REL: April 24, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1190092

Tamikia Everheart

v.

Rucker Place, LLC, and Savoie Catering, LLC

Appeal from Jefferson Circuit Court
(CV-16-903634)

1190102

Cardell Coachman, a deceased minor, by and through his mother and next friend Johnitia Coachman

v.

Rucker Place, LLC, and Savoie Catering, LLC

Appeal from Jefferson Circuit Court
(CV-17-903656)

1190110

Michael Coleman, as administrator of the Estate of Diane McGlown, deceased

v.

Rucker Place, LLC, and Savoie Catering, LLC

Appeal from Jefferson Circuit Court
(CV-17-905217)

1190116

Mary W. Weatherspoon and Elizabeth W. McElroy, as administratrix of the Estate of Jakobie E. Johnson, a deceased minor

v.

Rucker Place, LLC, and Savoie Catering, LLC

Appeal from Jefferson Circuit Court
(CV-16-903644)

SELLERS, Justice.

Tamikia Everheart; Cardell Coachman, a deceased minor, by and through his mother and next friend Johnitia Coachman; Michael Coleman, as administrator of the estate of Diane McGlown, deceased; and Mary W. Weatherspoon and Elizabeth W. McElroy, as administratrix of the estate of Jakobie E. Johnson, a deceased minor (hereinafter referred to collectively as "the plaintiffs"), filed four separate appeals from summary judgments entered in their separate cases by the Jefferson Circuit Court in favor of Rucker Place, LLC, and Savoie Catering, LLC. We consolidated the appeals for review, and we affirm the judgments.

While attending a Christmas party in December 2015 at the residence of Bruce McKee and Dale McKee, Jason Bewley consumed alcohol. Later, he was driving while allegedly intoxicated and was involved in an accident with a vehicle occupied by five individuals. As a result of the accident, two of those individuals were injured and the other three were killed.

The plaintiffs filed four separate actions against Bewley, alleging negligence and wantonness in the operation of his vehicle. The plaintiffs also asserted dram-shop claims against Dale McKee; the estate of Bruce McKee, who died

shortly after the Christmas party; Savoie Catering, LLC, which had catered the McKees' party and had served guests alcohol that had been provided by the McKees; and Rucker Place, LLC, which operates a catering business with connections to Savoie but which claims it had no involvement with the McKees' party.[1]

The trial court consolidated the actions under Rule 42(a), Ala. R. Civ. P. Eventually, the plaintiffs voluntarily dismissed their claims against the McKees and proceeded against Bewley, Savoie, and Rucker Place. The plaintiffs settled their claims against Bewley, and the trial court entered summary judgments in favor of Savoie and Rucker Place. These appeals followed.[2]

> "We apply the same standard of review the trial court used in determining whether the evidence presented to the trial court created a genuine issue

[1]The alcohol served at the McKees' Christmas party had been purchased by the McKees from a third party. Savoie's employees allegedly served as bartenders. Only for purposes of these appeals, we presume that Savoie's employees served Bewley.

[2]The plaintiffs also asserted claims against companies with which Bruce McKee had been associated. Those claims, however, were voluntarily dismissed. One of the plaintiffs also asserted claims against two companies owned by Bewley. The trial court entered a default judgment against those companies. That judgment is not at issue on appeal.

> of material fact. Jefferson County Comm'n v. ECO Preservation Services, L.L.C., 788 So. 2d 121 (Ala. 2000) (quoting Bussey v. John Deere Co., 531 So. 2d 860, 862 (Ala. 1988)). Once a party moving for a summary judgment establishes that no genuine issue of material fact exists, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989)."

Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2000). Questions of law are reviewed de novo. Van Hoof v. Van Hoof, 997 So. 2d 278, 286 (Ala. 2007).

The Dram Shop Act provides, in pertinent part:

> "Every wife, child, parent, or other person who shall be injured in person, property, or means of support by any intoxicated person or in consequence of the intoxication of any person shall have a right of action against any person who shall, by selling, giving, or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages, cause the intoxication of such person for all damages actually sustained, as well as exemplary damages."

§ 6-5-71(a), Ala. Code 1975 (emphasis added).

In arguing that the alcohol served at the McKees' party was "giv[en], or otherwise dispos[ed] of to another, contrary to the provisions of law," the plaintiffs have relied on a regulation promulgated by the Alabama Beverage Control Board ("the ABC Board"), which provides: "No ABC Board on-premises

licensee, employee or agent thereof shall serve any person alcoholic beverages if such person appears, considering the totality of the circumstances, to be intoxicated." Reg. 20-X-6-.02(4), Ala. Admin. Code (ABC Board) (emphasis added). The plaintiffs have alleged that Bewley was visibly intoxicated at the McKees' Christmas party and that Savoie's employees continued to serve him alcohol. Savoie, however, does not hold an ABC license. Thus, the trial court reasoned, Savoie could not have violated Reg. 20-X-6-.02(4) and therefore did not serve Bewley alcohol "contrary to the provisions of law."

Rucker Place operates a catering business that has its own venue for events in Birmingham. It is undisputed that Rucker Place holds an ABC "on-premises" license to sell alcohol at its venue. The trial court, however, concluded that the plaintiffs had not presented substantial evidence indicating that Rucker Place was involved in catering the McKees' Christmas party. Thus, the trial court determined, Rucker Place could not possibly have served Bewley alcohol in violation of Reg. 20-X-6-.02(4).

In their joint opening brief, the plaintiffs essentially concede that an off-site caterer that does not hold an ABC on-premises license generally cannot be held liable under Reg. 20-X-6-.02(4) and the Dram Shop Act for serving alcohol that is provided by the hosts of an off-site private party to guests who appear to be intoxicated. In the present cases, however, the plaintiffs claim they presented evidence indicating that Savoie and Rucker Place were involved in a joint venture in catering the McKees' party. Thus, the plaintiffs assert, Savoie was actually acting as the agent of Rucker Place, which does hold an ABC on-premises license, when it served Bewley alcohol. See generally Flowers v. Pope, 937 So. 2d 61, 66 (Ala. 2006) (indicating that the participants in a joint venture are considered agents of one another). The plaintiffs argue that, because Savoie was acting as Rucker Place's agent, such agency as imputed to Savoie would mean that Savoie violated Reg. 20-X-6-.02(4) by serving alcohol to Bewley, who allegedly was visibly intoxicated, and, thus, that Savoie served alcohol "contrary to the provisions of law" as that phrase is used in the Dram Shop Act. The plaintiffs also assert that Rucker Place is liable for the actions of Savoie,

its alleged agent. The plaintiffs appear to argue that the fact that Savoie and Rucker Place are separate business entities should be disregarded and the entities should be combined for the purposes of these actions to form a single business operation in which Savoie and Rucker Place are jointly and severally liable for the actions of the other.

In support of their joint-venture argument, the plaintiffs point to various connections between Savoie and Rucker Place. For example, the two owners of Rucker Place are also part owners of Savoie. The other owner of Savoie is a chef, who, as an independent contractor, has prepared food for Rucker Place at its on-site venue in Birmingham. At the time of the McKees' party, Savoie's base of operations was located at Rucker Place's venue, and Savoie used Rucker Place's kitchen and equipment to prepare for off-site catering events, including the McKees' party.

For their part, Rucker Place and Savoie point to evidence they contend establishes that the two entities conducted separate businesses and were not engaged in a joint venture. They assert, however, that this Court does not need to reach that issue because, they say, even if the evidence established

that they were involved in a joint venture, Reg. 20-X-6-.02(4) should not be deemed to apply here, because the alcohol Savoie served was provided by the host of an off-site private party. We agree.

The ABC Board has the authority to issue licenses to people and entities to, among other things, sell alcoholic beverages. See § 28-3A-3, Ala. Code 1975. It is illegal for a person or entity to sell, offer for sale, or possess for sale alcoholic beverages without a proper license. § 28-3A-25, Ala. Code 1975. The ABC Board's licensing authority includes the power to issue a license "[t]o sell any or all alcoholic beverages at retail under special license issued conditioned upon terms and conditions and for the period of time prescribed by the board." § 28-3A-3(a)(15), Ala. Code 1975. See also § 28-3A-19, Ala. Code 1975 (authorizing the ABC Board to issue a "special retail license" to an organization to "sell at retail and dispense such alcoholic beverages as are authorized by the [ABC Board] at such locations authorized by the [ABC Board]"). At all pertinent times, Rucker Place held an annual special retail license

allowing it to sell and dispense alcohol only at its specific venue in Birmingham.

The plaintiffs have not argued that any license from the ABC Board is required for a caterer at an off-premises private party to serve alcohol provided by the host of that party. Thus, they have conceded that Rucker Place would not have needed a license for its employees to serve the alcohol provided by the McKees at their Christmas party. However, because Rucker Place took the step of obtaining an on-premises license to sell alcohol at its own venue in Birmingham, the plaintiffs argue that Reg. 20-X-6-.02(4) was triggered and that it governs Rucker Place's serving of alcohol everywhere and under all circumstances, including Savoie's alleged action of serving a visibly intoxicated Bewley at the McKees' Christmas party.

We disagree. A more reasonable interpretation of Reg. 20-X-6-.02(4) is that it applies when the on-premises licensee, either as an individual or through its agents, is acting in its capacity as an on-premises licensee. In other words, the regulation is limited and applies only when a licensee is engaged in the activity contemplated by the on-

premises license, i.e., selling and dispensing alcohol at the premises covered by the license. It is noteworthy that other subsections of Reg. 20-X-6-.02(4) suggest that the regulation is concerned with governing activity occurring on the premises covered by the license. For example, such licensees must have restroom facilities that conform to applicable health-department standards; are prohibited from holding contests on the premises that require participants to drink alcohol; and must provide tables and seating sufficient to accommodate at least 16 people "within the designated on-premises consumption area." Reg. 20-X-6-.02(7), Ala. Admin. Code (ABC Board). See also Harrison v. PCI Gaming Auth., 251 So. 3d 24, 34 (Ala. 2017) (stating, although in what admittedly appears to be dicta, that Reg. 20-X-6-.02(4) declares it unlawful to make "'on-premises' sales to visibly intoxicated patrons").

The plaintiffs point to Gamble v. Neonatal Associates, P.A., 688 So. 2d 878 (Ala. Civ. App. 1997), in which the Court of Civil Appeals, like the trial court in the present case, ruled that an off-site caterer could not have violated Reg. 20-X-6-.02(4) because the caterer did not hold an on-premises ABC Board license. The plaintiffs suggest that, had the

caterer held such a license, the Court of Civil Appeals would have concluded that the caterer was subject to Reg. 20-X-6-.02(4). The Court of Civil Appeals in Gamble, however, simply did not consider the alternative argument that Reg. 20-X-6-.02(4) does not apply when the on-premises licensee is not engaged in actions in furtherance of the business activity for which the license is required.[3]

Although the trial court concluded that there was not sufficient evidence of a joint venture between Savoie and Rucker Place, we need not decide that issue, and this Court can affirm a trial court's judgment for any valid reason. Smith v. Mark Dodge, Inc., 934 So. 2d 375, 380 (Ala. 2006). We affirm the trial court's judgments based on the conclusion that the plaintiffs have not demonstrated that Reg. 20-X-6-.02(4) applies to the circumstances involved in the present cases. We express no opinion as to whether the plaintiffs

[3]As noted, the plaintiffs have not preserved an argument that Savoie or Rucker Place was required to hold a particular license to serve the alcohol provided by the McKees at their private party and that they therefore illegally served that alcohol without a proper license. The only basis for the argument that alcohol was served "contrary to the provisions of law" is the plaintiffs' allegation that Savoie, as Rucker Place's alleged agent, violated Reg. 20-X-6-.02(4) by serving an allegedly visibly intoxicated Bewley.

presented sufficient evidence that a joint venture between Savoie and Rucker Place did in fact exist.

1190092 -- AFFIRMED.

1190102 -- AFFIRMED.

1190110 -- AFFIRMED.

1190116 -- AFFIRMED.

Bolin, Wise, Mendheim, Stewart, and Mitchell, JJ., concur.

Parker, C.J., and Shaw and Bryan, JJ., dissent.

SHAW, Justice (dissenting).

I believe that the main opinion has essentially rewritten Reg. 20-X-6-.02(4), Ala. Admin. Code (Alcoholic Beverage Control Board), to mean something other than what it actually says. Our law governing the application of administrative regulations requires us to follow the plain meaning of the language of the regulation; therefore, I respectfully dissent.

Reg. 20-X-6-.02 governs Alabama Alcoholic Beverage Control Board ("ABC Board") "on-premises licensees." The issue addressed in the main opinion is whether subsection (4) of the regulation is restricted to governing a licensee's activity only at the licensee's physical location or whether it governs the licensee generally. The subsection states: "No ABC Board on-premises licensee, employee or agent thereof shall serve any person alcoholic beverages if such person appears, considering the totality of the circumstances, to be intoxicated." Reg. 20-X-6-.02(4).

"'[L]anguage used in an administrative regulation should be given its natural, plain, ordinary, and commonly understood meaning, just as language in a statute.'" Ex parte Wilbanks Health Care Servs., Inc., 986 So. 2d 422, 427 (Ala. 2007)

(quoting Alabama Medicaid Agency v. Beverly Enters., 521 So. 2d 1329, 1332 (Ala. Civ. App. 1987)). Nothing in the plain language of subsection (4) indicates that its prohibition against serving alcohol to intoxicated persons is limited to alcohol served at the licensee's physical location. My analysis of subsection (4) would stop there.

The main opinion, however, suggests an alternate meaning: subsection (4) can also mean that it applies only to serving alcohol at the licensee's physical location. This meaning is not found in the language of subsection (4), but the main opinion notes that other subsections of Reg. 20-X-6-.02 govern activity at the licensee's physical location and that this suggests that all subsections of the regulation must be similarly limited.

However, only some of the other subsections of Reg. 20-X-6-.02 govern the licensee's physical location; this is because, unlike subsection (4), the actual language of the subsections indicate that such is the case. For example, subsections (1), (2), (6), and (7) deal with the on-premises licensee's physical facilities, retail spaces, and areas provided for alcohol consumption.

Subsections (3), (4), and (5), however, govern conduct. Under subsection (3), a licensee is prohibited from allowing drinking contests "on the licensed premises." Subsection (5) prohibits licensees and its employees or agents from consuming alcohol "during working hours" when "engaged in serving customers," but it does not explicitly indicate that it is restricted to a physical location. Finally, subsection (4), the subsection at issue in these cases, simply prohibits a licensee or its employees or agents from serving alcoholic beverages to persons if they appear intoxicated. Nothing in the language of that subsection restricts its application to the licensee's physical location.

So, although some other subsections of Reg. 20-X-6-.02 relate to a physical location, subsection (4) conspicuously does not. It is clear that the drafters of the regulation knew how to specify when conduct governed in a subsection should apply to a physical location: subsection (3) explicitly refers to what cannot be done "on the licensed premises." If one subsection prohibiting certain conduct by the licensee -- like subsection (3) -- specifically limits itself to such conduct occurring on the premises, but the next subsection --

like subsection (4) -- also prohibits certain conduct but does not limit itself to the premises, a clear distinction has been made. Subsection (4) is not vague. Other subsections, covering different subject matters and having different language, do not change this meaning. In this case, the Court has essentially rewritten subsection (4) to make it, in the Court's opinion, "more reasonable." ___ So. 3d at ___. I dissent: "[I]t is our job to say what the law is, not to say what it should be." DeKalb Cty. LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 276 (Ala. 1998). Applying the plain meaning of a regulation, as with a statute, is a requirement of the separation-of-powers doctrine; it is not within the power or role of the judicial branch to do otherwise. See State v. $223,405.86, 203 So. 3d 816, 842 (Ala. 2016) ("'[D]eference to the ordinary and plain meaning of the language of a statute is not merely a matter of an accommodating judicial philosophy; it is a response to the constitutional mandate of the doctrine of the separation of powers set out in Art. III, § 43, Alabama Constitution of 1901.'" (quoting City of Bessemer v. McClain, 957 So. 2d 1061, 1082 (Ala. 2006) (Harwood, J., concurring in part and dissenting in part))).

Parker, C.J., and Bryan, J., concur.