

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN TANNER HANSEN,  
INDIVIDUALLY; CRAIG LEFEVRE,  
INDIVIDUALLY; JOSEPH GRILL,  
INDIVIDUALLY; CARMA MAHN AND  
EDWARD MAHN, INDIVIDUALLY  
AND/OR AS PARENTS OF STEPHEN  
TANNER HANSEN; CLARK LEFEVRE  
AND STACEY LEFEVRE,  
INDIVIDUALLY AND/OR AS PARENTS  
OF CRAIG LEFEVRE; AND THOMAS  
GRILL, INDIVIDUALLY AND/OR AS  
PARENT OF JOSEPH GRILL,  
Appellants,  
vs.  
TERRIBLE HERBST, INC., A NEVADA  
CORPORATION,  
Respondent.

No. 45082

**FILED**

JAN 04 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order, certified as final under NRCP 54(b), dismissing appellants' complaint against respondent Terrible Herbst, Inc. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

In their district court complaint, appellants alleged that several defendants, who remain parties below, threw rocks and beer cans at appellants' car, injuring appellants and damaging their property. Appellants also named as a defendant Terrible Herbst, asserting that Terrible Herbst sold beer to a minor, who later participated in the beer can and rock throwing incident. According to appellants, Terrible Herbst was negligent in hiring and training its employees, who then negligently sold beer to a minor, proximately causing appellants' physical and emotional injuries and damages. Terrible Herbst filed a motion to dismiss, arguing that, in cases where intoxicated persons injure others,

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the party who consumed the alcohol is deemed the proximate cause of any damages. The district court granted the motion, certifying its order as final. This appeal followed.

On appeal, appellants argue that they alleged not only that their injuries were related to the minor defendant's alcohol consumption, but also that their injuries resulted from physical misuse of the alcoholic beverages, *i.e.*, throwing the cans. Thus, they assert that common law principles, providing that liquor vendors are not liable for patrons' acts, do not govern their negligent hiring and training and intentional infliction of emotional distress claims. Appellants contend that, although silent on civil liability, NRS 202.055 sets forth a duty of care to which Terrible Herbst must adhere, namely not selling alcohol to minors, in order to protect minors and also members of the general public, including appellants. According to appellants, Terrible Herbst breached its duty, proximately causing appellants' injuries and damages.

This court's review of the order dismissing appellants' complaints is rigorous,<sup>1</sup> as this court, in determining whether appellants have set forth allegations sufficient to state a claim for relief,<sup>2</sup> accepts all factual allegations in appellants' complaint as true and construes all inferences in their favor.<sup>3</sup> Accordingly, appellants' complaint was properly dismissed only if their allegations would not entitle them to any relief.<sup>4</sup>

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<sup>1</sup>Vacation Village v. Hitachi America, 110 Nev. 481, 874 P.2d 744 (1994).

<sup>2</sup>Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

<sup>3</sup>See Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).

<sup>4</sup>Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

In Hamm v. Carson City Nugget, Inc.,<sup>5</sup> this court adopted the common law rule that liquor vendors cannot be held liable to third persons for alcohol-related injuries. The rationale underlying this non-liability principle is that individuals, drunk or sober, are responsible for their own torts.<sup>6</sup> In other words, the common law, and Nevada by subscribing to it, considers the act of selling an intoxicating beverage too remote to serve as the proximate cause of an injury resulting from the beverage purchaser's negligent conduct.<sup>7</sup> Instead, the purchaser's beverage consumption is deemed to be the injuries' proximate cause.<sup>8</sup> And, in explaining that any civil liability imposed on liquor vendors would have to be legislatively established, this court has repeatedly concluded that a liquor vendor's violation of a criminal statute, namely NRS 202.055, does not constitute negligence per se.<sup>9</sup>

Having reviewed the record in light of the above-referenced standards and legal principles, we conclude that the district court properly dismissed appellants' claims against Terrible Herbst. Although appellants attempt to draw a distinction between injuries that resulted from an alcoholic beverage container being used as a make-shift weapon and

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<sup>5</sup>85 Nev. 99, 450 P.2d 358 (1969).

<sup>6</sup>Hinegardner v. Marcor Resorts, 108 Nev. 1091, 1093, 844 P.2d 800, 802 (1992).

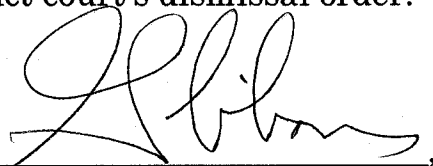
<sup>7</sup>Id.

<sup>8</sup>See Yoscovitch v. Wasson, 98 Nev. 250, 645 P.2d 975 (1982); Snyder v. Viani, 110 Nev. 1339, 885 P.2d 610 (1994).

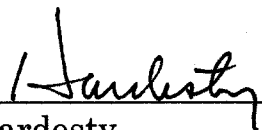
<sup>9</sup>See Hamm, 85 Nev. at 102, 450 P.2d at 360; Bell v. Alpha Tau Omega, 98 Nev. 109, 642 P.2d 161 (1982); Hinegardner, 108 Nev. 1091, 844 P.2d 800; Snyder, 110 Nev. at 1341, 885 P.2d at 612.

injuries that resulted from an intoxicated person's conduct after consuming the container's contents, that purported distinction is illogical and, if anything, would further support the district court's dismissal order. As noted above, Nevada considers the act of selling an intoxicating beverage to be too remote to be considered the proximate cause of an injury resulting from the purchaser's conduct. It follows then, that the act of selling the beverage container itself, without regard to its contents, is even more remote and therefore cannot serve as the proximate cause of a third person's injuries. Regardless, all of appellants' claims stem from allegations that Terrible Herbst improperly sold alcohol to a minor, and, as we have repeatedly pointed out, the legislature has chosen not to impose any civil liability against liquor vendors who, whether willfully or carelessly, sell alcohol to a minor who then causes injuries to third parties.<sup>10</sup> Accordingly, we affirm the district court's dismissal order.

It is so ORDERED.

  
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Gibbons J.

  
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Douglas J.

  
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Hardesty J.

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<sup>10</sup>See Hinegardner, 108 Nev. at 1096, 844 P.2d at 804.

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Benson, Bertoldo, Baker & Carter, Chtd./Las Vegas  
Bowen Law Offices, Chtd.  
Moran & Associates  
Clark County Clerk