**[Edited Opinion]**

CHARLES ARCHER & LINDA ARCHER VS. SIGMA TAU GAMMA ALPHA EPSILON, INC.;

SUPREME COURT OF ARKANSAS

2010 Ark. 8; 2010 Ark. LEXIS 8

January 14, 2010, Opinion Delivered

PAUL E. DANIELSON, Associate Justice

Appellants Charles Archer and Linda Archer, husband and wife . . . appeal the order of the Clark County Circuit Court, dismissing their complaint gainst appellees . . . Sigma Tau Gamma Alpha Epsilon, Inc.. . . (hereinafter . . . referred to as "the Sig Taus"), under Rule 12(b)(6) of the Arkansas Rules of Civil Procedure for failure to state facts upon which relief can be granted.

This case arose out of an automobile accident in Hot Spring County, Arkansas. On March 12, 2005, on their way home from a family trip to Hot Springs, the Archers' vehicle was struck in a head-on collision with a vehicle driven by Antony Moore. Moore had a blood-alcohol level of 0.25 and died at the scene as a result of the injuries he sustained. Moore had been at a fraternity party prior to the accident. A witness at the scene reported that Moore's driving had been erratic and dangerous prior to the collision with the Archers. Each member of the Archer family sustained extensive injuries and required hospitalization after the accident. . . .

On July 7, 2005, the Archers filed suit against Moore's estate, with J.R. Andrews listed as the special administrator, claiming that Moore's negligence was the direct and proximate cause of all of the Archers' injuries and medical expenses. The Archers filed a first amended complaint on January 13, 2006, adding Daniel and Michelle Milam, the property owners of the property on which the fraternity party had taken place, and Sigma Tau Gamma Alpha Epsilon, Inc., Sigma Tau Gamma, Inc., and Sigma Tau Gamma Foundation, Inc., the organizations that the Archers alleged were responsible for planning, sponsoring, and hosting the party, as defendants. On September 15, 2006, Sigma Tau Gamma Alpha Epsilon, Inc., Sigma Tau Gamma, Inc., and Sigma Tau Gamma Foundation, Inc., filed a motion for summary judgment, alleging that they did not plan, sponsor, authorize, or control the party held in Hot Spring County on March 12, 2005, and, therefore, did not owe a duty to the Archers. That motion was denied by the circuit court. The court found that, viewing the facts in the light most favorable to the nonmoving party, genuine issues of fact existed as to the role of the fraternity in the party held on March 12, 2005, in Hot Spring County. However, the complaint was dismissed as against Daniel and Michelle Milam on September 24, 2006, and as against Sigma Tau Gamma Foundation, Inc., on April 11, 2007.

The Archers filed their fourth and final amended complaint on March 4, 2008. In response, the Sig Taus filed a motion to dismiss on March 13, 2008, claiming that because they did not hold a license or permit to sell alcoholic beverages, liability against them was precluded by Arkansas Code Annotated § 16-126-106 (Repl. 2006). . . . On March 3, 2009, the circuit court granted the Sig Taus's motion to dismiss, finding that, pursuant to section 16-126-106 and previous case law, even assuming all the alleged facts were true, the Sig Taus were social hosts and could not be held liable for the act of providing alcohol to Moore. It is from that order of dismissal that the Archers now appeal.

. . .

The facts as alleged against the Sig Taus in the Archers' complaint are these. On March 12, 2005, the Sig Taus, by and through their officers and members, hosted a party in Hot Spring County. The party began around 1:00 p.m. and was hosted for Sig Tau members and others. The party was planned by the Sig Taus several days in advance and was publicized by notices posted at the Henderson State University campus, fliers passed out by Sig Tau members, and word of mouth. Previous events hosted by the Sig Taus that involved the consumption of alcohol had been held at the same location in Hot Spring County. The party was held on property located at 164 Palmetto Loop, property owned by the parents of Richard Milam, the then-president of the Sig Taus.

The Sig Taus had initially purchased at least two kegs of beer for the party and, ultimately, at least five kegs of beer were actually served at the party. Approximately 100 persons attended the party and the majority of the attendees were either current Sig Taus, alumni members of the Sig Taus, or future members of the Sig Taus. Guests were charged money to cover the expense of food and alcohol. During the party, there were no arrangements made for designated drivers, no methods to determine whether guests were too intoxicated to drive, no monitoring of the egress of persons from the party, and no methods to determine whether persons who were consuming alcohol were minors, under the influence, impaired, or intoxicated.

Moore was an active or alumnus member of the Sig Taus and had attended the party. Moore consumed alcohol at the party, became intoxicated, left the party intoxicated after dark, and drove his vehicle toward Hot Springs. Moore then crashed into the Archers.

The Archer's complaint also stated the following:

114. At no time relevant hereto was any Defendant licensed to sell, supply or possess alcohol.

115. At no time relevant hereto did any Defendant possess a permit to sell, possess or supply alcohol to others.

As noted by the circuit court, those undisputed facts are important. Section 16-126-106 provides:

In no event will the act of providing alcoholic beverages to a person who can lawfully possess them by a social host, or other person who does not hold an alcoholic beverage vendor's permit, constitute a proximate cause of any personal injuries or property damages which may be subsequently caused by an individual consuming any alcoholic beverages so provided.

Ark. Code Ann. § 16-126-106 (Repl. 2006). Based upon this statute, the circuit court found that the Sig Taus could not be held liable for providing alcohol to Moore and, therefore, the complaint failed to allege facts upon which relief could be granted. We agree.

. . . [T]he legislature passed Act 1596 of 1999, codified at Ark. Code. Ann. §§ 16-126-101 et seq. (Repl. 2006). Section 16-126-103 established civil liability against an alcoholic beverage retailer for the sale of alcohol to a minor and section 16-126-104 established civil liability against an alcoholic-beverage retailer for the sale of alcohol to a clearly intoxicated person. However, the legislature followed those two sections with section 16-126-105, which provides the general rule that consumption of any alcoholic beverage, rather than the furnishing of the same, is the proximate cause of injuries or property damage inflicted by a legally intoxicated person, and section 16-126-106, prohibiting a social host, or other person who does not hold an alcoholic-beverage vendor's permit, from being held liable for providing alcoholic beverages to a person who can lawfully possess them. It seems clear that the legislature intentionally limited liability to alcoholic-beverage retailers and, even then, only under two specific fact situations. To extend liability in a case such as this would be a policy decision. This court has long held that matters of public policy are generally within the purview of the legislature. . . . For these reasons, we agree with the order of the circuit court dismissing the case. . . .