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

Polk County No. LACL 137598

APPLICATION FOR FURTHER REVIEW
by APPELLANT JERAMY HOLLINGSHEAD
(Court of Appeals Decision filed May 15, 2019)

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QUESTIONS PRESENTED FOR REVIEW

1. Does the dram notice specifications contained in Iowa Code § 123.93 include an unwritten mandatory requirement that the formal name of the licensee be made part of the notice?

2. Does the definition of "place" in § 123.93 mean the location of the injury and the name of the bar (in this case one and the same) ?

3. Does the decision in *Arnold v. Lang*, 259 N.W.2d 749, (Nov. 23, 1977) overturn previous opinions of the Iowa Supreme Court, including *Harrop v. Keller*, 253 N.W.2d 588 (May 25, 1977) with respect to the dram shop notice requirements?

TABLE OF CONTENTS

Pages(s)

Cover Page 1

Questions Presented for Preview 2

Table of Contents 3

Table of Authorities 4

Statement Supporting Further Review 5

Statement of the Facts 7

Argument 9

Conclusion 12

Certificate of Compliance 14

Decision of Court of Appeals filed May 15, 2019 . . . . . Exhibit 1

District Court Ruling dated June 29, 2018 . . . . . .Exhibit 2

TABLE OF AUTHORITIES

Cases: Page(s)

Arnold v. Lang, 259 N.W.2d 749 (Iowa 1977) 2, 5, 6, 9, 10

Berte v. Bode, 692 N.W.2d 368 (Iowa 2005) 11, 12

Ehlinger v. Mardorf, 285 N.W.2d 27 (Iowa 1979) 5, 6

Harrop v. Keller, 253 N.W.2d 588 (Iowa 1977). 2, 5, 10, 11

Veach v. Prairie Meadows Racetrack & Casino, Inc.

No. 6-387/06-0366 . . . . . .11, 12

Weichers v. Bourbon Street Bar and Monkey, Inc.

No. 17-1960 6

Statutes and Rules:

Iowa Code § 123.93 . . . . . 2, 5, 6, 7, 10, 11, 12, 13

STATEMENT SUPPORTING FURTHER REVIEW

1. The Court of Appeals decision in this case is in conflict with the plain language of Iowa Code § 123.93 and the many opinions since its enactment in 1971. *Ehlinger v. Mardorf*, 285 N.W.2d 27, 28.

The statute requires dram shop notice within six months of injury served upon licensee or the dram insurance company indicating the intent to bring a lawsuit under the statute. "There are only three matters required for inclusion in the notice by § 123.93. The notice must include the time, place and circumstances causing injury." *Harrop v. Keller*, 253 N.W.2d 588, 593 (1977).

The appellate order upholding the Polk County Judge's grant of summary judgment to the defendant bar Misfits relies on dictum in *Arnold v. Lang*, 259 N.W.2d 749, 752, interpreted to require a new dram notice element, namely: the name of the bar owner/licensee. If left to stand many pending and future cases are in jeopardy and many people injured by intoxicated persons will be denied justice simply because their lawyers followed the plain language of § 123.93.

2. The three-part notice requirement has been good law for nearly fifty years and the legislatures have not seen fit to amend the notice

provisions.

3. Moreover, § 123.93 is to be considered liberally and not used to deny remedies because of a technicality. The Court has expressed a duty to construe the statute liberally. *Ehlinger v. Mardorf*, 285 N.W.2d 27, 29 (1979)

4. In this year alone there exists a conflict between the Hollingshead decision (18-225) and *Weichers v. Bourbon Street Bar and Monkey, Inc.* (17-1960). In *Weichers* the Court cited *Arnold v. Lang*, discussing only that Weichers could have given notice since he knew the name of the bar, Tony's LA Pizzeria. The owner/licensee was Monkey, Inc., dba Tony's. The Court does not mention any requirement to serve notice identifying Monkey, Inc. Substantial compliance with the provisions of § 123.93 will suffice. *Arnold*, at 751.

STATEMENT OF FACTS

Plaintiff-Appellant Jeramy Hollingshead was injured in a physical confrontation on or about December 12, 2015, while at a Des Moines bar called Misfits. On June 8, 2016, a certified letter was sent to the insurance carrier for Misfits and signed for by the insurance representative for Founders Insurance. The notice contained the date of loss, the name of the injured claimant, Jeramy Hollingshead, and a claim number set up by Founders Insurance prior to the date of the notice. The notice (App. 5) contained all elements specified in Iowa Code § 123.93, namely:

a) Our intention to bring an action under § 123.92 on behalf of Jeramy Hollingshead;

b) The circumstances of the injury;

c) The date (time) of the event;

d) The place of the event - Misfits.

On July 8, 2016, nearly seven months after the injury date the dram carrier's representative sent a certified letter to attorney for Plaintiff-Appellant advising inter alia the policy to Leonard LLC had been cancelled before December 12, 2015 (App. 44). Founders continued to be the dram carrier for the bar Misfits on December 12,

2015. On April 7, 2017, Jeramy Hollingshead filed suit for injuries which included a count for dram shop (App. 8).

On March 23, 2018, Defendant DC Misfits, LLC, filed an Amended and Substituted Motion for Summary Judgment and on June 29, 2018, the Hon. David May granted the Motion, stating the notice was defective without the name of the licensee. On July 17, 2018, Plaintiff-Appellant appealed the District Court's ruling. On May 15, 2019, Judge Bower affirmed the summary judgment and dismissal of Plaintiff-Appellant claims, presiding Judge Doyle dissenting. The Supreme Court is now requested to reconsider the appellate decision.

The rationale contained in the appellate decision is critical in several respects of the work performed on behalf of Mr. Hollingshead. Included is the statement that Appellant's counsel did not attempt to amend the dram notice after Founders Insurance advised that Misfits was not owned by Leonard, LLC. Said notice was served seven months after the injury. It is also mentioned that the original petition did not have attached the certified letter. An allegation under the dram shop count in the original petition stated that the notice had been served in accordance with § 123.93. The Court further criticized the petition

stating that it did not have attached a notice of intent to bring suit. Plaintiff's allegation of compliance with § 123.93 referred to the necessary content of the notice that was duly served within the six-months' window. The Court also makes reference to two distinct owners of Misfits with separate insurance policies that happened to be with the same carrier. That is an assumption not supported by any facts in the record. The information on the web page of the Alcoholic Beverages Division of the State of Iowa contained information that is not part of the record in this case. What is known from the record is that a policy was issued to Leonard, LLC dba Misfits scheduled to begin February 1, 2015, and continuing one year. It is also known that the insurance policy was cancelled on the day it was to begin and that DC Misfits, LLC, used Founders Insurance for its dram shop coverage. It was counsel's opinion that any evidence of actual notice of the injury event and details of insurance issues were not relevant on the question of the validity of § 123.93 notice. That notice on its face complied with the statutory requirements.

ARGUMENT

The dictum in the *Arnold* case, *id*. at 752, relied upon by the trial

court and in the appellate decision refers to the defective notice which was a letter to the premises insurance carrier for Lang with no content required under § 123.93.

> "Noticeably this communication makes no reference to the place or circumstances under which plaintiff suffered his alleged injuries. Neither does it mention Lang's name nor express any intention by Arnold to bring a dram shop action against Lang. All such information was essential in order to qualify as a § 123.93 notice. See *Harrop v. Keller*, 253 N.W.2d at 593."

These remarks did not intend to adopt a material change of statutory law or place an unreasonable new burden upon injured persons. As stated in dissent by the Hon. P.J. Doyle, the reference could have been to the name of the tavern or to Lang as operator or to Lang as licensee (although the opinion does not even identify exactly who was the licensee). The Court in *Arnold* cites *Harrop v. Keller*, 253 N.W.588, 592 (Iowa 1977) as authoritative of the content requirements of § 123.93. In *Harrop, id* at 593, there are only three matters needed for inclusion, all of which were clearly present in the Hollingshead notice.

There is no requirement that the notice say an action will be brought against a certain individual or entity, only that an action may be brought under the dram shop statute and indicate the place and

circumstance of the injury.

A fair interpretation of the need to identify the place where the injury occurred and the circumstances involve words that identify the location, that is, the name of the bar. Hollingshead's notice stated in three separate places that he was assaulted at Misfits by people who became intoxicated at Misfits.

Determining ownership of bars for notice purposes poses a trap for injured persons and will invite litigation. Corporations and LLCs are often terminated for failure to file reports and pay fees but the official records (notice of termination) are often months before they are posted. Partnerships are not always known and are often changing. Ownership of bars change often for a variety of reasons. It is reasonable to assume the legislators understood this inherit difficulty when they wrote the statute requiring the name of the place, not owner(s). Designating the exact owner at the time of the injury is not required. See § 123.93, *Harrop v. Keller*, 253 N.W.2d at 593.

The Appellate Court relies upon *Berte v. Bode*, 692 N.W.2d 368, 370-71 (Iowa 2005) and *Veach v. Prairie Meadows Racetrack & Casino, Inc.*, No. 6-387/06-0366 (Iowa Ct. App. Dec. 28, 2006) to support the

additional notice requirements for § 123.93.

In both cases the appellant did not send a notice at all. The Court held in *Berte* that notice on behalf of a minor does not constitute notice on behalf of the minor's parent. *id*, at 370.

In *Veach* the Court denied a similar attempt to avoid the § 123.93 six-month window made by a woman involved in the same accident as another who did send proper notice on time. *id*, at 844.

These cases do not support any inference or conclusion that the Court intended to materially alter § 123.93. They are simply fact based decisions confirming established law that the injured party must give notice. Hollingshead is properly identified in his notice.

The Court in *Hollingshead* is critical that Misfits is mentioned without address or city. Neither is required in § 123.93. It is safe to assume the dram carriers operating in Iowa have computer records that reference the names of the bars they insure. There is no evidence in this case that Founders Insurance had any difficulty determining the identify of their insured.

CONCLUSION

Clear and unambiguous statutory language and case law

examining notice issues under § 123.93 require date, place, circumstance and an intent to sue served on the dram carrier (or licensee) within six months of injury. Nothing more is required. The Founders Insurance Company was properly put on notice with the Hollingshead notice timely served. The inadvertent mention of the Misfits' previous owner did not impact the purpose of the notice. Founders was clearly told of an injury at a bar they insured. Misfits is the place; December 12, 2015, is the date; Jeramy Hollingshead is the injured party and the intention to sue under § 123.93 is clearly stated. Rewriting the statute denies justice for Hollingshead and will result in a flood of technical challenges in the future subverting the purpose and protections of the Iowa dram shop law.

Respectfully submitted,

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_/s/ Debra S. Davis_____ _6/01/2019_____
Signature Date