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Missouri Still Refuses to Impose Social Host Liability for Furnishing Alcohol to Minors

*Ritchie v. Goodman*¹

I. INTRODUCTION

Following the repeal of the Missouri Dramshop Act in 1934, Missouri courts did not recognize a civil cause of action against a supplier of alcohol for injuries suffered by a third person that were caused by an intoxicated person.² For many decades, a supplier of alcohol was immune from any liability.³ Gradually, as society took notice of the dangers created by intoxicated drivers, various courts began chipping away at this common law immunity.⁴ Jurisdictions across the country began imposing liability against commercial vendors of alcohol for the injuries caused by intoxicated patrons.⁵ In the early 1980s, the Missouri courts first recognized a cause of action against tavern owners.⁶ Currently, under the law of Missouri and a great majority of other states, a commercial vendor is liable for injuries sustained by a third party caused by an intoxicated person if the vendor sold intoxicating liquor to a visibly intoxicated person or minor.⁷

In recent years, many jurisdictions have expanded this liability to include not only commercial vendors, but social hosts as well.⁸ Despite this trend, however, Missouri has consistently failed to recognize a civil cause of action against social hosts for injuries caused by their intoxicated guests.⁹ In *Ritchie v. Goodman*, the Court of Appeals for the Southern District of Missouri, following case law from the early 1980s, refused to expand civil liabil-

1. 161 S.W.3d 851 (Mo. Ct. App. 2005).

2. *See Von Ruecker v. Holiday Inns, Inc.*, 775 S.W.2d 295, 298 (Mo. Ct. App. 1989).

3. *See id.*

4. *See id.*

5. *See Id.* at 572-73 & n.1 (Mo. Ct. App. 1983).

6. *See Carver*, 647 S.W.2d 570; *Nesbitt v. Westport Square, Ltd.*, 624 S.W.2d 519 (Mo. Ct. App. 1981); *Sampson v. W.F. Enters., Inc.*, 611 S.W.2d 333 (Mo. Ct. App. 1981).

7. *See* MO. REV. STAT. § 537.053 (2000 & Supp. 2002). *See, e.g.*, Steven A. Ramirez, Comment, *Social Host Liability and Missouri Tort Law*, 29 ST. LOUIS U. L.J. 509, 510 n.5 (1985).

8. *See infra* note 93 and accompanying text.

9. *Ritchie v. Goodman*, 161 S.W.3d 851, 855-57 (Mo. Ct. App. 2005). Missouri courts have failed to recognize social host liability both in situations involving the furnishing of alcohol to minors and also in situations involving the furnishing of alcohol to visibly intoxicated guests of legal drinking age. *See, e.g., id.* at 855; *McClure v. McIntosh*, 770 S.W.2d 406 (Mo. Ct. App. 1989).

ity to social hosts for furnishing alcohol to minors.¹⁰ This Note argues that the *Ritchie* decision provides inadequate compensation for innocent victims of intoxicated minor drivers and does nothing to deter the threat caused by underage drunk driving.

II. FACTS AND HOLDING

Steve and Anita Ritchie, parents of Kelsey Ritchie, a teenage girl who died in an automobile accident involving an intoxicated minor driver, brought a wrongful death action against Frank, Jeremy, and Sue Shumard,¹¹ hosts of the party at which the intoxicated minor driver was served alcohol.¹² The majority of those present at the party were high-school students, and none were of legal drinking age.¹³ Prior to the party, several of the minors gathered money for a keg of beer, which was placed in the Shumard's backyard.¹⁴ At the party, the minors built a bonfire, drank from the keg, and passed around a bottle of vodka.¹⁵

During the party, a group of four minors left the residence in a Ford Mustang, with two boys in the front and Kelsey Ritchie and another girl riding in the back seat.¹⁶ About a mile from the Shumard's home, the driver pulled over to the side of the road, and he and the other boy exited the car to urinate.¹⁷ With the two girls remaining in the backseat, the two boys decided to wait by the side of the road for another pair of friends who were also leaving the party.¹⁸ Moments later, their friend's car, driven by an intoxicated Adam Tomblin, crested a hill at approximately eighty-two miles per hour and crashed into the rear of the parked Mustang.¹⁹ The resulting collision killed Kelsey Ritchie and the other girl in the back seat; the four others all sustained serious injuries.²⁰

In their petition, the Ritchies premised the Shumards' liability on three "separate but related" theories.²¹ The Ritchies first asserted a public policy argument that would impose joint liability on social hosts who serve alcohol

10. 161 S.W.3d 851 (Mo. Ct. App. 2005).

11. *Id.* at 852. The trial court acknowledged that the Ritchies had dismissed their cause of action as to the other defendants, John Does 1 through 5 and Kelly Goodman. *Id.* at 852 n.2.

12. *Id.* at 852.

13. *Id.* at 853.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

to minors.²² Second, the Ritchies argued that the Shumards were “negligent in failing to supervise the minors attending the party upon their premises.”²³ Third, they argued that under section 318 of the Restatement (Second) of Torts (“Restatement”) the Shumards were liable for the conduct of the minors who attended the party at their home.²⁴

The Shumards filed a motion to dismiss, asserting that the Ritchies’ petition failed to state a claim upon which relief could be granted because Missouri does not impose civil liability upon social hosts.²⁵ The Shumards also maintained that their conduct was neither the proximate cause nor the cause in fact of Kelsey’s death.²⁶ Additionally, they maintained that they owed no duty to Kelsey under section 318 of the Restatement.²⁷ The trial court sustained the Shumards’ motion and dismissed the Ritchies’ petition.²⁸

On appeal, the Ritchies argued that, in light of the “public policy and common law of the State of Missouri,” the trial court had erred in dismissing their petition.²⁹ Further, they argued that the trial court erred in dismissing their claim of “negligent supervision,”³⁰ and finally, that it erred in dismissing their cause of action under section 318 of the Restatement.³¹

The court of appeals, however, affirmed the trial court’s dismissal, holding that: (1) neither the principles of common law negligence nor any Missouri statute imposes a duty upon social hosts to abstain from furnishing alcohol to guests under the age of twenty-one; and (2) the proximate cause of Kelsey’s death was not the furnishing of the alcoholic beverages to the minor, but the minor’s consumption of the alcoholic beverages.³²

III. LEGAL BACKGROUND

The earliest reported Missouri case in which someone was held civilly liable for furnishing alcohol was decided in 1850, when a slave owner sued the owners of a store that had sold alcoholic beverages to a slave who died of

22. *Id.* They based this argument on the fact that it was reasonably foreseeable that the intoxicated minor guests would negligently operate their vehicles and that such negligence was the proximate cause of their daughter’s death. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 853-54.

27. *Id.* at 854.

28. *Id.*

29. *Id.* According to the Ritchies, the public policy and common law imposed joint civil liability upon social hosts who allow minors to drink alcohol on their premises and then operate vehicles. *Id.*

30. *Id.* at 855.

31. *Id.* at 856.

32. *Id.* at 854-57.

alcohol poisoning.³³ Because Missouri statute prohibited the sale of liquor to a slave without the owner's consent,³⁴ the court in *Skinner v. Hughes* ruled that the slave owner was entitled to recover damages, holding that the proximate cause of the slave's death was the furnishing of alcohol by the store.³⁵

Since *Skinner*, the law regarding civil liability for furnishing alcohol has evolved. In 1919, the Missouri Dram Shop Act was enacted, creating a cause of action against the sellers of intoxicating liquors when the sale caused or contributed to the intoxication of a person who subsequently harmed another.³⁶ However, in 1934, after Prohibition ended, the Missouri General Assembly repealed the Dram Shop Act, thus leaving issues of dram shop liability to be decided by the courts.³⁷ After 1934, there was no dram shop liability in Missouri until the early 1980s,³⁸ when courts decided *Sampson v. W.F. Enterprises, Inc.* and *Nesbitt v. Westport Square, Ltd.*³⁹

In *Sampson*, the parents of a deceased minor brought a wrongful death action against tavern owners after their son's consumption of alcohol at the tavern led to a fatal automobile accident.⁴⁰ The Western District Court of Appeals held that a civil cause of action existed under section 311.310 of the Missouri Revised Statutes.⁴¹ The court found that the statute's purpose was not only to regulate the liquor industry, but also to protect persons under the age of twenty-one.⁴²

Similarly, in *Nesbitt*, an eighteen-year-old passenger sued a tavern owner for her injuries caused by an automobile accident after she and the intoxicated minor driver had both been illegally served drinks at the tavern.⁴³ After the trial court dismissed the claim, the Court of Appeals for the Western District reversed, following the reasoning set forth in *Sampson*.⁴⁴

In *Carver v. Schafer*, the Court of Appeals for the Eastern District allowed the plaintiff to bring a cause of action against a tavern owner after an intoxicated driver struck and killed one of plaintiff's family members.⁴⁵

34. *Skinner v. Hughes*, 13 Mo. 440 (1850).

34. *Andres v. Alpha Kappa Lambda Fraternity*, 730 S.W.2d 547, 550 (Mo. 1987) (citing MO. REV. STAT. ch. 72, § 7 (1845)).

35. *Skinner*, 13 Mo. at 443.

36. William J. Ford, *Alcohol Supplier's Liability in Missouri*, 45 J. MO. BAR, 193, 193 (1989) (citing MO. REV. STAT. § 4487 (1929)).

37. *Von Ruecker v. Holiday Inns, Inc.*, 775 S.W.2d 295, 298 (Mo. Ct. App. 1989).

38. *Id.*

39. *Id.* at 298 (citations omitted).

40. *Sampson v. W.F. Enters., Inc.*, 611 S.W.2d 333, 334 (Mo. Ct. App. 1980).

41. *Id.* at 336-37. The statute made it a misdemeanor to sell intoxicating liquor to persons under the age of 21. MO. REV. STAT. § 311.310 (1978).

42. *Sampson*, 611 S.W.2d at 337.

43. *Nesbitt v. Westport Square, Ltd.*, 624 S.W.2d 591 (Mo. Ct. App. 1981).

44. *Id.* at 519-20.

45. 647 S.W.2d 570 (Mo. Ct. App. 1983).

However, instead of relying on section 311.310, as the Western District had done in *Sampson* and *Nesbitt*, the Court of Appeals for the Eastern District cited general principles of common law negligence and held that the standard of ordinary care required a tavern owner to refrain only from serving a *visibly* intoxicated patron.⁴⁶ Nevertheless, the *Carver* court did mention that section 311.310 was “indicative of Missouri public policy” that everyone should use ordinary care to avoid reasonably foreseeable injuries.⁴⁷

In 1985, however, the Missouri legislature enacted section 537.053.⁴⁸ Section 537.053 prohibited dram shop liability and codified the common law rule that the consumption, not the furnishing, of alcoholic beverages is the proximate cause of injuries caused by intoxicated persons, except in cases in which the tavern owner has already been convicted of, or has received a suspended imposition of sentence for, selling intoxicating liquor to a minor or visibly intoxicated person.⁴⁹ This statute served to eliminate dram shop liability except when there was a criminal conviction.⁵⁰

In 2000, though, the Missouri Supreme Court ruled in *Kilmer v. Mun*, that allowing a civil cause of action under section 537.053 only if a prosecutor decides to prosecute and obtains a conviction was an arbitrary and unreasonable barrier to the state constitutional right to bring a civil action.⁵¹ Thus, after *Kilmer v. Mun*, a cause of action exists under section 537.053 against a person who sells intoxicating liquor when the buyer is either under the age of twenty-one or is visibly intoxicated.⁵²

While *Sampson*, *Nesbitt*, *Carver*, and *Kilmer* dealt with vendors of liquor, some have argued that, by logical extension, a social host who furnishes alcohol to his or her guests has a duty, either under section 311.310 or the common law, not to furnish alcohol to underage or visibly intoxicated guests.⁵³ The first case to address this issue in Missouri was *Harriman v. Smith*, decided in 1985.⁵⁴

46. *Id.* at 572.

47. *Id.* at 575.

48. MO. REV. STAT. § 537.053 (1985).

49. *Id.*

50. *Id.*

51. , 17 S.W.3d 545, 552-53 (Mo. 2000). Article I, section 14 of the Missouri Constitution states: “That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay.” MO. CONST. art. I, § 14. In the Western District, the court recognized the pre-2002 version of section 537.053 as being unconstitutional. *State ex rel Dos Hombres-Independence, Inc. v. Nixon*, 48 S.W.3d 76 (Mo. Ct. App. 2001).

52. See MO. REV. STAT. § 573.053 (2000).

53. *Andres v. Alpha Kappa Lambda Fraternity*, 730 S.W.2d 547, 550 (Mo. 1987).

54. 697 S.W.2d 219 (Mo. Ct. App. 1985).

In *Harriman*, the trial court dismissed a father's action against social hosts after his son was killed in an automobile accident while he was a passenger in a car driven by an intoxicated minor driver.⁵⁵ On appeal to the Eastern District, the father argued that the rationale employed in the *Carver* case, in which the court allowed a civil cause of action against a tavern owner for serving liquor to a visibly intoxicated patron, should also be applied to a social host who serves alcohol to a guest in his home.⁵⁶

In rejecting the father's argument, the *Harriman* court distinguished between the situation of a social host and that of a commercial vendor.⁵⁷ First, tavern owners realize a profit from selling alcoholic beverages and benefit financially when customers purchase additional drinks. Social hosts, by contrast, often experience no pecuniary gain from serving alcoholic beverages to their guests.⁵⁸ Second, a tavern owner is better able to insure against the risk of loss as a cost of doing business.⁵⁹ Finally, the *Harriman* court mentioned that a tavern owner's expertise in determining the extent of an individual's intoxication is vastly superior to the social host's.⁶⁰ As such, the court was unwilling to extend dram shop liability to social hosts, noting that the judiciary's inability to measure all the possible effects of such a decision indicated that the response might be better left to the legislature.⁶¹ The court also declined to recognize a cause of action arising out of section 311.310, because the statute by its terms applied only to liquor licensees, not social hosts.⁶²

Two years after the Eastern District decided *Harriman*, the Missouri Supreme Court tackled the issue of social host liability in *Andres v. Alpha Kappa Lambda Fraternity*.⁶³ In *Andres*, the parents of a deceased fraternity member brought a wrongful death action against the fraternity after their son died of acute alcohol intoxication following a fraternity party.⁶⁴ In denying the parents' action, the court adopted the *Harriman* analysis, stating that because imposing liability upon social hosts would have a "substantial impact on . . . everyday social and family affairs," the duty imposed on social hosts should be determined by the legislature.⁶⁵

Most recently, in *Gabelsberger v. J.H.*, the Court of Appeals for the Western District followed the trend of *Harriman* and *Andres* when it held that no cause of action existed for parents of a deceased motorist against a social host who, while not a vendor, received money from minors for the purpose of

55. *Id.* at 220.

56. *Id.* at 220-21.

57. *Id.* at 221.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* at 221-22.

62. *Id.* at 223.

63. 730 S.W.2d 547 (Mo. 1987) (en banc).

64. *Id.* at 548-49.

65. *Id.* at 553 (alteration in original) (quoting *Harriman*, 697 S.W.2d at 221).

purchasing alcohol for the minors.⁶⁶ The court held that because the defendant did not have a license to sell liquor, he did not qualify as either a non-business dispenser or a tavern owner under section 537.053, and thus owed no duty to the plaintiffs.⁶⁷

Meanwhile, in other jurisdictions, many courts have extended liability to social hosts. In 1971, before Missouri had even begun to impose liability on commercial vendors for negligently selling alcohol, Oregon became the first state to impose social host liability.⁶⁸ In *Weiner v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, the Oregon Supreme Court held a social host fraternity liable for injuries sustained by a passenger who had been riding with a driver who had become intoxicated at the fraternity's party.⁶⁹ The court premised the fraternity's duty on common law negligence principles, holding that the host fraternity had a duty to refuse to serve alcohol to a guest when it was unreasonable to allow him to drink.⁷⁰ The court concluded that it was unreasonable to allow the guest to drink because the guest was a minor.⁷¹

In 1978, in the case of *Coulter v. Superior Court*, the California Supreme Court imposed social host liability.⁷² In *Coulter*, the court found an owner/manager of an apartment complex liable, holding that, under California's Business and Professions Code and common law principles of negligence, a social host who serves alcohol to an obviously intoxicated person, thereby creating a reasonably foreseeable risk of harm, is liable to third parties for the injuries inflicted by the intoxicated person.⁷³ However, less than five months after the decision, the California legislature passed a statute abrogating the court's holding in *Coulter*.⁷⁴

In 1984, the New Jersey Supreme Court addressed the issue of social host liability in *Kelly v. Gwinnell*.⁷⁵ In *Kelly*, the court found the guest and host jointly liable for the injuries inflicted on a third party by the intoxicated guest after the host had served the guest alcohol, knowing the guest to be intoxicated and knowing that he would soon be operating a motor vehicle.⁷⁶

Since *Kelly v. Gwinnell*, more jurisdictions have begun to recognize social host liability, premising the duty either on statutes or common law principles of negligence. Currently, there are thirty-two states that have imposed

66. 133 S.W.3d 181, 185 (Mo. Ct. App. 2004).

67. *Id.* at 186.

68. *Weiner v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, 485 P.2d 18 (Or. 1971).

69. *Id.* at 23.

70. *Id.*

71. *Id.*

72. 577 P.2d 669 (Cal. 1978).

73. *Id.* at 670, 673-74.

74. *Cartwright v. Hyatt Corp.*, 460 F. Supp. 80, 81-82 (D.D.C. 1978).

75. 476 A.2d 1219 (N.J. 1984).

76. *Id.* at 1221-22, 1230.

social host liability in some form.⁷⁷ Thus, while a growing majority of states have recognized social host liability, from the 1980s to the present, Missouri courts have continued to be resolute in their position that social hosts have no duty to abstain from furnishing alcoholic beverages to minor guests.

IV. INSTANT DECISION

In *Ritchie v. Goodman*, the Court of Appeals for the Southern District decided whether to hold the Shumards liable for the death of Kelsey Ritchie.⁷⁸ The issues before the court were whether, under Missouri law, there exists a duty upon social hosts to abstain from serving alcoholic beverages to underage guests, and whether the furnishing of alcoholic beverages by hosts, as opposed to the consumption of alcoholic beverages by a minor, could be considered the proximate cause of injuries or a death resulting from an intoxicated minor's actions.⁷⁹ The court in *Ritchie* held that there was no such duty for social hosts, and even if this duty existed, the consumption of alcoholic beverages by the minor, rather than the furnishing, was the proximate cause of Kelsey's death.⁸⁰

The court first considered whether "the public policy and common law of the State of Missouri" provide that social hosts who allow underage guests to drink alcoholic beverages on their premises and to operate motor vehicles should be held "jointly liable for the negligence of the minors in the use and operation of the motor vehicles."⁸¹ In making this determination, the court

77. See COLO. REV. STAT. § 12-47-801 (2006); GA. CODE ANN. § 51-1-40 (2000); IDAHO CODE ANN. § 23-808 (2001); MINN. STAT. § 340A.801 (2004); MONT. CODE ANN. § 16-6-305 (2005); N.Y. GEN. OBLIG. LAW § 11-100 (McKinney 2001); UTAH CODE ANN. § 32A-14a-102 (2005); VT. STAT. ANN. tit. 7 § 501 (1999); WIS. STAT. § 125.035 (2001); WYO. STAT. ANN. § 12-6-101 (2005); *Martin v. Watts*, 513 So. 2d 958 (Ala. 1987); *Estate of Hernandez v. Ariz. Bd. of Regents*, 866 P.2d 1330 (Ariz. 1994); *Ely v. Murphy*, 540 A.2d 54 (Conn. 1988); *Newsome v. Haffner*, 710 So. 2d 184 (Fla. Dist. Ct. App. 1998); *Brattain v. Herron*, 309 N.E.2d 150 (Ind. Ct. App. 1974); *Bauer v. Dann*, 428 N.W.2d 658 (Iowa 1988); *McQuiggan v. New England Tel. & Tel. Co.*, 496 N.E.2d 141 (Mass. 1986); *Longstreth v. Gensel*, 377 N.W.2d 804 (Mich. 1985); *Hart v. Ivey*, 420 S.E.2d 174 (N.C. 1992); *Hickingbotham v. Burke*, 662 A.2d 297 (N.H. 1995); *Kelly v. Gwinnell*, 476 A.2d 1219 (N.J. 1984); *Walker v. Key*, 686 P.2d 973 (N.M. Ct. App. 1984); *Mitseff v. Wheeler*, 526 N.E.2d 798 (Ohio 1988); *Weiner v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, 485 P.2d 18 (Or. 1971); *Congini v. Portersville Valve Co.*, 470 A.2d 515 (Pa. 1983); *Biscan v. Brown*, 160 S.W.3d 462 (Tenn. 2005); *Hansen v. Friend*, 824 P.2d 483 (Wash. 1992).

78. 161 S.W.3d 851, 852 (Mo. Ct. App. 2005).

79. *Id.* at 854-57.

80. *Id.* at 857.

81. *Id.* at 854.

looked to the Eastern District case *Harriman v. Smith*⁸² and the Missouri Supreme Court case *Andres v. Alpha Kappa Lambda Fraternity*.⁸³

The court noted that *Harriman* recognized a common law prohibition against imposing civil liability upon social hosts for damages resulting from serving alcohol to minor guests.⁸⁴ It agreed with the *Harriman* court that customers of a tavern are business invitees, whereas social guests are licensees, and so a tavern owner owes a greater duty of care than a social host.⁸⁵ The court quoted the *Andres* opinion, which explained that any duty imposed upon social hosts should be determined by the legislature because it would cause such a “substantial impact on everyday social and family affairs.”⁸⁶ Further, the court quoted the *Andres* rationale for distinguishing a tavern owner’s duty from that of a social host — the differences in pecuniary incentives, expertise in evaluating how much alcohol a guest can safely consume, and the level of insurance protection.⁸⁷

The court rejected the Ritchies’ attempt to extend the application of section 537.053, in combination with section 302.505 of the Missouri Revised Statutes, to support their claim against the Shumards.⁸⁸ It stated that the exception in section 537.053, which allows for civil liability against tavern owners licensed to sell liquor for consumption on the premises when they sell to minors, applied only to that limited group.⁸⁹ Because the Shumards were not licensed tavern owners, section 537.053 could not provide for a civil cause of action against them.⁹⁰ The court also stated that nowhere in section 302.505,⁹¹ Missouri’s “zero-tolerance” law prohibiting minors from driving while intoxicated, is there any legislative expression that would impose liability upon someone who provides intoxicants to the minor.⁹² In denying the

82. See *supra* notes 69-78 and accompanying text.

83. See *supra* notes 79-82 and accompanying text.

84. *Richie*, 161 S.W.3d at 854 (citing *Harriman v. Smith*, 697 S.W.2d 219, 221 (Mo. Ct. App. 1985)).

85. *Id.* (citing *Harriman*, 697 S.W.2d at 221).

86. *Id.* (quoting *Andres v. Alpha Kappa Lambda Fraternity*, 730 S.W.2d 547, 553 (Mo. Ct. App. 1987)).

87. *Id.* (citing *Andres*, 730 S.W.2d at 553).

88. *Id.* at 855.

89. *Id.*

90. *Id.*

91. The statute, in pertinent part, provides for the suspension or revocation of the license of any person:

less than twenty-one years of age when stopped and was stopped upon probable cause to believe such person was driving while intoxicated . . . or driving with excessive blood alcohol content . . . or upon probable cause to believe such person violated a state, county or municipal traffic offense and such person was driving with a blood alcohol content of two-hundredths of one percent or more by weight.

MO. REV. STAT. § 302.505.1 (2000).

92. *Ritchie*, 161 S.W.3d at 855.

Ritchies' first point on appeal, the court acknowledged that while it had the power to modify the common law, it "decline[d] the invitation to enlarge the application of these statutes."⁹³

Second, the court considered whether the trial court erred in dismissing the Ritchies' claim of negligent supervision.⁹⁴ The Ritchies alleged that the Shumards negligently supervised the minors at the party when they allowed the minors, who were visibly intoxicated, to leave the party operating motor vehicles. According to the Ritchies, this negligence contributed to Kelsey's death.⁹⁵ In disposing of this argument, the court cited its previous holding in *Smith v. Gregg*.⁹⁶ In *Smith*, the defendants were hosts of a party in which most of the guests, and two of the three hosts, were underage.⁹⁷ One of the hosts, while intoxicated, assaulted a guest, who sued all of the party hosts.⁹⁸ The plaintiff alleged negligent supervision because the hosts failed to ensure that alcohol was not served to the underage guests and failed to supervise the conduct of the other hosts and guests at the party.⁹⁹ In siding with the defendants, the *Smith* court held that there was "no civil cause of action against social hosts for providing alcohol to minor guests."¹⁰⁰ The *Ritchie* court followed its holding in *Smith*, denying that the Shumards had any duty that would support a claim of negligent supervision.¹⁰¹

In the final step of its analysis, the court considered whether the trial court erred in dismissing the Ritchies' cause of action under section 318 of the Restatement.¹⁰² The Ritchies argued that the Shumards knew or should have known that they had the ability to control the minors' actions by taking away their car keys, and that the intoxicated minors leaving the party operating motor vehicles posed an unreasonable risk of bodily harm to others, in-

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 856 (citing *Smith v. Gregg*, 946 S.W.2d 807 (Mo. Ct. App. 1997)).

97. *Id.* (citing *Smith*, 946 S.W.2d at 809).

98. *Id.* (citing *Smith*, 946 S.W.2d at 809).

99. *Id.* (citing *Smith*, 946 S.W.2d at 809).

100. *Id.* (quoting *Smith*, 946 S.W.2d at 811).

101. *Id.* (citing *Smith*, 946 S.W.2d at 812).

102. *Id.* Section 318 of the Restatement states:

If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor[:]

(a) knows or has reason to know that he has the ability to control the third person, and

(b) knows or should know of the necessity and opportunity for exercising such control.

RESTATEMENT (SECOND) OF TORTS § 318 (1965).

cluding Kelsey Ritchie.¹⁰³ This negligence, they argued, contributed to Kelsey's death.¹⁰⁴ The court held that, even if section 318 of the Restatement could be interpreted to impose a duty upon the Shumards, case law clearly states that it was the consumption of alcohol, not the furnishing of it, that was the proximate cause of Kelsey's death.¹⁰⁵ Because of the policy arguments set out in the previous cases, most notably those of the Missouri Supreme Court in *Andres*, the court declined to extend its reading of section 318 so as to provide a basis for a negligence action against the Shumards.¹⁰⁶ Having denied all three of the Ritchies' points on appeal, the Court of Appeals for the Southern District affirmed the trial court's judgment to dismiss the claim against the Shumards.¹⁰⁷

V. COMMENT

The decision of the Court of Appeals for the Southern District in *Ritchie v. Goodman* did not stray from the Missouri courts' prior reluctance to extend civil liability to social hosts who serve alcoholic beverages to minors.¹⁰⁸ The *Ritchie* decision, therefore, keeps Missouri in line with a declining minority of states that also refuse to recognize a cause of action against social hosts for serving alcohol to visibly intoxicated persons or minors.¹⁰⁹ In reaching its conclusion, the *Ritchie* court expressed concern about the possible impact that an extension of social host liability would have on common family and social activities, and as a result, it deferred to the legislature for such policy-based considerations.¹¹⁰ The court also highlighted several reasons why civil liability is more appropriately imposed upon commercial vendors of alcohol than social hosts.¹¹¹ The court reasoned that, unlike commercial vendors, social hosts do not receive any pecuniary benefit from furnishing drinks to guests, and thus have no incentive to encourage excessive consumption.¹¹² Moreover, social hosts have less expertise in identifying how many drinks a guest can safely consume, and they cannot insure themselves against the risks of furnishing alcoholic beverages as a commercial vendor can.¹¹³

However, the court's argument against the appropriateness of imposing civil liability to social hosts fails with respect to the social host's presumed

103. *Ritchie*, 161 S.W.3d at 856.

104. *Id.*

105. *Id.* at 857.

106. *Id.*

107. *Id.*

108. *Id.* at 854.

109. *See supra* note 98 and accompanying text.

110. *Ritchie*, 161 S.W.3d at 854.

111. *Id.*

112. *Id.*

113. *Id.*

lack of expertise in identifying how many drinks a guest can safely consume. The court's reasoning distinguishing the social host's "expertise" from that of commercial vendor does not apply in situations involving social host liability for providing alcohol to minors. This consideration would be appropriate if the court were deciding whether to extend social host liability to the furnishing of alcohol to visibly intoxicated guests. However, in *Ritchie*, most of those in attendance at the party were high school students, and all were under the age of twenty-one.¹¹⁴ Presumably, the party hosts knew that most of those present were high school students, and, thus, there was no expertise necessary to determine that the guests being furnished alcohol were underage. In fact, because the Shumards knew the general age of many of the guests, they were probably in a better position to discern the age of the guests than a tavern owner, who could be more easily fooled by false identification. Whether the hosts could discern if the guests were intoxicated is not an issue in this situation because it is illegal for minors to consume any amount of alcohol and operate a motor vehicle.¹¹⁵

While the *Ritchie* court explained its reasons for not holding social hosts liable, it failed to recognize any reasons why imposing civil liability upon social hosts who serve underage guests alcoholic beverages would be a good idea. One reason supporting social host liability for serving alcohol to minors is that it would better compensate victims of alcohol related accidents. Without a cause of action against social hosts, victims are forced to seek compensation from the minor driver. Such a remedy is lacking because drivers under the age of twenty-one are much more likely to be judgment-proof and lack sufficient insurance.¹¹⁶ In addition, high-school and college-aged drivers are unlikely to have any significant assets from which an award could be collected; many of them have little or no income, little experience with credit, and potentially large student loan debts.¹¹⁷ On the other hand, social hosts, who are much more likely to have a job, home, and insurance, will often be much more financially capable of providing compensation.¹¹⁸ The ability of an innocent victim to sue both the minor driver and the social host would increase the likelihood of the innocent victim being adequately compensated for his or her injuries.

While it may seem unjust to hold the social host liable for the negligent actions of a minor driver, it might be more unfair to leave an innocent victim without any form of recovery for the damages. As the court in *Ritchie* de-

114. *Id.* at 853.

115. MO. REV. STAT. § 302.505.1 (2000 & Supp. 2003).

116. Kelly B. Dick, Comment, *Minor Drinking and Driving: California's Inconsistent and Inequitable Statutory Scheme of Social Host Immunity*, 25 U.C. DAVIS L. REV. 463, 485 n.142 (1992).

117. Sabrina A. Hall, *Clouded Judgment: The Implications of Smith v. Merritt in the Realm of Social Host Liability and Underage Drinking in Texas*, 30 ST. MARY'S L.J. 207, 233 n.141 (1998).

118. *Id.* at 234.

pended so heavily on the Missouri Supreme Court's reasoning in *Andres*, it is worth mentioning that the plaintiffs in *Andres* were the parents of a fraternity member who willingly participated in a drinking party and drank himself to death.¹¹⁹ *Ritchie*, on the other hand, did not involve a minor who drank himself to death, it did not concern a driver injuring or killing himself, and it did not involve a passenger who was injured or killed by an intoxicated driver with whom the passenger had willingly ridden.¹²⁰ Instead, *Ritchie* focused on the death of an innocent passenger who was riding in a vehicle that was struck by a vehicle driven by an intoxicated minor.¹²¹ While it could possibly be relevant that Kelsey had attended the party with everyone else,¹²² the point is that the injustice of an innocent victim being unable to recover damages because of the inability to sue the social host is more evident in a case like *Ritchie* than in *Harriman* or *Andres*, and it may be even more so in some future case.

Another reason for imposing social host liability for serving alcohol to minors is to reduce the number of alcohol-related automobile accidents. Automobile accidents are the leading cause of death for persons between the ages of fifteen and twenty years old.¹²³ In 2003, twenty-five percent of all fifteen- to twenty-year-old drivers killed in automobile accidents had been drinking.¹²⁴ Additionally, drivers between the ages of fifteen and twenty are involved in alcohol-related automobile accidents more often than any other comparable age group.¹²⁵ The statistics strongly support a causal link among underage drinking, automobile accidents, and injuries.¹²⁶ Because so many teenagers and innocent victims have been injured or killed in alcohol-related accidents, society needs a form of recourse to deter those who foster the illegal consumption of alcohol.¹²⁷

119. *Andres v. Alpha Kappa Lambda Fraternity*, 730 S.W.2d 547, 554 (Mo. 1987) (Blackmar, J., concurring).

120. This was the situation in *Harriman v. Smith*, 697 S.W.2d 219, 220 (Mo. Ct. App. 1985).

121. *Ritchie v. Goodman*, 161 S.W.3d 851, 853 (Mo. Ct. App. 2005).

122. *Id.*

123. National Highway Traffic Safety Administration, *Traffic Safety Facts 2002-Young Drivers*, available at <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2002/2002ydrfacts.pdf>.

124. National Highway Traffic Safety Administration, *Traffic Safety Facts 2003 Data-Young Drivers*, available at <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2003/809774.pdf>.

125. National Highway Traffic Safety Administration, *Alcohol and Highway Safety 2001: A Review of the State of Knowledge*, available at http://www.nhtsa.dot.gov/people/injury/research/AlcoholHighway/4_drinking_drivers.htm#6Age.

126. *Charles v. Seigfried*, 651 N.E.2d 154, 172 (Ill. 1995) (McMorrow, J., dissenting).

127. *Id.*

Imposing civil liability on social hosts who allow minors to drink and then permit them to operate motor vehicles is a step toward reducing the number of drunk driving accidents. The *Ritchie* court was more worried about the possible liability of social hosts than the injuries and fatalities caused by teenage drunk driving.¹²⁸ Social hosts who foster the intoxication of teenagers and allow them to drive deserve little sympathy when compared to the tragic consequences that can result from their actions.¹²⁹ If social hosts faced liability for the actions of their underage guests, they would be less likely to provide alcohol to those guests.¹³⁰ While social host liability could never eliminate such a widespread societal problem such as underage drinking and driving, removing these opportunities for teenagers to consume alcohol and operate motor vehicles would likely be a step in reducing the likelihood of alcohol-related automobile accidents involving minors.

VI. CONCLUSION

In *Ritchie v. Goodman*, the Court of Appeals for the Southern District faithfully adhered to the reasoning set forth by the Missouri Supreme Court in *Andres v. Alpha Kappa Lambda Fraternity*, and refused to impose social host liability for furnishing alcohol to minor guests.¹³¹ In so doing, the court was at odds with the growing number of jurisdictions that have extended liability to social hosts. While Missouri law remains firm in this area, social hosts continue to have little reason to avoid serving alcohol to minor guests, and innocent victims are unable to recover adequate damages from intoxicated minor drivers.

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128. *Ritchie v. Goodman*, 161 S.W.3d 851, 854 (Mo. Ct. App. 2005).

129. *Charles*, 651 N.E.2d at 171 (McMorrow, J., dissenting).

130. See Hall, *supra* note 142, at 235.

131. *Ritchie*, 161 S.W.3d at 854-55, 857.