

Carnahan Perry Hanlon & Hudson, PLC

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No Homeowner Liability for Injuries to Guests Off Property

The law firm of Carnahan Perry Hanlon & Hudson successfully defended a premises liability lawsuit filed by an 18-year-old male seriously injured at an unsupervised party at the client's home. In a published opinion, the Court of Appeals affirmed the trial court's ruling in favor of the homeowner defendants. *Wickham v. Hopkins*, 226 Ariz. 468 (Ct. App. 2011). On September 20, 2011, the Arizona Supreme Court denied plaintiffs' petition for review.

Our clients hired a chaperone to watch their 14-year-old daughter while they were away on a weeklong vacation. On a Friday night, the chaperone went to dinner with friends and left the 14-year-old unattended. She invited several friends and eventually a party of approximately 70 individuals, mostly minors, gathered for the party. Although alcohol was consumed at the party, it was not furnished by our clients and therefore there was no social host liability.

During the course of the party, a heated argument ensued between Plaintiff and other young males. Plaintiff left the party. When he reached the street in front of our client's home, the group of males assaulted Plaintiff causing serious injuries. Plaintiff argued by hiring a chaperone, our clients voluntarily assumed a duty of care to prevent the party and his resulting injury. The trial court agreed Plaintiff was a social guest and, as a "licensee", the only duty owed by our clients was to "refrain from knowingly letting Plaintiff run upon a hidden peril or wantonly or willfully causing him harm." Once off the property, the trial court held our clients had no duty of care to protect Plaintiff.

Division I of the Arizona Court of Appeals upheld the trial court's ruling in favor of our clients, agreeing they owed no duty of care to Plaintiff once off their property.

The Court rejected Plaintiff's argument the parents assumed the duty of "preventing parties" by hiring the chaperone because he never spoke with the homeowners or the chaperone and had never received "any commitment that the party would be chaperoned, supervised, peaceful, free of alcohol, or devoid of bad actors." The Court further cautioned that even if Plaintiff had asked directly and specifically for help or protection at the party, a duty of care would not necessarily exist.

Alternatively, Plaintiff argued the homeowners had a duty of care because an unsupervised Friday night party with teenagers, minors and beer created a foreseeable risk of harm. The Court agreed that "foreseeability" of harm does not create a duty of care. *Gipson v. Kasey*, 214 Ariz. 141 (2007), "declared unequivocally that foreseeability is no longer a factor used to decide if a duty exists. Accordingly, we cannot base the existence of a duty on the asserted foreseeability that someone could be hurt in an altercation on the street as the result of the party at the home."

The Court refused to abolish the common law distinctions of trespassers, licensees and invitees and adopt a rule requiring homeowners to exercise reasonable care under the circumstances to all persons on and off the property.

By denying review, the Arizona Supreme Court reaffirmed the historical common law distinctions between trespassers, licensees and invitees remain the law in Arizona. Invited social guests are mere "licensees", and the only duty of care owed to them is to refrain from knowingly causing their harm or knowingly letting them encounter hidden dangers on the property. Homeowners must only avoid willfully or intentionally inflicting injury upon trespassers. Homeowners owe "invitees" (sometimes referred to as "business visitors") a greater duty of care. Homeowners have a duty to inspect the property for unreasonable risks of harm, to warn of such dangers or, if necessary, remedy the dangerous condition to prevent harm.

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