

SOCIAL HOST LIABILITY

BY ADAM HUTCHINSON AND HOLLY HAMMONS

Ah, the Holiday season, the time when family and friends gather together and celebrate, often taking time to share a word or two about what we're thankful for: good food, love, laughter, and the knowledge that there were 2,300 deep-fried-turkey related residential fires from 2017-2019.¹ What is the litigation-savvy host to do if not educate guests on the ins-and-outs of social host liability over a glass of Cabernet? If you are not sure how to keep your guests' rapt attention, rest assured these talking points on your loved ones' prospective liability will have them begging for another glass of wine.

SOCIAL HOST LIABILITY

Unlike many states, Kentucky does not have a robust social host liability jurisprudence. As an initial matter, Kentucky still contemplates that guests coming onto a property will either be "invitees" and "licensees," a distinction that remains relevant when

discussing social host liability. An invitee is "on the premises at the explicit or implicit invitation of the property owner to do business or otherwise benefit the property owner."² The invitee is on the premises for the benefit of the property owner and is owed a duty of "reasonable care;" the "invitee enters the premises with the implied assurance of preparation and reasonable care for his protection and safety while he is there."³ That is, the property owner has a duty to inspect the premises and make it safe for an invitee or, barring that, must warn the invitee so that she may avoid the danger with reasonable diligence. However, most "social" guests will not be invitees, but instead will be licensees. A licensee is a "person who is privileged to enter or remain on land only by virtue of the possessor's consent."⁴ A licensee does not provide the property owner an economic incentive to allow her entrance. The property owner must warn the licensee of any dangers of which she knows and not "willfully or wantonly" place the licensee in peril.⁵

Many jurisdictions have long abandoned the distinction between the "invitee" and "licensee" for premises liability purposes. Kentucky has made some gestures in this direction, but still utilizes these old-fashioned designations. In *Smith v. Smith*, the Court decided to keep the categories of "invitee" and "licensee" over the dissent of Chief Justice Minton.⁶ However, only three years later in *Bramlett v. Ryan*,⁷ the Court held such titles were only to be given consideration in determining whether the property owner acted reasonably in particular cases: "An enlightened legal system does not reason backward from labels, to decide whether a duty of reasonable care exists."⁸ This appears to have the practical effect of making these labels mere factors in a larger analysis of whether the property owner acted reasonably to a person coming upon the property.

So, what does this mean when a social host asks about his potential liability during a gathering?



First, a social host owes all of his guests – licensees – a duty to perform a reasonable inspection of his home and warn guests of any dangers that turn up. Second, the host needs to refrain from putting guests in danger. However, given the Court's recent direction it would be advisable if he just decided to treat everyone as an invitee. Instead of just inspecting and warning, he should probably attempt to make the house safe, even temporarily, for her visitors. So, instead of telling his guest to watch out for the rickety basement stairs, he should probably just lock the basement door.

SOME OTHER QUESTIONS THAT MIGHT POP UP:

WHAT HAPPENS IF A FIGHT BREAKS OUT?

As noted above, there is scant Kentucky law on social host liability. However, it is clear under existing law that a social host is not ordinarily responsible for the acts of third parties at events. “[A]n actor whose own conduct has not created a risk of harm has no duty to control the conduct of a third person to prevent him from causing harm to another.”⁹ An exception to this rule is if there exists “(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person’s conduct, or (b) a special relation exists between the actor and the other which gives to the other a right to protection.”¹⁰ If the host’s minor children are threatening to cause harm to others, then the host likely has a duty to stop them. On the other hand, the host likely does not have a duty to ensure than an adult partygoer is not attacked by another adult partygoer. Indeed, this is precisely the situation the Kentucky Court of Appeals dealt with in *Wilkerson v. Williams*.¹¹

WHAT HAPPENS IF SOMEONE HAS A LITTLE TOO MUCH TO DRINK?

In general, social hosts do not take on a special duty to control the conduct of guests who may be intoxicated. Indeed, in the aforementioned *Wilkerson v. Williams* case the Kentucky Court of Appeals dismissed a social host from a lawsuit stemming from the intoxicated conduct of a party goer, “Jeffrey [the host] had no effective means of control over Aaron, an adult guest, to prevent him from driving, much less from assaulting another guest.”¹² The Court further opined that if under Kentucky’s dram shop law a bar would not be responsible for the conduct of an intoxicated patron, including if that patron assaulted another in the bar, it would be strange to impose a more strenuous duty on a private party host. In general, intentional torts committed by adult partygoers against other partygoers or third parties are not foreseeable to social hosts.

WHAT IF A MINOR MANAGES TO SNEAK SOME ALCOHOL DURING THE PARTY?

“Where minors and alcohol are concerned, the scope of foreseeability is expanded.”¹³ If a minor imbibes alcohol at a holiday party or event, then the social host may be liable for any damages suffered as a result of said minor’s unintentional and negligent conduct. However not *all* possible conduct from intoxicated minors may be foreseeable to social hosts. For example, a minor suffering from alcohol poisoning from overconsumption may be foreseeable. However, in Kentucky social hosts are generally entitled to assume that partygoers will not commit intentional criminal acts. Therefore, social hosts generally have similar protections to those granted to commercial establishments through Kentucky’s dram shop act. “The law is clear that intentional torts against third parties, such as bar fights, assaults, and shootings, are not foreseeable to social hosts or bar owners.”¹⁴

The best advice, though, is keep a close eye on the punch bowl if there are any minors at your party. **BB**

ABOUT THE AUTHORS

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ENDNOTES

- 1 Alia Slisco, *This is why Frying Thanksgiving Turkey is so Dangerous*, NewsWeek, (Nov. 24, 2022), <https://www.newsweek.com/this-why-frying-thanksgiving-turkey-so-dangerous-1762206>.
- 2 *Bramlett v. Ryan*, 635 S.W.3d 831, 837 (Ky. 2021).
- 3 *Smith v. Smith*, 563 S.W.3d 14, 18 (Ky. 2018) (internal citations omitted).
- 4 *Id.* at 17.
- 5 *Id.*
- 6 *Id.* at 14.
- 7 635 S.W.3d 831 (Ky. 2021).
- 8 *Id.* at 838 (quoting *Perry v. Williamson*, 824 S.W.2d 869, 875 (Ky. 1992)).
- 9 *Grand Aerie Fraternal Order of Eagles v. Carneyhan*, 169 S.W.3d 840, 849 (Ky. 2005) (citations omitted).
- 10 *Id.* at 849.
- 11 336 S.W. 3d 919 (Ky. App. 2011).
- 12 *Id.* at 923.
- 13 *Martin v. Elkins*, No. 2011-CA-000862, *3 (Ky. App. August 31, 2012).
- 14 *Id.*