

Case Brief

Case Name & Citation

Stewart v Pettie, 1995 SCC 18, [1995] 1 SCR 131.

Procedural History

This is an appeal by the defendant (Mayfield) and the plaintiff (Stewart) to the Supreme Court of Canada. The trial judge found Mayfield not responsible and Pettie not grossly negligent. The Alberta Court of Appeal allowed the original appeal by the plaintiff and ruled in favour of the plaintiff with regards to the liability of Mayfield, but not the liability of Pettie. Mayfield now appeals to the SCC and Stewart is also appealing the Court of Appeals decision regarding Pettie.

Facts

The plaintiff (Stewart), her husband, brother (Pettie) and his wife all attend a work-sponsored event at a dinner theatre. During the evening, the two men consume alcohol, which was recorded by the waitress for billing purposes. Stewart consumed 12-14 ounces of alcohol. After the theatre the group has a discussion in the parking lot about whether or not Pettie is sober enough to drive the group home in his car. The wife and sister attest that Pettie does not seem drunk and is fine to drive. On the way home the weather conditions are bad so Pettie drives with caution. Pettie loses control of the car and hits a telephone pole. Stewart is thrown from the car, as she was not wearing a seatbelt, she becomes paralyzed. The other 3 persons suffered no injuries and were wearing their seatbelts. Stewart is suing her brother for gross negligence and Mayfield Investments, the owner of the theatre claiming contribution for her injuries.

Issue(s)

Did the establishment (Mayfield Investments Ltd.) owe any duty of care to third parties and meet the standard of care required of a vendor of alcohol, or was it negligent in failing to take any steps to prevent intoxicated guests from harming third parties?

Decision

Appeal Allowed: Standard of care met. Cross-appeal dismissed: No gross negligence.

Reasons

Rule/Test:

The rule set out in *Anns v Merton*, as adopted by this court in *Nielson v Kamloops*, which continues to be the appropriate test to apply where the question of whether a duty of care should be imposed in a new situation, requires a 2 stage assessment:

Stage 1:

- Was the harm that occurred a reasonably foreseeable consequence of the defendant's act? This consideration of reasonable foreseeability must be supplemented by the notion of proximity, which is assessed based on factors arising from the relationship between the plaintiff and the defendant, including considerations of policy.

Stage 2:

- If a *prima facie* duty of care is established under Stage 1, are there residual policy considerations outside the relationship of the parties that may negative the imposition of a duty of care?

Application of the Rule/Test:

- In this case, there was a sufficient degree of proximity between Mayfield Investments Ltd. and Gillian Pettie that a duty of care existed between them. The more difficult question is what was the standard of care and whether or not it was breached.
- The duty of care arises because Gillian Stewart was a member of a class of persons who could be expected to be on the highway. It is this class of persons to whom the duty is owed.- The question of whether a duty of care exists is a question of the relationship between the parties, not a question of conduct.
- There is no question that commercial vendors of alcohol owe a general duty of care to persons who can be expected to use the highways. (Duty of care owed to patrons, but not third parties)
- It is true that applicable liquor control legislation in Alberta, and across the country, prohibits serving alcohol to persons who are apparently intoxicated.
- The first is that it is not clear that there was any violation of liquor control legislation in this case, given the fact that Pettie was apparently not exhibiting any signs of intoxication. Moreover, even if it could be said that Mayfield was in violation of legislation, this fact alone does not ground liability

- Therefore, liability on the part of Mayfield, if it is to be found, must be in their failure to take any affirmative action to prevent the reasonably foreseeable risk to Gillian Stewart.
- s. 53 of the Ontario *Liquor License Act* provides a statutory action against bars for people injured as a result of a patron of the bar becoming drunk.
- The existence of this "special relationship" will frequently warrant the imposition of a positive obligation to act. Where no risk is foreseeable as a result of the circumstances, no action will be required; despite the existence of a special relationship- Thus duty of care is owed.
- The hosts in this circumstance were not found to have breached the duty of care owed to Ms. Stewart. Because they acted as reasonable hosts would in such a situation by assuming that one of the two sober guests would drive the intoxicated guests home.

Ratio

A commercial operator where alcohol is served is not liable for injury sustained as a result of conduct by intoxicated guests, where the risk of injury was not foreseeable or where the operator's failure to act was not causally linked to the injury