

Adams County Legal Journal

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IN THIS ISSUE

M.M., A MINOR, BY TRACY SHEFFER, ESQUIRE,
GUARDIAN AD LITEM VS. GETTYSBURG LODGE NO.
1526, LOYAL ORDER OF MOOSE, INC., D/B/A
GETTYSBURG MOOSE 1526/CHAPTER 182 AND
ROBERT BENJAMIN CARBAUGH

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PUBLIC NOTICE TO
JESSICA MARIE HOWE, NAVIN LYNN
KRIDELER, JR. AND
KYLE WESLEY BARTRAM

In Re: Adoption of Isabelle Lynn Krideler
and Layla Marie Krideler, Minors

A petition has been filed asking the Court to put an end to all rights you have as a parent to your children, Isabelle Lynn Krideler and Layne Marie Krideler. A Termination of Parental Rights Hearing has been scheduled for April 29, 2020, at 1:30 p.m., in Court Room No. 7003, of the York County Judicial Center, 45 North George Street, York, Pennsylvania, to terminate your parental rights to Isabelle Lynn Krideler (DOB: July 19, 2013), whose Father is Kyle Wesley Bartram and whose Mother is Jessica Marie Howe; and to Layla Marie Krideler (DOB: December 5, 2014), whose Father is Navin Lynn Krideler, Jr. and whose Mother is Jessica Marie Howe. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the Court without your being present. You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

ATTORNEY CONNECTION/YCBA
MODEST MEANS

137 East Market Street
York, Pennsylvania 17401
717-854-8755
<http://www.yorkbar.com/?page=YCBAFindEsq>

If you cannot afford an attorney, an attorney may be appointed by the court at no cost to you if you qualify. Contact the following office for instructions and forms to complete and file.

Clerk of the Orphans' Court
York County Judicial Center
45 North George Street
York, Pennsylvania 17401
717-771-9288

<http://yorkcountypa.gov/component/jdownloads/send/100-adopt-forms/824-packet-for-court-appted-counsel-and-financial-affidavit.html>

Martin Miller, Esq.
Solicitor for York County Offices of
Children, Youth & Families

A prospective adoptive parent of a child may enter into an agreement with a birth relative of the child to permit continuing contact or communication between the child and the birth relative or between the adoptive parent and the birth relative. An agency or anyone representing the parties in an adoption shall provide notification to a prospective adoptive parent, a birth parent and a child who can be reasonably expected to understand that a prospective adoptive parent and a birth relative of a child have the option to enter into a voluntary agreement for the continuing contact or communication. See 23 Pa.C.S.A. Section 2731, et seq.

3/13, 3/20 & 3/27

M.M., A MINOR, BY TRACY SHEFFER, ESQUIRE,
GUARDIAN AD LITEM VS. GETTYSBURG LODGE NO.
1526, LOYAL ORDER OF MOOSE, INC., D/B/A
GETTYSBURG MOOSE 1526/CHAPTER 182 AND
ROBERT BENJAMIN CARBAUGH

1. In order to prevail on a dram shop claim, a plaintiff must prove (1) an employee or agent of the defendant served alcohol to a visibly intoxicated patron in violation of the Pennsylvania Liquor Code, and (2) the service of alcohol to a visibly intoxicated patron was the proximate cause of injury to the plaintiff.

2. Carbaugh affirmed that any previous statements he made to the police or to Gettysburg Moose's Counsel regarding the amount of alcoholic drinks he consumed were based solely on what he typically drank when he was out drinking. In actuality, Carbaugh has no memory of what he had to drink that night at Gettysburg Moose.

3. There is no testimony or evidence that Carbaugh was visibly intoxicated at Gettysburg Moose.

4. Therefore, there is no issue of material fact presently before this Court. As horrible, appalling and tragic as Carbaugh's actions towards the minor M.M. were, liability therefor does no rest with the Moose Lodge.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, 16-S-1295, M.M., A MINOR, BY TRACY
SHEFFER, ESQUIRE, GUARDIAN AD LITEM VS.
GETTYSBURG LODGE NO. 1526, LOYAL ORDER OF
MOOSE, INC., D/B/A GETTYSBURG MOOSE 1526/CHAPTER
182 AND ROBERT BENJAMIN CARBAUGH

Nathaniel L. Foote, Esquire, Attorney for Plaintiff

Carol A. Murphy, Esquire, Attorney for Defendant Gettysburg Moose

Robert B. Carbaugh, Pro Se

Campbell, J., February 20, 2020

OPINION

Presently before the Court is Defendant Gettysburg Lodge No. 1526, Loyal Order of Moose, Inc. d/b/a/ Gettysburg Moose 1526/Chapter 182's (hereinafter referred to as "Gettysburg Moose") Motion for Summary Judgment filed February 13, 2020. For the reasons stated herein, the attached Order granting Defendant's Motion for Summary Judgment is entered.

In the Motion for Summary Judgement, Gettysburg Moose alleges that Plaintiff's claim under the dram shop act has no genuine issue of material fact for the jury to hear. Specifically, Gettysburg Moose has requested for Summary Judgement alleging Plaintiff has produced

no evidence that Carbaugh was served alcohol **while he was visibly intoxicated** at Gettysburg Moose. (emphasis added).

Under the Pennsylvania Rules of Civil Procedure, a court may enter summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. **Pa. R.C.P. 1035.2; Strine v. Commonwealth**, 894 A.2d 733, 737 (Pa. 2006). Summary judgment is only appropriate where the pleadings, depositions, answers to interrogatories, omissions and affidavits, and other materials demonstrate that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. **Roche v. Ugly Duckling Car Sales, Inc.**, 879 A.2d 785, 789 (Pa. Super. 2005) (quotations and citations omitted). The burden of demonstrating the lack of any genuine issue of material fact falls upon the moving party, and, in ruling on the motion, the court must consider the record in the light most favorable to the non-moving party. **Id.** However, where a motion for summary judgment has been supported with depositions, answers to interrogatories, or affidavits, the non-moving party may not rest on the mere allegations or denials in its pleadings. **Accu-Weather, Inc. v. Prospect Commc'ns Inc.**, 644 A.2d 1251, 1254 (Pa. Super. 1994). Rather, the non-moving party must by affidavit or in some other way provided for within the Rules of Civil Procedure, set forth specific facts showing that a genuine issue of material fact exists. **Id.** Summary judgment is only appropriate in those cases which are free and clear from doubt. **McConnaughey v. Bldg. Components, Inc.**, 637 A.2d 1331, 1333 (Pa. 1994).

In order to prevail on a dram shop claim, a plaintiff must prove (1) an employee or agent of the defendant served alcohol to a visibly intoxicated patron in violation of the Pennsylvania Liquor Code, and (2) the service of alcohol to a visibly intoxicated patron was the proximate cause of injury to the plaintiff. **Fandozzi v. Kelly Hotel, Inc.**, 711 A.2d 524, 525-26 (Pa. Super. 1998).

Gettysburg Moose claims that Plaintiff has failed to produce evidence to show that Defendant Carbaugh was visibly intoxicated when an employee of Gettysburg Moose served him alcohol, and therefore Plaintiff cannot establish a cause of action under the Pennsylvania Liquor Code.

Section 4-493(1) of the Pennsylvania Liquor Code sets forth the basis for imposing liability on bars and taverns for negligent service of alcohol. Pursuant to the Pennsylvania Liquor Code a licensee, employee, agent, or the like, will not be held liable for a patron's actions unless the patron served was visibly intoxicated or a minor. **47 P.S. §4-493(1)**. It is important to note that the patron must have been served by a licensee when he or she was already visibly intoxicated in order to hold the licensee liable. **Fandozzi**, 711 A.2d at 527. Visible intoxication is to be based upon what a person can see based on appearance when serving a patron rather than a medical diagnosis such as blood alcohol level. **Johnson v. Harris**, 615 A.2d 771, 776 (Pa. Super. 1992) (quoting **Laukemann v. Commonwealth of Pennsylvania Liquor Control Bd.**, 475 A.2d 995, 956-57 (Pa. Cmwlth. 1984)).

When this Court previously denied Gettysburg Moose's Motion for Summary Judgement on October 25, 2018, this Court stated that "Plaintiff has provided barely enough testimony from which it could be inferred that Carbaugh could have been visibly intoxicated upon being served his last drink at the Gettysburg Moose." Despite time for ongoing discovery, Plaintiff's case has become substantially weaker since this Court made the previous ruling.

This Court's previous Opinion regarding Carbaugh's intoxicated state was prior to the preclusion of Plaintiff's expert witness, Dr. Lawrence Guzzardi, and prior to Carbaugh's trial deposition.¹ Plaintiff previously argued that Carbaugh's intoxicated state would be further explained by Dr. Guzzardi's testimony at trial. Because Dr. Guzzardi has now been precluded from testifying at trial, Plaintiff's argument over Carbaugh's intoxicated state is severely weakened.

Moreover, in this Court's previous Opinion, this Court stated "Nonetheless, Carbaugh's testimony suggests he had a tremendous amount to drink at the Moose Lodge [...] [f]rom Carbaugh's testimony about the exorbitant quantity he drank at the Moose Lodge, if believed by a jury, it could be inferred that he was visibly intoxicated while being served at the Moose Lodge." As this Court made clear,

¹ Defendant filed a Motion in Limine to preclude Dr. Guzzardi from testifying at trial. In response Plaintiff advised it would not be calling Dr. Guzzardi at trial and consented to the relief requested in Defendant's Motion in Limine.

our Opinion on the issue of Carbaugh being visibly intoxicated was based on Carbaugh's testimony about the amount of alcohol he had to drink together with Dr. Guzzardi's proposed testimony about how that would have affected Carbaugh's appearance.

Since then, Carbaugh gave his trial testimony via deposition on January 10, 2020, and in that deposition, his statements clarified the fact that he had zero actual knowledge of what he had to drink at Gettysburg Moose. Carbaugh affirmed that any previous statements he made to the police or to Gettysburg Moose's Counsel regarding the amount of alcoholic drinks he consumed were based solely on what he typically drank when he was out drinking. In actuality, Carbaugh has no memory of what he had to drink that night at Gettysburg Moose. Portions from the transcript from the trial deposition reads:

Carbaugh's Direct Examination

Q. Now, when you made the statement to the police on December 28, 2015, regarding how much you drank, was that – what was that based on? Was that based on what you remember on December 28, 2015?

A. That's based on what I usually drink. I mean, I would drink that much – I drank more than that before.

Carbaugh's Cross Examination

Q. Okay. And as a matter of fact, your testimony here today several times you said my usual drinking, my usual drinking, correct?

A. Yes.

Q. So is your memory based on what you usually did?

A. Yes. What do you mean?

Q. When you said I had 6 beers or 12 beers or whatever number you're saying here or you said back on July 6, 2017, or what you said back on December 28, 2015, was that all based on what you would usually drink?

A. Yes.

Plaintiff has failed to provide any witnesses from Gettysburg Moose who could testify to how much Carbaugh drank at Gettysburg

Moose that night.² Plaintiff has produced no witness to testify to Carbaugh's appearance at Gettysburg Moose, nor at the 7-Eleven after leaving Gettysburg Moose nor at any time before he arrived home at least an hour later. There is no testimony or evidence that Carbaugh was visibly intoxicated at Gettysburg Moose. Carbaugh's actions during the time gap³ from the time he left Gettysburg Moose until returning home are unexplained. Taking Carbaugh's testimony as true for the purposes of Summary Judgment in regards to the time he left Gettysburg Moose, Plaintiff has still failed to show that Carbaugh was visibly intoxicated when he was served alcohol.

Even considering all the evidence in favor of Plaintiff, this Court finds that there is not sufficient direct or circumstantial evidence to establish that Carbaugh was visibly intoxicated when he was served alcohol at Gettysburg Moose. The contrast from this Court's last Opinion on Summary Judgment and now, are the aforementioned facts that: (1) Dr. Guzzardi cannot testify to Carbaugh's intoxicated state or his appearance in Gettysburg Moose, and (2) Carbaugh has clarified that he does not have any actual memory of how much alcohol he drank at Gettysburg Moose, and his prior statements about the amount of alcohol consumed was pure speculation. Plaintiff has presented no evidence whatsoever to show that Carbaugh was visibly intoxicated when he was served alcohol, a required element under the dram shop act. **Johnson**, 615 A.2d at 776. It is not enough to say because he was visibly drunk when he came home, at least an hour after closing, that he must have been visibly intoxicated while Moose staff served him.

As the case presently stands, Plaintiff simply does not have the evidence to present to the jury a question of material fact regarding Carbaugh's intoxicated state at Gettysburg Moose. Plaintiff has failed to show any evidence or witnesses to corroborate her claim that Carbaugh was visibly intoxicated when he was served alcohol at Gettysburg Moose, and Carbaugh openly admitted he has no actual idea of how much alcohol he consumed while at Gettysburg Moose

² The depositions reference "Justin" who was Carbaugh's drinking companion at Gettysburg Moose on the night in question. Plaintiff has not identified "Justin" nor provided an affidavit from him nor taken his deposition.

³ Even assuming Carbaugh didn't leave Moose until closing time, at least an hour passed before he returned home.

that night and early morning. While this Court must view all issues of material fact in favor of Plaintiff as the non-moving party, Plaintiff has failed to present a credible case that Carbaugh was **visibly** intoxicated while being served alcohol at Gettysburg Moose. **Roche**, 879 A.2d at 789 (emphasis added). Therefore, there is no issue of material fact presently before this Court. As such, Plaintiff has failed to meet the first required element under the dram shop act and this Court need not address the issue of causation.⁴ As horrible, appalling and tragic as Carbaugh's actions towards the minor M.M. were, liability therefor does not rest with the Moose Lodge.

For the reasons stated herein, Defendant Gettysburg Moose's Motion for Summary Judgement is granted. Accordingly, the attached order will be entered.

ORDER

AND NOW, this 20th day of February, 2020, upon consideration of Defendant Gettysburg Lodge No. 1526, Loyal Order of Moose, Inc. d/b/a/ Gettysburg Moose 1526/Chapter 182's Motion for Summary Judgement and Brief in Support filed February 14, 2020, and Plaintiff's Response and Brief in Opposition filed February 18, 2020, it is hereby Ordered that Defendant's Motion for Summary Judgement is granted. Judgement is entered in favor of Defendant Gettysburg Lodge No. 1526, Loyal Order of Moose, Inc. d/b/a/ Gettysburg Moose 1526/Chapter 182. Therefore, Argument scheduled for February 21, 2020, on the respective party's Motions in Limine is canceled. The Prothonotary's Office is directed to enter the Judgement of Record.

The Tender Years Hearing scheduled for February 21, 2020, is canceled, subject to rescheduling if necessary. The case is stricken from the March 2020 Trial term. Plaintiff's Counsel shall consult with the Court concerning Plaintiff's intentions with regard to the remaining claims against Defendant Carbaugh.

⁴ In any event, this Court has found no appellate authority holding that a criminal sexual assault of a minor child is the foreseeable result of a dram shop action violation.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF JAMES E. ALVEBERG, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Grace A. Watson, 4849 Greenwood Street, Brookhaven, PA 19015

Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF BETSY A. FELDER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: Thomas Meltzer, 700 Durant Street, Apt. 204, Chapelhill, NC 27517

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF DOROTHY B. HELLER, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Personal Representative: Barry A. Heller, 107 Georgetown Road, Gardners, PA 17324

Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF DEAN K. HESS, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Co-Administrators: Cory K. Hess, 881 Yellow Hill Road, Biglerville, PA 17307; Devin Hess, 184 Nashville Boulevard, Spring Grove, PA 17362

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF AGNES M. POHLMAN, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania

Co-Executors: Bruce E. Pohlman, 1633 Centennial Road, New Oxford, PA 17350; Marcia A. Wilcox, 374 Miller Road, Elizabethtown, PA 17022

Attorney: Robert E. Campbell, Esq., Salzmann Hughes, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF SARA M. SANDOE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Susan P. Pizzuto, 820 Yellow Hill Road, Biglerville, PA 17307

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF BETTY L. TEAL, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Troy L. Teal, c/o Duane P. Stone, Esq., Stone, Wiley, & Linsenbach, PC, 3 N. Baltimore Street, Dillsburg, PA 17019

Attorney: Duane P. Stone, Esq., Stone, Wiley, & Linsenbach, PC, 3 N. Baltimore Street, Dillsburg, PA 17019

SECOND PUBLICATION**ESTATE OF ROMAINE FLORENCE EMIG, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Lori Ann Bare, 880 Edgegrove Road, Hanover, PA 17331

Attorney: Clayton A. Lingg, Esq., Mooney Law, 230 York Street, Hanover, PA 17331

ESTATE OF PAUL H. HENNINGER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Joyce C. King, c/o Linda S. Siegle, Esq., Siegle Law, 1010 Eichelberger Street, Suite 3, Hanover, PA 17331

Attorney: Linda S. Siegle, Esq., Siegle Law, 1010 Eichelberger Street, Suite 3, Hanover, PA 17331

ESTATE OF ROSE M. HYDOCK, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Jeffery A. Hydock, 227 Ewell Avenue, Gettysburg, PA 17325

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARY A. KRAMER, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Administrator: Christina M. Gregory, 10576 Harney Road, Emmitsburg, MD 21727

ESTATE OF MARY LOUISE MAY, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Karen L. Kohlmaier, 145 Bolero Drive, Downingtown, PA 19335

Attorney: Clayton A. Lingg, Esq., Mooney Law, 230 York Street, Hanover, PA 17331

ESTATE OF ROBERT JAMES ROCK, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Patricia A. Smith, 130 Teeter Road, Littlestown, PA 17340

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARGARET R. STAIR a/k/a MARGARET RUTH SHRIVER STAIR a/k/a MARGARET S. STAIR, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Bruce W. Stair, 703 West King Street, Littlestown, PA 17340

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF BARBARA L. TRIMMER, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Executor: Michael L. Trimmer, c/o Samuel A. Gates, Esq., Gates & Gates, P. C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P. C., 250 York Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF LISA ANN CRAMER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Administratrix: Mary Cramer, 77 Conewago Drive, Hanover, PA 17331

Attorney: Clayton A. Lingg, Esq., Mooney Law, 230 York Street, Hanover, PA 17331

ESTATE OF ETHEL L. CROWL a/k/a ETHEL LEOLA CROWL, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Thomas A. Crowl, 158 Lincoln Road, Westminster, MD 21157

Attorney: Damian L. Halstad, Esq., Hoffman, Comfort, Offutt, Scott & Halstad, LLP, 24 North Court Street, Westminster, MD 21157

ESTATE OF JOHN W. FEHRINGER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: John R. Fehring, 1285 Hunterstown Hampton Road, New Oxford, PA 17350

ESTATE OF CATHARINE L. KERSHNER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Co-Executors: Sharon K. Ford, 490 Russell Tavern Road, Gettysburg, PA 17325; Allen R. Kershner, 2700 Mummasburg Road, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Salzmann Hughes, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FREDERICK ANTHONY MILLER, a/k/a FREDERICK A. MILLER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Personal Representative: Patricia A. Dillon, 804 Buchanan Valley Road, Orrtanna, PA 17353

Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF PHILIP LOUIS MURREN, a/k/a PHILIP L. MURREN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Administrator: Michael J. Murren, 414 Delone Avenue, McSherrystown, PA 17344

Attorney: Jacob H. Kiessling, Esq., Mette, Evans & Woodside, 3401 North Front Street, Harrisburg, PA 17110

ESTATE OF TIMOTHY A. SMITH, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Amanda J. Smith, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin, PA 17316



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