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Public Safety Officers Injured by Drunk Patrons Can Sue Bar Owners for Their Injuries

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(Rel'd. Aug. 30, 2005, No. 252683)

Addressing a case of first impression, the Michigan Court of Appeals ruled in *Francis Tull v WTF, Inc., d/b/a/ Shakers*, that the "firefighters' rule" does not preclude a police officer's statutory right or remedy to pursue a personal injury cause of action against a bar under the Michigan Dramshop Act. MCL 600.2967 and MCL 436.1801.

The plaintiff, a Genesee Township police officer, was dispatched to respond to the defendant's bar after an Alleged Intoxicated Person (AIP) became visibly intoxicated and then became involved in an altercation with another patron. In the process of arresting and attempting to restrain the AIP, the plaintiff was injured due to repeated kicks to his knee.

The plaintiff subsequently brought suit against the bar under the dramshop act. The defendant bar obtained summary disposition at the trial court level by arguing that the firefighters' rule effectively precluded the plaintiff's cause of action. Specifically, the defendant bar argued that the circumstances in question were not among the statutory exceptions to the general rule, which provides that a safety officer may not recover damages from a private party for negligence that required the officer's assistance at a scene.

The statute states that it does not affect rights and remedies available under other statutes or the common law.

-Michigan Court of Appeals

The specific issue addressed by the appeals court was whether and/or under what circumstances the firefighters' rule precludes a plaintiff from seeking damages under the dramshop act. More specifically, the appellate court's focus was interpretation and application of subsection 2 of the firefighters' rule, which states: "this section shall not be construed to affect a right, remedy, procedure or limitation of action that is otherwise provided by statute or common law."

Ultimately, in reversing the lower court's decision in the defendant bar's favor, the appellate court

stated: “The plain, unambiguous language of the [firefighters’] statute states that it does not affect rights and remedies available under other statutes or the common law. In the plaintiff’s situation, this means that the limitations prescribed in subsection 1 with respect to negligence and intentional tort actions do not affect his statutory dramshop action, because that is an action ‘otherwise’ provided by statute.” Thus, the court concluded that an action under the dramshop act “falls outside the parameters” of subsection 1 of the firefighters’ statute and is preserved by subsection 2.

The court also went on to clarify that any arguments regarding the independent negligence exception of the firefighters’ rule set forth in section 1 were irrelevant to the final outcome of the case. Specifically, the court noted that because a dramshop action is a remedy “otherwise provided by statute,” the plaintiff was not required to “satisfy the independent negligence requirements that would apply if the plaintiff brought a common law action for ordinary negligence and the negligent person were someone whose act or omission resulted [in] the plaintiff’s presence at the scene.” Thus, the court never specifically addressed or decided whether the defendant’s alleged violation of the dramshop act was related or independent of the situation that resulted in the plaintiff’s presence at the scene.

Significantly, the holding in this case makes clear that the firefighters’ rule does not preclude a fireman, police officer and/or other public safety officer’s ability to sue a bar and, presumably, other liquor retail licensees under the dramshop act for injuries sustained due to the acts of an AIP. It goes without saying however, that, under the dramshop act **a plaintiff must still establish visible intoxication as a prerequisite for recovery against the bar**. In addition, the statutory right of indemnification against an AIP remains available for a third party cause of action.

For a complete copy of the Michigan Court of Appeals ruling on *Francis Tull v WTF, Inc., d/b/a/ Shakers*, [click here](#).

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