

IN THE SUPREME COURT OF IOWA

NO. 18-1225

JERAMY HOLLINGSHEAD
Plaintiff-Appellant,

vs.

DC MISFITS, LLC
Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HON. DAVID MAY, JUDGE

APPELLANT'S BRIEF AND
REQUEST FOR ORAL ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. DOES IOWA CODE § 123.93 REQUIRE THAT THE DRAM SHOP NOTICE CONTAIN THE NAME OF THE OWNER OF THE BAR?

Iowa Code § 123.93

Arnold v. Lang, 259 N.W.2d 749 (Iowa 1977)

Evjen v. Brooks, 372 N.W.2d 494 (Iowa 1985)

Harrop v. Keller, 253 N.W.2d 588 (Iowa 1977).

ROUTING STATEMENT

This appeal meets the applicable criteria in Iowa R. App. P. 6.1101 for transfer to the Court of Appeals. Specifically, this case presents the application of existing legal principles under Iowa R. App. P. 6.1101(3)a and presents issues appropriate for summary disposition under Iowa R. App. P. 6.1101(3)b.

STATEMENT OF THE CASE

This case involves a dram shop claim filed April 7, 2017. (See Petition, App. 6). Answer was filed on April 27, 2017. (See Answer, App. 10) Amended and Substituted Motion for Summary Judgment (See Motion, App. 14) was filed by Defendant DC Misfits, LLC, on March 23, 2018. Plaintiff filed

Resistance on April 3, 2018. (See Resistance, App. 21). The Trial Court granted the Motion for Summary Judgment on June 29, 2018. See Order, App. 46). Plaintiff appealed from the Order on July 17, 2018. (See Notice of Appeal, App. 50)

STATEMENT OF THE FACTS

Plaintiff was injured in a Des Moines bar called Misfits on December 12, 2015. See Petition, App. 6. (See Answer, App. 10; Motion, App. 14) A Sec.123.93 notice was mailed June 8, 2016, return receipt requested to Founders Insurance, the dram shop carrier for all relevant times for the Defendant DC Misfits, LLC. (See notice, App. 5). Service was proper and occurred within six months from the time of injury. (See notice, App 5). The notice contained the information required by Iowa Code § 123.93. It stated the intention that a lawsuit may be brought against the bar. It stated the time/date of the occurrence. It stated the place where the customers were over-served and the injury took place, that is, Misfits bar. Finally, the notice described the circumstances of the injury to the Plaintiff. (See Notice, App. 5). The Trial Court found the notice defective for failing to name the owner of Misfits bar at the time of the injury. See Order, App. 46.

ARGUMENT

IOWA CODE § 123.93 DOES NOT REQUIRE IDENTIFICATION OF THE BAR OWNER OR OWNERS.

This issue was preserved by resisting the Motion for Summary Judgment. (See Resistance, App. 21).

The scope of review under Iowa R. App. P. Rule 6.907 is to correct errors of law that form the basis for the Trial Court's ruling on the Motion for Summary Judgment (See Order, App. 46).

The ruling affirming the Motion for Summary Judgment was based upon a narrow and incorrect interpretation of the Iowa Supreme Court's ruling in *Arnold v. Lang*, 259 N.W.2d 749 (1977). In *Lang* the Appellant's attorney failed to comply with § 123.93 in nearly every regard. The notice was sent after six months. It failed to state the intention to bring suit or make reference to the place or circumstances under which Plaintiff suffered injury. The name of the bar was Lang's (Joe Lang's Tap). When the Court stated the notice failed to mention Lang's name the Court was discussing the name of the bar. (*supra*, at 752). The Court in *Lang* was not in one sentence of dictum attempting to overturn established case law nor was the Court adding a requirement to the plain language of Iowa Code

§123.93 (*Lang*, at 751-752).

In the instant case the notice stated on two occasions that the perpetrators were served at Misfits bar and the injuries occurred at Misfits bar. Section 123.93 does not require that the owner of the bar be identified. Indeed, in *Lang* the Court does not even discuss who the owner of the bar might be. We are told only that the Appellee operated the bar. Ownership was not relevant (*Lang*, at 749). Likewise in the case at bar ownership of Misfits bar is not relevant. The dram shop carrier was told of the place where the incident occurred. Notice upon the owner is not required under Iowa Code § 123.93.

There is no dispute over the identity of the dram shop carrier for Misfits at the time of the assault on Plaintiff, December 12, 2015 or at the time of the notice. (See notice, App. 5; Motion, App. 14; Affidavit, App. 18).

All of the information to satisfy the purpose of the notice requirements of § 123.93 were met in this case, providing the carrier the opportunity to investigate while the facts were fresh (*Lang*, at 751). Adding an extra unwritten duty to § 123.93 creates the kind of trap the Court has warned against (*Lang*, at 753). The notice

provision is to be given a liberal construction that will not defeat the ends of justice (*Id*, at 753).

The Trial Court's ruling in this case if followed in the future would close the door on many meritorious cases. It is not clear if the Trial Judge wants identification of all owners, individual, partnerships and corporations. Nor is it clear if the Trial Judge is referring to owners at the time of the injury or at the time of the notice or both.

All of the cases reviewing notice questions agree on the content required in a § 123.93 notice. In *Harrop v. Keller, et al.*, 253 N.W.2d 588 (1977), the Court stated: "There are only three matters required for inclusion in the notice by § 123.93. The notice must include the time, place and circumstance causing injury."

The Court reviewed word for word the notice given in *Evjean v. Brooks, et al* (372 N.W.2d 494) (1985).

The notice described in detail a single car accident and went on to state that the driver "was in an intoxicated condition as a result of the consumption of alcoholic beverages obtained on or about the 14th day of March 1982 from the 7-Eleven store located at 3342 Mt. Vernon Rd., S.E. Cedar Rapids, Linn County, State of Iowa." (*Id*, 494).

Nowhere in the notice was the name of Southland

Corporation mentioned, even though it was the owner of the 7-Eleven stores at the time. There was no mention of any defect in the notice. There was no mention that the notice needed the name of the owner of the dram shop defendant. The place where the alcohol was sold was fine, a 7-Eleven store. (*Id*, 494). In the present case the place was also indicated. The Misfits bar identified together with the date and circumstances in the notice gave Founders Insurance all the information needed to fully investigate the occurrence, satisfying the purpose of Iowa Code § 123.93.

CONCLUSION

The notice stating the intention to bring suit was served within six months on the Misfits bar's insurance carrier. It properly states the time, place and circumstance of injury to Mr. Hollingshead.

REQUEST FOR ORAL ARGUMENT

Counsel for Plaintiff-Appellant respectfully requests that he be heard in oral argument upon submission of this case.

Respectfully submitted,

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