

## ***Fell v. Fat Smitty's and Idaho's Dram Shop Act***

Case Summary  
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On July 2, 2020, the Idaho Supreme Court clarified that the limitations of the Idaho Dram Shop Act apply in lawsuits where alcohol intoxication is even a possible proximate cause of the harm alleged.<sup>1</sup> This decision is the culmination of the legal challenges brought against the Fat Smitty's starting in 2018.<sup>2</sup> The facts underlying this case are as follows: On November 26, 2016, Steven and Audra Fell went to the First Street Saloon in Idaho Falls, a bar owned and operated by Fat Smitty's.<sup>3</sup> At the First Street Saloon before closing, Pamela Hall, who previously had caused some complications that night, caused a commotion attempting to find her cellphone.<sup>4</sup> Two bartenders removed Pamela from the bar premises. Pamela's daughter, LaDonna Hall, then went outside to console her mother.<sup>5</sup>

However, once outside mother and daughter got into a physical altercation, causing the bartenders and the Fells to run out to stop the fight.<sup>6</sup> At some point Audra Fell and LaDonna Hall got into a fight and a bartender brought Audra back into the First Street Saloon.<sup>7</sup> Moments later, LaDonna stabbed Steven Fell in the abdomen several times.<sup>8</sup> Hall was arrested and Steven Fell taken to the hospital for treatment; he was later released.<sup>9</sup> On April 2, 2018, the Fells filed their complaint against Fat Smitty's alleging one cause of action: Negligence.<sup>10</sup>

In support of their claim the Fells alleged that Fat Smitty's owed them a duty to (1) warn them (invitees) of any hidden or concealed dangers in their establishment (First Street Saloon), (2) keep the First Street Saloon in a reasonably safe condition, and (3) protect them from reasonably foreseeable injury at the hands of other patrons.<sup>11</sup> Specifically, the Fells claimed that Fat Smitty's "knew or should have known that LaDonna Hall was a dangerous individual" and thus breached their duty "by failing to warn them of the danger that LaDonna Hall posed," "failing to properly train its agents or employees," and "failing to cease service to LaDonna Hall and/or remove her from [the First Street Saloon's] premises."<sup>12</sup>

Initially, Fat Smitty's moved for summary judgment, claiming in relevant part that the Fells failed to comply with the Dram Shop Act by providing timely notice of their intent to sue.<sup>13</sup>

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<sup>1</sup> *Fell v. Fat Smitty's L.L.C.*, 167 Idaho 34, 467 P.3d 398, 404 (2020).

<sup>2</sup> *Id.* at 400.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Fell*, 167 Idaho 34, 467 P.3d at 400.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Fell*, 167 Idaho 34, 467 P.3d at 400.

The Idaho Dram Shop Act seeks to limit liability for bar owners and social hosts. The act says it is not the furnishing of alcoholic beverages that is the proximate cause of injuries inflicted by intoxicated persons unless an exception applies.<sup>14</sup> The exceptions that do permit claims against alcohol providers include only situations where the intoxicated person was under age and situations where the tortfeasor was obviously intoxicated when the provider furnished the drinks.<sup>15</sup>

In response to Fat Smitty's motion, the Fells argued that they did not bring their claim under the Dram Shop Act but rather under the common law of negligence.<sup>16</sup> They said Fat Smitty's "had a duty to exercise reasonable care to protect its patrons from reasonably foreseeable injury at the hands of other patrons, that [Fat Smitty's] breached that duty, and [that] Mr. Fell's injuries were caused by that breach." Because their claim was founded on the bar owners' failure to protect their patrons rather than on the bar owners' furnishing of alcohol to the Halls, the Fells argued, the Dram Shop Act and its notice provisions did not apply.<sup>17</sup>

On April 12, 2019, the district court entered its decision: Idaho's Dram Shop Act applied, including the 180-day notice requirement.<sup>18</sup> The Fells' failure to provide this notice warranted summary judgment for Fat Smitty's.<sup>19</sup>

On appeal, the Idaho Supreme Court agreed.<sup>20</sup> Specifically, it found unpersuasive the Fells' argument that basing Fat Smitty's liability on a premises liability theory took the claim out of reach of the Idaho Dram Shop Act requirements.<sup>21</sup> Instead, the court agreed with Fat Smitty's argument and the district court's finding that the Idaho Dram Shop Act applies to facts that demonstrate that a social host or dram shop's provision of alcoholic beverages *may* have been one of the proximate causes of a plaintiff's injuries.<sup>22</sup>

To reach this conclusion, the court first went through the history of Idaho's treatment of similar claims prior to the statute, finding the court had declared that furnishing alcohol which results in harm to a third party may in fact be the proximate cause of the third party's harm.<sup>23</sup> Following this the court looked to the specific language of the act and found that only one reasonable interpretation could be found: the dram shop act "applies in all cases where the facts demonstrate that the furnishing of alcoholic beverages by a dram shop or social host *may* have been *a* proximate cause of a plaintiff's injuries."<sup>24</sup> Specifically:

... in a case involving a bar, such as this one, section 23-808 is implicated whenever the facts indicate that a person was injured by a bar patron, the bar

<sup>14</sup> IDAHO CODE § 23-808(1) (2019).

<sup>15</sup> IDAHO CODE § 23-808(2)(a)(b) (2019).

<sup>16</sup> *Fell*, 167 Idaho 34, 467 P.3d at 400.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 405.

<sup>22</sup> *Fell*, 167 Idaho 34, 467 P.3d at 402.

<sup>23</sup> *Id.* (comparing *Meade v. Freeman*, 93 Idaho 389, 462 P.2d 54 (1969) with *Alegria v. Payonk*, 101 Idaho 617, 619 P.2d 135 (1980)).

<sup>24</sup> *Id.* at 404 (emphasis in original).

patron was intoxicated, and the bar in question furnished alcohol to the intoxicated bar patron. If those elements are satisfied, then the injured person cannot bring a claim or cause of action against the furnisher of the alcoholic beverages, unless he can demonstrate that at least one of the two exceptions articulated in subsections (3)(a) or (3)(b) applies.<sup>25</sup>

Finally, because the intent of the Dram Shop Act was to confine liability of dram shops and social hosts to specific circumstances, then if the act applies then the plaintiff must comply with the rest of the act, including the notice provision.<sup>26</sup>

Applied to the facts here the court found that because alcohol consumption was undisputedly a factor in plaintiff's harm, this case is different from cases where the Dram Shop Act did not apply because the consumption of intoxicants served as no factor in the resulting harm.<sup>27</sup> The Fells' demand letter exhibited the Fells' acknowledgement that alcohol consumption played a role in the incident. It asserted that "LaDonna Hall and her mother arrived at the bar and drank heavily, both becoming highly intoxicated" and that the bar's employees "knew that LaDonna Hall was extremely intoxicated, to [the] point where she was a danger to the other patrons" and further that when Fat Smitty's failed to remove Hall from the bar they breached their duty to Steven Fell.<sup>28</sup> This point is further supported by the complaint filed by the plaintiff. The court found that even if alcohol consumption was never alleged by the plaintiff as a factor the defense would almost certainly have introduced it in its answer, meaning this was a case involving alcohol consumption as a possible proximate cause of plaintiff's harm. As such, the Dram Shop Act applied, including the notice provision, and Fell's claim was barred for failing to comply with the notice provision.<sup>29</sup>

In summary, the Idaho Supreme Court definitively ruled that if the furnishing of alcohol is even a possible proximate cause of the harm suffered by a third party then the Dram Shop Act shall apply, including all provisions including the notice requirements, and no underlying common law grounds for negligence will be allowed.

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 405.

<sup>28</sup> *Fell*, 167 Idaho 34, 467 P.3d at 405.

<sup>29</sup> *Id.* at 405–06.