

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002708-MR

JAMES E. WILSON

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
ACTION NO. 97-CI-00805

TER-CAT, INC., D/B/A
CAT'S LIQUORS; STATE FARM
FIRE AND CASUALTY COMPANY

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

DYCHE, JUDGE. James E. Wilson brings this appeal from an order of the Boone Circuit Court dismissing, by summary judgment, his complaint seeking money damages from appellee Ter-Cat, Inc.,¹ d/b/a Cat's Liquors. We affirm.

¹ The brief for appellant and the notice of appeal refer to appellee as Ter-Cats, Inc. The order from Boone Circuit Court and the attorney for appellee refer to appellee as Ter-Cat, Inc.

For the purposes of this appeal, we will assume that Cat's Liquors sold alcoholic beverages to a minor, who shared them with the driver of a vehicle which wrecked, severely injuring Wilson, a passenger therein. The minor who bought the alcohol was also a passenger in the vehicle, but Wilson was the only occupant who received severe injuries in the accident. The trial court dismissed Wilson's complaint on the authority of KRS 413.241 and the decision of the state's highest Court in DeStock #14, Inc. v. Logsdon, Ky., 993 S.W.2d 952 (1999), holding that Ter-Cat was entitled to complete indemnity from the driver of the vehicle. And, since Wilson's release of, and settlement with, the driver included a provision requiring Wilson to hold Robinson harmless from Ter-Cat's indemnity claim, there could be no recovery by Wilson from Ter-Cat.

Wilson argues on appeal that the trial court erred in finding that the above statute extends immunity from liability to Ter-Cat. We do not find that the trial court made this ruling. The ruling of the trial court was based solely upon the indemnity issue, and our highest Court has recently spoken on this point. Sixty-Eight Liquors, Inc. v. Colvin, Ky., __S.W.3d __ (No. 2001-SC-0830-DG, rendered October 23, 2003), holds that, "A legal sale is necessary for a dram shop to be shielded from liability under KRS 413.241." Id., slip op. at 7. Wilson and the trial court are correct, then, that Ter-Cat is not

shielded by the statute. But the Supreme Court also held that "[the dram shop] clearly has a valid claim against [the driver] for indemnity relative to claims made by an injured third person against [the dram shop]." Id., slip op. at 8 (citation omitted).

Although Wilson's brief "concede[s] the indemnity argument made by Ter-Cat, Inc.," he makes an argument that the Destock decision should have prospective application only, and that his release, executed prior to finality of Destock, is not affected thereby. There is no merit in this argument. Destock was rendered by this Court prior to the execution of the release by Wilson. Although it was not rendered until June 17, 1999, and final thereafter, Wilson was on notice of the decision by this Court, and the issue was preserved herein.

The order of the Boone Circuit Court is affirmed.

ALL CONCUR.

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