

TUESDAY, MARCH 24, 2009
11:00 A.M.

NO. 3

#24943, #24947

CATHERINE ROSE MCGUIRE,
Plaintiff and Appellant,

vs.

DEAN J. CURRY,
Defendant,
and

PARK JEFFERSON SPEEDWAY, INC.,
a South Dakota Corporation,
Defendant and Appellee,

vs.

CHRISTOPHER ERIC MOLLET,
Third Party Defendant
and Appellant.

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(FOR APPELLEE SPEEDWAY)

The Honorable Steven R. Jensen
First Judicial Circuit
Union County

(CIV 05-89)

STATEMENT OF THE ISSUES

I. DOES AN EMPLOYER IN THE BUSINESS OF SERVING ALCOHOL HAVE ANY LEGAL DUTY TO THE GENERAL PUBLIC TO USE ORDINARY CARE IN SUPERVISING ITS UNDERAGE EMPLOYEES TO PREVENT THEM FROM HAVING UNMONITORED ACCESS TO COMPANY ALCOHOL AND FROM USING IT TO BECOME INTOXICATED ON THE JOB?

After initially holding that Park Jefferson had a common law duty of ordinary care under the circumstances and denying its motion for summary judgment on the plaintiff's claim for negligent supervision, the trial court reversed course, and, in a second summary judgment opinion granting summary judgment on that same claim, held that Park Jefferson did not have any legal duty in this case.

- *Kirlin v. Halverson*, 2008 SD 107
- *Harris v. Best Business Prod.*, 2002 SD 115, 651 N.W.2d 875
- *Barger v. Cox*, 372 N.W.2d 161 (S.D. 1985)
- *Petolicchio v. Santa Cruz County Fair and Rodeo Ass'n, Inc.*, 866 P.2d 1342, 1348 (Ariz. 1994) (en banc).

II. DOES AN EMPLOYER IN THE BUSINESS OF SERVING ALCOHOL HAVE ANY LEGAL DUTY TO THE GENERAL PUBLIC TO USE ORDINARY CARE IN HIRING EMPLOYEES WHO WILL BE GRANTED UNSUPERVISED ACCESS TO COMPANY ALCOHOL?

The trial court held that Park Jefferson did not have a common law duty of ordinary care in this case and granted its motion for summary judgment on the plaintiff's negligent hiring claim.

- *Kirlin v. Halverson*, 2008 SD 107
- *Ogg v. Dillard's, Inc.*, 239 S.W.3d 409 (Tex. Ct. App. 2007)

STATEMENT OF LEGAL ISSUE PRESENTED FOR REVIEW

I. UNDER SOUTH DAKOTA LAW, WHETHER A DUTY OF CARE CAN BE IMPOSED ON AN EMPLOYER TO PREVENT THE NEGLIGENCE OF AN OFF-DUTY EMPLOYEE WHEN THE ALLEGED NEGLIGENCE OCCURS OFF THE EMPLOYER'S PREMISES, AFTER NORMAL BUSINESS HOURS AND OUTSIDE THE SCOPE OF EMPLOYMENT?

The trial court concluded no such duty can be imposed on an employer and held that Park Jefferson Speedway did not owe a duty to protect third parties from harm under the circumstances in this case.

- *Biel v. Alcott*, 876 P.2d 60, 62-63 (Colo. App. 1994)
- *C.C. v. Roadrunner Trucking, Inc.*, 823 F. Supp. 913 (D. Utah 1993)
- *Guidry v. National Freight*, 944 S.W.2d 807 (Tex. App. 1997)
- *Kirlin v. Halverson*, 2008 SD 107

The designation "R.A." denotes a referral to the Clerk's Register of Actions. The appendix of this brief will be referred to as "App."