

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GREGORY A. COLBY,

Plaintiff-Appellant,

v

RODNEY NOAH, RENEE CHIPMAN,  
JASON CHLEBEK, SHEENA NOAH, and  
HARRY BISSELL,

Defendants,

and

WESCO, INC.,

Defendant-Appellee.

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UNPUBLISHED

May 22, 2007

No. 275154

Montcalm Circuit Court

LC No. 05-006559-NO

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition in favor of defendant Wesco, Inc.,<sup>1</sup> in this dramshop action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Under the liquor control code of 1998, MCL 436.1101 *et seq.*, also referred to as the dramshop act, it is unlawful for a retail licensee to “directly, individually, or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a minor” and to “directly or indirectly, individually or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a person who is visibly intoxicated.” MCL 436.1801(2). An individual who is “personally injured by a minor or a visibly intoxicated person by reason of the unlawful selling, giving, or furnishing of

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<sup>1</sup> Plaintiff voluntarily dismissed his claims against Bissell, Chipman, Chlebek, and Sheena Noah in late 2005 and obtained a default judgment against Rodney Noah in late 2006.

alcoholic liquor to the minor or visibly intoxicated person” has a cause of action against the licensee “if the unlawful sale is proven to be a proximate cause of the . . . injury” and the licensee has “caused or contributed to the intoxication of the person or who has caused or contributed to the . . . injury . . . .” MCL 436.1801(3).

The elements of a claim predicated upon an unlawful sale to a visibly intoxicated person are: (1) the plaintiff was injured by the wrongful or tortious conduct of an intoxicated person, (2) the intoxication of that person was the sole or contributing cause of the plaintiff’s injuries, and (3) the defendant sold, gave, or furnished to the alleged intoxicated person the alcoholic beverage which caused or contributed to that person’s intoxication. *Walling v Allstate Ins Co*, 183 Mich App 731, 738-739; 455 NW2d 736 (1990). The trial court’s ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

Defendant Rodney Noah purchased a 15-pack of 22-ounce cans of beer from defendant while allegedly visibly intoxicated. He took them home for a party to which plaintiff, a minor, had been invited by another guest. Noah offered the beer to plaintiff, who consumed four full cans and part of a fifth during the next hour to hour and a half. Plaintiff also smoked marijuana. Plaintiff thereafter went outside and dove into Noah’s backyard pool and broke his neck.

Plaintiff failed to show that Noah’s intoxication proximately caused plaintiff’s injuries. To the extent plaintiff seeks to hold defendant liable on an agency theory of liability, his claim must fail. If plaintiff contends that defendant illegally furnished beer to a minor (himself) through Noah as his agent, defendant cannot be held liable because the statute only precludes direct sales to minors. *Dobson v Maki*, 184 Mich App 244, 249-250; 457 NW2d 132 (1990). Further, a minor or intoxicated person who becomes intoxicated and injures himself cannot recover damages from the licensee for his own injuries. *Craig v Larson*, 432 Mich 346, 358-359; 439 NW2d 899 (1989). Thus, where the injured minor seeks to hold the licensee liable for furnishing him alcohol through an intermediary, his claim must fail. *Saavedra v Ghannan*, 183 Mich App 234, 236; 454 NW2d 134 (1989). Therefore, the trial court did not err in granting defendant’s motion.

Affirmed.

/s/ Jessica R. Cooper  
/s/ William B. Murphy  
/s/ Janet T. Neff