr. Lawson, and he also serves - and this is assuming service - he also served an 18 year old. They left independently and were in motor vehicle accidents injuring separate people on the road. Under Smith v. Merritt the 18 year, the injured people would not have a cause of action against Tyler Reeder.

ABBOTT: I will concede to you that the facts of this case aren't _____ for the plaintiff. You keep trying to thread this through the needle of Smith v. Merritt and Graff v. Beard. And in both of those cases we said something very important, which was that absent a special relationship between the social host and the adult guests, the host has neither superior knowledge with which to proceed on nor a legal right to control the guest. The point being is, that with regard to an adult you can't control what an adult's going to do; whether or not they can drink, etc., etc. In this particular matter that policy analysis doesn't apply because the issue is not whether or not you have the right to control a person under the age of 18, or the extent to which you have superior knowledge about whether or not they can handle drinking and driving. We have a clear black and white line in this particular instance where absolutely never under any circumstances are you to provide alcohol to somebody under the age of 18. You don't have to go through that weighing that we talked about in both Smith v. Merritt and Graff v. Beard. There's no weighing involved here. It's clear, unequivocal, no questions asked. You shall not provide alcohol to somebody under the age of 18. Why doesn't that distinguish this case from our prior precedence?

BOYD: You hit the nail on the head. It's a special relationship. And if you're going to look at common law social host liability, there was absolutely no special relationship between Tyler Reeder and his highschool classmate in this case that would give rise to a duty to control.

ABBOTT: I'm saying no special relationship should be required when you're dealing with a situation providing alcohol to a minor. Under no circumstances whatsoever regardless of the relationship can you provide alcohol to a minor.

BOYD: This court could fashion a bright line rule at 18. But the problem goes back to the scenario that I just presented. That at that same party had a person who had just turned 18 been drinking, and Lawson and he take off in separate vehicles and kill people on our public streets, the injured parties with respect to the 18 year old would have no cause of action against Tyler Reeder, but the injured parties for the 17 year old, 11 month, would.

ENOCH: The legislature made that distinction. They picked 18 and that's - they can do that.

BOYD: Actually under 106, which is what is being asked to apply here, they didn't. They said 21. And if you look back at the history, they didn't pick 18 with respect to this scenario. What they did, they were providing a safe harbor or a heightened standard to commercial providers under ch. 2, that doesn't even apply to a social host. But it's important, because had it applied, had

they left the word 'host' in the definition of provider, it would apply here. And the only difference would be that the persons in my scenario would both have causes of action back against the social host. But under one scenario, the host would have a protection. The obviously intoxicated to a dangerous degree standard would apply here in one scenario. And it would be a straight negligence under the common law cause of action under the other. And that is the danger of deciding this case and drawing a bright line at 18, is that you create that disparate result where a person who drinks, he's not supposed to, it's the same criminal conduct under 106. It's no less a crime to provide beer to an 18 year old under 106 than it is to provide it to a 17 year old or a 16 year old. It's the same thing crime under 106. There is no difference.

ENOCH: The record in this case seems to indicate that Mr. Reeder has been host to a number of parties at his house. And the practice has been that people bring their own alcohol to the party. The record doesn't demonstrate who brings the food. It just talks about the alcohol. But it also looks as if in the record that Mr. Reeder helps himself to the alcohol that others bring. And so it seems to me there's an implication: if I provide the place and you provide the alcohol we'll have a party. Now the statute talks about make available. Why isn't Mr. Reeder making alcohol available to the minors at the party because his contribution is a house and someone elses contribution is the alcohol, why is that not him making alcohol available?

BOYD: First let me address what was in the record which was a question asked of Jeff Lawson in deposition had there been other parties. There is nothing in the record about any arrangement or agreement that I will provide the house, you provide the alcohol. What is in the record is that Jeff Lawson specifically stated in his deposition: I went and got my own beer. I had Taylor Chapman purchase my beer for me.

HANKINSON: But he also said that when he arrived there there were several cases of beer already there.

BOYD: The record speaks for itself. But my interpretation of the record was that they actually brought several cases and placed them in coolers.

HANKINSON: There's also on page 14 of the record testimony that when he arrived there were several cases of beer already there.

BOYD: In response to that there is absolutely nothing in the record that would indicate whatsoever that Tyler Reeder supplied any beer.

HANKINSON: But the point is, when he arrived there was beer there.

BOYD: Right. And more importantly, the point is, he brought his own beer. He had somebody else go buy it.

ENOCH: That's not my point. I'm assuming he brought his own beer. My question is,

when somebody provides the place for the party and somebody else provides the beer and there is sharing of the beer when they get there, why is that not just one sharing their own responsibility for a party? How does the host of the party avoid this making available by simply saying: look it wasn't my money that bought the beer?

BOYD: That specific question was addressed in Kovar v. Krampitz, out of the Houston CA. What the Houston CA noted is identical to this scenario. There was no evidence that the host provided the beer. Others brought the beer. And the conclusion of the court was that we're not going to find liability under those circumstances merely from hosting the party. That does not equate to the furnishing of the alcohol. And giving furnish it's most common meaning, you would have to assume that that beer from the time that Jeff Lawson secured that beer at the convenience store it was unavailable to him while he road over to Tyler Reeder's house. The beer was already available to him before he ever got to the house. Tyler didn't do anything that made that beer anymore or any less available except provide a place where it could be consumed.

ABBOTT: If I had a beach house and a margarita machine, with no alcohol, and invited a bunch of people over and said party at my place, let's get wasted. And other people bring the margaritas and put them in the margarita machine. Have I made alcohol available?

BOYD: No. What you've done is you've changed the consistency of it by freezing it. But all seriousness, you haven't provided the alcohol. What you again have done is provided a situs for a social event. And that should not give rise to providing alcohol. It takes some affirmative action by the host in actually making alcohol available. You can't just provide a location that has a refrigerator or a margarita machine and if the alcohol is brought in, you have to assume the alcohol wasn't available before the guests ever arrived at the party.

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RESPONDENT

REYNOLDS: I'm representing Andrew Daniel. He was the injured person at the party hosted by Tyler Reeder. My client's position is that Tyler Reeder had a party; he gave alcohol to Jeff Lawson, a 17 year old, and as a result of that a fight ensued - the records not really clear as to exactly what happened other than my client got hit. He suffered severe injuries. We are just asserting that the provisions of the alcoholic beverage code creates a cause of action as a matter of law - a negligence per se. Unexcused violation.

ABBOTT: The _____ here of course is that there seems to be a serious problem with you satisfying the requirement that the defendant made available alcohol. Because he didn't provide it. He didn't buy it. At most he provided a refrigerator.

REYNOLDS: This is a summary judgment proceeding. My opinion is, whether the alcohol was provided or not should be a matter for a jury to decide based on the facts. The law says if you either make it available or put it in a place where it's accessible or may be obtained, that's make

available. That's the dictionary definition. The statute doesn't define exactly what make available is. It's I guess left up to the discretion of the court considering the facts.

This party went on for several hours. The beer was in the refrigerator and in the coolers on the premises. Tyler Reeder knew about it. He certainly could have stopped it at anytime by saying hey, ya'll get out of here because the law says you can't have alcohol, you're under 18. There's a definite bright line prescription against furnishing alcohol legally to somebody under 21. And from the tort liability kind of carved out down to 18 in Smith v. Merritt, he could have said no more alcohol and took it away. But when the alcohol came in to his house it came under his care, custody and control. He's in control of the house. It's his parents house, the parents aren't there. So he is the person in charge. He could have shut the thing down at anytime. He didn't. And I believe that at least creates a fact issue to have a trial on and see if Tyler made the alcohol available or accessible to Jeff Lawson.

ENOCH: I think the facts really aren't in dispute about whether the beer was purchased by Lawson and was put it in the refrigerator and Tyler drank some of that beer. So it was shared. But I don't know if there's a fact issue for the jury to decide. It's really up to the court in deciding that amounts to providing alcohol. If I understand Mr. Boyd's argument, if Lawson had been sued as the host, then that would be alright because he bought the beer. But because Tyler didn't buy the beer, but he simply provided the place for the party, then I guess that would be - that's not providing the alcohol.

REYNOLDS: My position is the record as it stands does not show as a matter of law that he didn't make it available. I believe there's enough evidence there to at least give to a jury. I think there's a fact question. It's not that there's no evidence that he didn't provide it or make it accessible.

BAKER: Isn't there a more fundamental thing that we're being asked to do and that's to find that there is a cause of action before we can get to the point you are making by your argument?

REYNOLDS: Yes.

BAKER: Why should we do that?

REYNOLDS: Because you shouldn't give alcohol to minors. The law says you can't.

BAKER: Well the legislature said it's a criminal offense.

REYNOLDS: It's a criminal offense.

BAKER: Does this require us to overrule Smith and Graff or any other case?

REYNOLDS: No, it doesn't. I believe the cause of action has always been here. This has always been the law, that to provide alcohol to a minor under the age of 18 is negligence as a matter of law.

O'NEILL: Can't hear O'Neill's question.

REYNOLDS: I believe it's just that. They chose not to put it in there. They chose not to address it. They chose for it to only apply to commercial providers.

O'NEILL: My question exactly. What do you make of that?

REYNOLDS: I make of that that's not the legislative intent that they intended to negate social host liability. I think that's legislative intent that they meant to prescribe conduct for commercial providers. They didn't address the social host issue at all.

O'NEILL: Can't hear question.

REYNOLDS: But the burden is passed. The legislature did not intend to address social host liability by a statute. And there's already a statute that says you can't provide alcohol to persons under the age of 21. Maybe they felt it was already taken care of. I certainly believe that. There's a absolute prohibition on providing alcohol to persons under the age of 21.

The alcoholic beverage code is to promote the health and safety of the citizens of the State of Texas. It's to be liberally construed to accomplish that purpose.

There are many criminal statutes that have been interpreted to set a standard for civil liability of traffic laws. You have traffic laws that are great examples. The court would not hesitate to impose liability on a person who runs a stop sign. Nobody argues about that. What's the difference? The alcoholic beverage code sets the standard for conduct: don't sell or furnish alcohol to minors.

HECHT: What's the standard for make available?

REYNOLDS: I got the dictionary definition in my brief. It says make it accessible or leave it in a place where it may be obtained. The AG has also opined on that. It says makes it available if vendor places that alcoholic beverage where it is accessible to the minor. That's a 1972 AG opinion.

HECHT: How do you say that happened here if the young man brought his own?

REYNOLDS: He brought his own, but it was a group effort to get all the beer into the coolers and the refrigerator. Tyler Reeder was a part of that. It was his house. He planned the party.

HECHT: What if there were just coolers out in the field?

REYNOLDS: Well this was a residence.

HECHT: I'm trying to get some understanding of what your position is on make available.

REYNOLDS: My position is if you own a house or if you're in control of a house or you're a resident of a home and you have control over the premises and there's alcoholic beverages there, you know they are there, you had some part in getting them there...

HECHT: Well what if you had no part. Your part was to unlock the door.

REYNOLDS: You mean like a cocaine party or something like that?

HECHT: No. I mean all you know that is people came in and they were carrying beer. You didn't ask them to do it. You didn't buy it yourself. They brought their own coolers. I'm just trying to get some understanding of where you draw the line to make available.

REYNOLDS: I think if it's at your house you are making it available, and you know it's there...

O'NEILL: You're saying strict liability?

REYNOLDS: Yes. the parents in this case were not at the house, and they were found not to be making it available and that's been upheld. I'm not complaining about that.

PHILLIPS: If I have a party where I am serving alcohol and there's anybody under 18 in the house, I've got to _____? Like a wedding party or something like that.

REYNOLDS: Yes. And I believe that's the way it should be. I think teenage drinking is a problem. And we if can't impose some civil sanctions on people, you know criminal sanctions probably aren't enough. People need to take responsibility for furnishing alcohol to minors especially under the age of 18.

ENOCH: We have from time to time not imposed or not exercised our authority under the common law to create a cause of action even though here is a criminal statute involved. Why should we exercise our authority to create a common law cause of action based on this criminal statute?

REYNOLDS: The purpose of the alcoholic beverage code is to protect the safety of the people and to control the use of alcoholic beverages. They are specific as to the problems with minors drinking. The legislature has spoken to that. I believe because minors are not experienced

enough. They haven't been around people drinking enough to know the effects of it. They certainly shouldn't have experienced the effects themselves. They are less capable of handling the alcohol.

OWEN: Aren't we kind of boxed in by Smith v. Merritt? We specifically rejected using the criminal statute to create negligence per se at least for 18 year olds and 21 year olds even though the statute clearly says it's criminal and we said no, we're not going to adopt that standard. Aren't we bound by that?

REYNOLDS: The facts of that case were different because you had a person...

OWEN: How can we say a statute is negligent per se for some and not for others?

REYNOLDS: In Merritt, the reasoning was that a person who was 18 years old is an adult.

OWEN: That was not in the negligence per se section. That was in a different section. And the section it seemed to deal with was 106. We specifically said we will not use that as the standard per se. How do we get around that?

REYNOLDS: I think that opinion also that this does not apply to service of alcohol...

OWEN: But logically, how do we say well we're going to trial run here?

REYNOLDS: My opinion is the bright line was drawn at 21. And it was negligence per se. I think the logic for Smith v. Merritt was that when you're 18, you're an adult, and we all know that 18 year olds are going to - we can't control what they do. They can vote. They can go in the service. They can marry. So we look to them and the injured party has a way to go remedy by looking at the person who was an adult - the 18 year old. In this case a 17 year old they don't have as good a remedy, I don't believe.

OWEN: We look at it simply from an asset(?) standpoint?

REYNOLDS: I think it's a policy standpoint. If this court doesn't draw the line at 18, there's no safety net underneath that. I think the lines been drawn at 18, and everybody understands that. But below 18, I believe there should be a cause of action.

OWEN: Was Smith v. Merritt right or wrong?

REYNOLDS: Of course it was right. Making it a negligence cause of action for serving minors under 18 would certainly serve the people of the State of Texas. It would place responsibility for damages these people caused or may cause in a place where it would deter that behavior in the future. I think that's the...

ENOCH: You cited the dictionary definition of "making it available." Do you have any

authority on the CA's, or the DC's defining "makes available" for the purposes of criminal prosecution?

REYNOLDS: No. Just the AG opinion. That was my other authority.

ENOCH: And again, the AG opinion said?

REYNOLDS: It said to make alcohol available to an offender, an offender must have "placed said alcoholic beverage where it is acceptable to the minor".

ENOCH: So if you put in a couple of cases of beer into one's refrigerator would be placing it where it's accessible to the minor?

REYNOLDS: I believe in reading that together with the instruction that the alcoholic beverage code be liberally construed to protect the safety of the people, yes.

I, and my client believe, there has always been a common cause of action for furnishing alcohol to anybody. This court in Graft carved out furnishing to an adult over the age of 21. They went further in Smith v. Merritt by saying there is no cause of action for furnishing to a minor 18 years and older. I think now is the time that - and both of those courts specifically said this does not apply to furnishing alcohol to a minor. Graft said that specifically. Smith said that it does not apply to furnishing alcohol to a minor under the age of 18. In this case, however, you have a minor who was furnished or made available an alcoholic beverage. He caused injury to my client. The Beaumont court has held that as a matter of law the unexcused violation of §106 of the alcoholic beverage code gives rise to an action in negligence. And I believe this court should uphold that and find that and set the policy for the state.

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REBUTTAL

ALLEN: In listening to the argument before the court today it's obvious that the use of alcohol is a social issue, an issue that should not be legislated by this court. With respect to social host liability, if that is to be recognized by the State of Texas, that liability should be enacted by our state's legislature.

ABBOTT: Do we ever apply the concept of negligence per se or should we never apply negligence per se?

ALLEN: Negligence per se is a viable concept to apply.

ABBOTT: Should we abandon the concept of negligence per se?

ALLEN: No, we should not.

ABBOTT: And don't you think the legislature has established a policy against providing alcohol to persons under the age of 18 in the criminal code?

ALLEN: Yes.

ABBOTT: Being that that policy decision has already been made either we apply negligence per se or we don't.

ALLEN: The policy decision that has been made by the Texas legislature is to make it a criminal violation to serve a minor. A minor is defined as a person under the age of 21 under the statute. That policy should not be extended in to the civil liability sphere for two principal reasons. First, and it's one that has been addressed by Justice Enoch briefly with respect to common law liability in the State of Texas, there is no special legal relationships between Tyler Reeder and his highschool classmate, Jeff Lawson, sufficient to create a duty or a right to control. That's one reason that this court should not recognize social host liability. That right to control issue also is something that should be examined by the court when looking at whether to adopt a negligence per se concept in this filed. The right to control is still not there between two highschool classmates.

Mr. Reynolds has in his brief addressed the issues that minors are irresponsible with respect to understanding the effect...

ABBOTT: The criminal statute doesn't deal with the concept of right to control. All it deals with is whether or not you purchase it or make it available. And it has nothing to do with regard to controlling the other person's consumption of alcohol. It has to do with before you even get to the stage of whether or not they had consumed it. So I don't even see how right to control has any bearing upon this case at all.

ALLEN: I understand your concern with respect to this issue. But as Justice O'Neill pointed out, basically if the court were to adopt a negligence per se concept with respect to social host liability, it would in effect be strict liability. A cause of action that does not even recognized being a commercial providers of alcohol You would...

ENOCH: It might not be strict liability. You still have to have provided and if you accept the AG's definition that you place it where it can be accessible to minors, and then a minor takes access to it, they can be prosecuted criminally and punished for that, why shouldn't the victim of the crime, the person who gets injured not have an ability to recover the damages for the crime?

ALLEN: You earlier brought up a good point with respect to this issue. In examining the case law as it has developed in Texas, we've always looked at not only a special relationship but more of an affirmative act that creates some sort of duty. You brought up earlier that merely at my own home placing beer in the refrigerator and a child happens to come over to my house and grabs the alcohol, consumes it and for some reasons injures himself or someone else, then I would be responsible. I don't think that the court should legislate those type of issues. That is something that

the legislature should legislate, and the legislature may in fact at some point in time create social host liability. But they have not done so today and this court should not do so.

ENOCH: But we do no violence to that concept if we define making available being a host of a party, knowing that alcohol will be brought to the party, knowing that they are providing a place for the alcohol to be stored until it's time to use, we could determine making available pretty narrowly or pretty strictly under the facts of this case, and conclude that the victim of a drunk from this party ought to be able to recover their injuries for having suffered as a result of someone having a party where alcohol is made available to a minor. And we don't do any violence to your notion that parents who have alcohol in their home with no intention of making it available to minors would not certainly run any fear of being found liable just because a minor slipped into the house and gets it out of the refrigerator.

ALLEN: You're correct. This court is free to define the parameters of what "make available" or "furnishing alcohol" is. You brought up an important point that the individual, Andrew Daniel in this case, was compensated for his injuries. He should look to Jeff Lawson, the individual who struck him intentionally, to recover his compensation, not to a third-party, Tyler Reeder, who merely had a party at his house.

And that brings up another interesting issue, and one that may address some of your concerns with respect to the negligence per se argument. As the SC examined in the Nixon case, it doesn't stop at the negligence per se concept. If you go one step further and look at foreseeability, the 9th CA in this case said on page 10 and page 11 of its own opinion that there is no way that anybody, including Tyler Reeder could have anticipated that Jeff Lawson would intentionally assault the plaintiff in this case.

ABBOTT: Looking back at whether or not we could establish a negligence per se cause of action. It's clear that the legislature has said that it's againts the law. We don't want anybody to provide alcohol to somebody under the age of 18. Do you agree with that?

ALLEN: Yes.

ABBOTT: Realistically it's going to be virtually impossible to police that. That's something that you're not going to have policemen going from home to home being sure that people are not providing alcohol to people under the age of 18. You will concede that?

ALLEN: It's difficult to police. Yes.

ABBOTT: So doesn't it seem that the only way to implement any form of enforcement of this would be to create a negligence per se cause of action?

ALLEN: Simply the legislature, and I misspoke, has made a determination that minors, persons under the age of 21, could not be served alcohol. The legislature has not made a policy

decision that you should hold those third-parties civilly responsible when they did in enactment of the dram shop act look at commercial providers and has specifically legislated that they are responsible for serving or selling alcohol to individual over the age of 18, as well as responsibility for serving those under the age of 18. The overall point that the petitioner makes in this case is that this is a social issue and one that should be regulated and legislated by our state legislature and not by the courts, because it is a difficult standard for this court to apply in situations such as these.