Kaste v. The Rusty Nail

Summary judgment (2020)

Minnesota District Court, Seventh Judicial District

56-CV-19-97 (Minn. Dist. Ct. Jan. 21, 2020)

IN THIS EDITION

Complete order and memorandum

Original collection page locators

Both court footnotes

The complete individual 12-page order and memorandum found at pages 16–27 of the 55-page original collection. This reading edition contains only the Kaste decision; the original collection remains unchanged.

Source-page labels refer to the original court PDF. The numbered pages in this PDF belong to this independent reading edition. Administrative stamps, signature artwork and source-copy layout remain available in the original PDF.

Independent edition prepared October 29, 2026

Source PDF page 16

STATE OF MINNESOTA	IN DISTRICT COURT
COUNTY OF OTTER TAIL	SEVENTH JUDICIAL DISTRICT
Phillip Kaste and Amanda Kaste, Plaintiffs, vs. The Rusty Nail, Inc., dba The Rust Nail, Stellas, LLC; and Sara Marie Boyum, Nathan Paul Boyum, Individually and Jointly, Defendants.	**ORDER AND MEMORANDUM DENYING MOTION FOR SUMMARY JUDGMENT, DENYING MOTION FOR DEFAULT JUDGMENT, AND GRANTING MOTION TO DISMISS A PARTY** Court File No. 56-CV-19-97

On November 11, 2019, the above-entitled matter came on for hearing before the undersigned Judge of District Court, at the Otter Tail County Courthouse in Fergus Falls, Minnesota on Defendants' Motions for Summary Judgment, Default Judgment, and to dismiss the Boyums as individual parties. Attorney Joseph Ellig appeared on behalf of Plaintiffs Phillip Kaste and Amanda Kaste. Attorney Jessie Sogge appeared on behalf of Defendants The Rusty Nail, Inc., dba The Rusty Nail, Stellas, LLC; and Sara Boyum and Nathan Boyum. Third-party Defendant Michael Spilde made no appearance. Plaintiff submitted Exhibits A-V, 1, and 3 in response to Defendant's motions. Defendant submitted exhibits A-I in support of the Motion for Summary Judgment; and Exhibit A in support of the Motion for Default Judgment. At the hearing, the Court received Exhibit MTN 001, Answer from Third-Party Defendant, Michael Spilde.

Based upon the entire file, the applicable law, the arguments of the parties, and for the reasoning set forth in the attached Memorandum, IT IS HEREBY ORDERED THAT:

Source PDF page 17

1. Defendants' Motion for Summary Judgment is **DENIED**.

2. Defendants' Motion for Default Judgment is **DENIED.**

3. Defendant's Motion to Dismiss Sara Boyum and Nathan Boyum as individual parties is **GRANTED.**

4. This matter is scheduled for a pre-trial hearing on **March 9, 2020 at 11:30 a.m.** and a jury trial commencing on **March 24, 2020 at 8:30 a.m.** before the undersigned Judge of District Court, at the Otter Tail County Courthouse, in the city of Fergus Falls, Minnesota

5. The attached Memorandum is incorporated herein.

Dated: 1/21/20.

BY THE COURT:
Kevin M. Miller
Judge of District Court

MEMORANDUM

Factual and Procedural Background

This case arises out of injuries sustained by Plaintiff Phillip Kaste (hereinafter "Kaste") when he was shot by Third-Party Defendant Michael Spilde (hereinafter "Spilde") outside of the Rusty Nail. The Rusty Nail is a bar and restaurant located at 106 E. Summit St., Battle Lake, Minnesota 56515. The Rusty Nail is owned by Sara and Nathan Boyum. The Boyums have over ten years of experience owning and operating bars. On the night and early morning of May 14 and 15, 2016, Kaste and Spilde were patrons of the Rusty Nail. Evan Meece (hereinafter "Meece"), Sara Boyum, and Nathan Boyum were all working as bartenders. Nathan Boyum testified that they are trained to identify signs of obvious intoxication and that they provide some training to their employees through on the job shadowing.

Source PDF page 18

The record is somewhat unclear as to the amount of alcohol that Kaste and Spilde consumed while at the Rusty Nail on the night in question. That evening, Kaste arrived at the Rusty Nail with his wife, Amanda Kaste, at around 8:30/9:00 p.m. Kaste drank between 5-10 "Battle Lake Bulldogs" and screwdrivers. When Spilde arrived at the Rust Nail, he had previously been drinking at another bar and consumed one beer and possibly one shot of alcohol.

As it relates to Spilde, Sara Boyum recalls serving him one beer and did not notice anything about his speech or behavior that would indicate to her that he was intoxicated. Nathan Boyum does not recall any specific conversations with Spilde but testified that he may have served him one beer. Meece recalls serving Spilde one or two beers but does not recall observing anything that would indicate that Spilde was obviously intoxicated that night. Spilde testified that he thought he had consumed approximately 3 Coors Light beers and one shot of alcohol that evening. Spilde's bar tab from that evening indicates that he had been served 6 beers and one shot of alcohol. Spilde testified that he was intoxicated that evening.

Neither the Boyums nor Meece recall any interactions between Kaste and Spilde while inside the bar. Surveillance video from the bar confirms that no interaction occurred between the two.

The bar closed at 1:00 a.m. on May 15, 2016. Around this same time, Sara Boyum returned to the bar to assist Nathan Boyum and Meece in cleaning up.[1] When she returned to help clean, Sara Boyum parked her car behind Spilde's car on a public road directly outside of the Rusty Nail. Spilde was in his car, with the engine running and the lights on. Sara Boyum noticed Kaste, whom she recognized, outside of the car and observed Spilde, inside the car, holding a gun. After observing this, Sara Boyum walked quickly inside to tell her husband.

Source PDF page 19

While seated in his car, with Kaste directly outside the driver's side window, Spilde shot Kaste in the chest. After Sara Boyum ran inside to report the gun, Nathan Boyum went to the door and observed Kaste being shot. After observing the shooting, Nathan Boyum shut the door and locked it.

Kaste testified that at the end of the night, after exiting the bar, he heard a man yelling insults at him. Kaste testified that he thought he might know the man, so he walked towards him. Kaste testified that when he was approximately two feet from the driver's side window, he observed that the man was holding a pistol. He continued toward the car in an attempt to swat the pistol away.

Spilde testified that he was in his car attempting to drive home and saw an individual standing in the middle of the road. He became fearful because the individual was a very large man.[2] He then pulled out his gun and shot the man in self-defense.

After Spilde shot Kaste, Spilde drove home, consumed more alcohol, and waited for police to arrive. Spilde was arrested and charged with Attempted Murder and First-Degree Assault- Great Bodily Harm. Spilde pled guilty to First-Degree Assault and is currently serving his sentence in prison. Two hours after the shooting, police administered a preliminary breath test to Spilde and it indicated a blood alcohol concentration ("BAC") of 0.15, a later test showed a result of 0.16.

Michael Spilde testified that he drank some vodka after arriving home but is not sure how much. He also testified that he was intoxicated on the night of the incident and doesn't think he would have shot anyone if he hadn't been. Through his report, Dr. Jon Van Berkom provided that based on the amount of alcohol consumed and the passage of time before the tests were conducted, Source PDF page 20 Spilde would have had a BAC of 0.20-0.22 at the time of the shooting and would have been displaying signs of impairment. Defendant Rusty Nail now brings three motion before the Court:

1. Motion for Summary Judgment on the basis that Plaintiff cannot prove the essential elements of the Minnesota Civil Damages Act;

2. Motion for Default Judgment against Third-Party Defendant Michael Spilde based on allegations that Spilde has not entered an Answer or otherwise participated in the proceedings; and

3. Motion to Dismiss Sara Boyum and Nathan Boyum as individual parties to the action.

I. Motion for Summary Judgment

Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.03; *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005). On Summary Judgment, it is improper for the court to weigh facts or determine the credibility of affidavits and other evidence. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The moving party bears the burden of showing the absence of an issue of material fact. *Stringer*, 705 N.W.2d at 754. A material fact is one whose resolution will affect the result or outcome of the case. *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976); *Anderson*, 477 U.S. at 248. Affidavits supporting and opposing a motion for Summary Judgment must set forth facts as would be admissible in evidence. MINN. R. CIV. P. 56.05. "When deciding any summary- Source PDF page 21 judgment motion, the district court must disregard hearsay evidence that would be inadmissible at trial." *In re Trusts A & B of Divine*, 672 N.W.2d 912, 921 (Minn. App. 2004).

If the moving party presents a prima facie case for Summary Judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific disputed facts that create a genuine issue of material fact for trial. MINN. R. CIV. P. 56.05; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). This demonstration requires more than resting on the averments or denials of the party's pleading. MINN. R. CIV. 56.05; *Stringer*, 705 N.W.2d at 753. In other words, "[s]peculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). The nonmoving party must demonstrate a genuine issue of material fact by presenting "substantial evidence" that creates more than "a metaphysical doubt as to a factual issue" and that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." DLH, 566 N.W.2d at 70-71. Further, Summary Judgment is appropriate when a non-moving party fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Bersch v. Rgnonti & Assocs.*, 584 N.W.2d 783, 786 (Minn. App. 1998).

Civil Damages Act

The Minnesota Civil Damages Act, or the Dram Shop Act, makes selling, giving, furnishing or in any way procuring alcoholic beverages for the use of an obviously intoxicated person illegal. See Minn. Stat. § 340A.502 (2009). Further, the act provides a remedy for such sales:

Source PDF page 22

> A spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person or by the intoxication of another person, has a right of action in the person's own name for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages. Minn. Stat. § 340A.801, subd. 1 (2009).

To prevail in a dram shop action under this statute, the claimant must prove: (1) that the sale of alcohol was illegal; (2) that the violation was substantially related to the purpose sought to be achieved by the Act; (3) that the illegal sale of alcohol caused or contributed to intoxication; and (4) that the intoxication was a proximate cause of the Plaintiff's injuries. *Rambaum v. Swisher,* 435 N.W.2d 19, 21 (Minn.1989); *Osborne v. Twin Town Bowl, Inc.,* 749 N.W.2d 367, 372 (Minn.2008).

Illegal Sale

To prove an illegal sale occurred, Plaintiff must provide evidence of an illegal sale of alcohol; in other words, that the Rusty Nail sold or furnished intoxicating liquor to Spilde while he was "obviously intoxicated." *Osborne v. Twin Town Bowl Inc.,* 749 N.W.2d 367, 372 (Minn. 2008). The standard for determining whether a person is "obviously intoxicated" is whether intoxication is "observable in appearance or behavior of the person to whom the intoxicating liquor is furnished." *Mjos v. Village of Howard Lake,* 287 Minn. 427, 178 N.W.2d 862, 867 (Minn. 1970).

Source PDF page 23

Defendant suggests that because the bartenders testified that they did not observe any obvious signs of intoxication in Spilde, that he was not obviously intoxicated. The Court finds this argument unpersuasive. In *Murphy v. Hennen*, the Court found sufficient evidence to sustain a finding of an illegal sale despite no witness testimony regarding the allegedly intoxicated person's behavior in the bar. This was due to the nature and extent of his drinking and his conduct upon leaving the bar. See *Murphy v. Hennen,* 119 N.W.2d 489 (Minn. 1963).

"A finding of intoxication and obvious intoxication does not require proof of any specified amount of drinking or of any degree of intoxication, but simply proof that, as a result of drinking intoxicants, a person has lost control to any extent of his mental or physical faculties and that such condition is, or should be, observable or apparent to the seller." *Id.* at 493.

Spilde's statement about being intoxicated; his small stature, the amount of alcohol that he consumed throughout the night; his behavior upon leaving the bar (yelling insults at a stranger); the report of Dr. Jon Van Berkom regarding Spilde's alcohol consumption; and Spilde's actual BAC all create enough of a genuine issue of fact as to whether the Rusty Nail made an illegal sale to preclude summary judgment.

Purpose of the Civil Damages Act

The purpose of the Civil Damages Act is as follows: to provide a remedy for a spouse or other injured person for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages. See Minn. Stat. § 340A.801, subd. 1 (2009). "The intent and purpose of the Act's provisions are clear. The mischief to be suppressed is the illegal furnishing of liquor causing a person's intoxication and the remedy to be advanced is the Source PDF page 24 protection of innocent third persons injured as a result by providing those persons a claim of civil damage." *Lefto v. Hoggsbreath Enterprises, Inc.* 581 N.W.2d 855, 857 (Minn.1998).

Here, it is undisputed that Phillip Kaste was injured after being shot in the chest by Michael Spilde. The Plaintiffs in this case fall within the category of those contemplated in the Act. Plaintiffs allege

that this assault occurred after the Rusty Nail illegally furnished alcohol to Spilde, causing his intoxication and the injury. Therefore, this case is clearly within the scope and purpose of the Minnesota Civil Damages Act.

Causation

In addition to proving that an illegal sale occurred, there must also be a "show[ing] by competent proof" that the illegal sale of alcohol "caused or contributed to...intoxication and that the same was a proximate cause of the [Plaintiff's] injuries." *Kryzer v. Champlin Am. Legion No. 600,* 494 N.W.2d 35, 36-37 (Minn.1992) quoting *Hartwig v. Loyal Order of Moose, Brainerd Lodge,* 91 N.W.2d 794, 801 (Minn. 1958).

A genuine issue of material fact remains as to the issue of causation relating to Spilde's intoxication. Spilde's bar tab indicated that he had purchased 6 beers and a shot at the Rusty Nail, this was after he consumed a beer and a possibly shot at another bar. Spilde stated that he was intoxicated on the night in question. These facts provide a sufficient causal link between Defendant's alleged illegal sale and Spilde's alleged intoxication.

The next step in the analysis is whether there is a genuine issue of material fact as to whether Spilde's intoxication was a proximate cause of Plaintiff's injury. In other words, the intoxication must be a substantial factor in bringing about the injury. *Osborne,* 749 N.W.2d at 373. Source PDF page 25 As such, the intoxication need not be the sole cause of injury for liability to attach under the Dram Shop Act. *Id.* at 375-76.

Here, it is possible that Spilde's choices and actions substantially resulted from his intoxicated state of mind. Much like an intoxicated driver who speeds up at a red light because his alcohol-impaired judgment leads him to believe he can make it through an intersection before an oncoming vehicle arrives, or an intoxicated individual who decides to jump off a bridge when faced with arrest, Spilde's decision to engage in a verbal altercation with Kaste and ultimately to shoot him, could have been substantially and directly caused by his alcohol-impaired judgment. See *Kvanli v. Village of Watson,* 272 Minn. 481, 485, 139 N.W.2d 275, 278 (1965); *Osborne v. Twin Town Bowl Inc.,* 749 N.W.2d 367, 374 (Minn. 2008).

Additionally, the *Osborne* Court alluded that causation is apparent in a dram shop case when it relates to a "bar fight scenario." *Osborne,* 479 N.W.2d at 378. The case at hand is factually similar to a bar fight scenario.

In this case, there is the statement from Spilde that he doesn't believe he would have shot anyone if he had not been intoxicated. Therefore, a jury could find that Kaste's injuries were proximately caused by Spilde's intoxication. This creates a genuine issue of material fact that precludes summary judgment.

II. Motion for Default Judgment

Minn. R. Civ. Pro. 55.01 governs the procedure for Default Judgment. “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against that party….” Minn. R. Civ. P. 55.01.

Source PDF page 26

Defendant seeks Default Judgment against Third-Party Defendant Michael Spilde. Defendant represented to the Court that Spilde had not participated in the proceedings thus far and had not entered any Answer. The Court does not agree. Spilde has “otherwise defend[ed]” as contemplated within the rule. Michael Spilde is currently incarcerated; this makes his appearing at Court hearings quite difficult, but he has still attempted to participate in the proceedings.

Spilde was served with the Third Party Summons and Complaint on June 5, 2019. Defendant submitted as Exhibit A, in their Motion for Default Judgment, a letter from Spilde dated June 5, 2019, indicating that he was attempting to secure counsel and requesting a continuance. Spilde further explained that the prison’s legal library was scheduled to be closed for a period of time in June 2019 and this had complicated his ability to research and respond to the Summons and Complaint. At the hearing on November 21, 2019, Defendant represented that although a letter had been received from Spilde on November 15, 2019, no Answer had been filed. The contents of the letter, marked as Exhibit MTN 001, are as follows:

> Answers by Michael Spilde.
>
> I have read the papers served upon me and do not understand how to respond.
>
> Because I do not understand the papers served upon me, I deny the allegations except for my name is Michael Spilde. I do not deny I was at The Rusty Nail. I do not deny I consumed alcohol and was intoxicated by the alcohol provide to me by The Rusty Nail.
>
> Respectfully,
>
> /s/ Michael Spilde
>
> 11-12-19

Source PDF page 27

This Court finds that despite its late service to the Defendant’s, this letter constitutes an Answer by Spilde. Given Spilde’s incarceration and difficulty accessing other materials, the Court does not find his delay in answering the complaint to be inexcusable. Additionally, Spilde has demonstrated his desire to participate in the proceedings by cooperating to be deposed and making himself available for communications with opposing Counsel.

The Court finds that Spilde has attempted to participate in the proceedings and has otherwise defended himself against the summons and complaint; therefore, the Court denies Defendant’s Motion for Default Judgment.

III. Motion to Dismiss Sara Boyum and Nathan Boyum as Individual Parties

The motion to dismiss the Boyums as individual parties to the action is not opposed by the Plaintiff. Therefore, the Court grants the motion.

Conclusion

For the above stated reasons,

1. Defendant's Motion for Summary Judgment is hereby **DENIED**;
2. Defendant's Motion for Default Judgment is **DENIED;** and
3. Defendant's Motion to Dismiss the Boyums as individual parties is **GRANTED.**

KMM
K.M.M.

Court's footnotes

1 Sara Boyum had briefly left the bar to bring her babysitter home and later returned to assist with cleaning up.

2 By contrast, Michael Spilde weighed approximately 125 lbs. at the time of the incident.