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QUESTION PRESENTED

WHETHER THE FIFTH DISTRICT CORRECTLY HELD THAT WRITTEN NOTICE IS NOT A PREREQUISITE UNDER SECTION 768.125, FLORIDA STATUTES, FOR IMPOSING LIABILITY UPON A VENDOR WHO KNOWINGLY FURNISHES ALCOHOL TO A PERSON HABITUALLY ADDICTED THERETO.

PREFACE

This brief is submitted on behalf of the Academy of Florida Trial Lawyers, appearing as Amicus Curiae supporting the position of the Plaintiff/Respondent, MARY SABO. In this brief, the parties will be referred to either by name or as Petitioner and Respondent. Any emphasis appearing in this brief is that of the writer unless otherwise indicated. Reference to the Appendix to this brief will be by A.1-6.

STATEMENT OF THE CASE AND FACTS

The Academy does not have a complete copy of the Record on Appeal, and thus assumes the correctness of the facts as set forth in the Petitioner's brief and supplemented by the Respondent.

## SUMMARY OF ARGUMENT

The Fifth District's decision in the present case, Sabo v. Shamrock Communications, Inc., 566 So.2d 267 (Fla. 5th DCA 1990), was correctly decided and should be affirmed. The conflicting decision of Ellis v. N.G.N. of Tampa, Inc., 561 So.2d 1209 (Fla. 2d DCA 1990), erroneously interpreted Section 768.125, Fla.Stats., which imposes civil liability upon a liquor vendor who "knowingly serves a person habitually addicted" to alcohol. The Ellis court inserted in Section 768.125 a provision not included by the Legislature, which would require that the "knowledge" element of that statute could be met only by means of a written notice furnished by a relative of the alcoholic in question. That interpretation contradicts both the plain language of the statute and the Legislature's deliberate amendment of the bill to eliminate language which would have required that written notice be furnished.

The Academy urges this Court to disapprove the Ellis court's interpretation and to approve the decision of the Fifth District in the present case, holding that a liquor vendor's knowledge of its patron's alcoholism may be proved in the same manner as any other fact, without the necessity of a written notice having previously been furnished by a family member. The Legislature recognized that criminal sanctions alone were not providing an effective deterrent, and deliberately adopted language in Section 768.125 to provide a civil remedy without the onerous requirement of a previous conviction or the furnishing of the written notice required only in the criminal statute.

## ARGUMENT

THE FIFTH DISTRICT CORRECTLY HELD THAT WRITTEN NOTICE IS NOT A PREREQUISITE UNDER SECTION 768.125, FLORIDA STATUTES, FOR IMPOSING LIABILITY UPON A VENDOR WHO KNOWINGLY FURNISHES ALCOHOL TO A PERSON HABITUALLY ADDICTED THERETO.

The Academy of Florida Trial Lawyers, as Amicus Curiae, supports the argument of Respondent in its entirety. The following discussion is intended to be supplemental rather than cumulative, and thus will address only the issue of whether the Legislature intended to require written notice as a prerequisite to imposing liability upon liquor vendors who knowingly serve persons habitually addicted to alcohol. It is the Academy's position that the Legislature, in enacting Section 768.125, intended that liquor vendors who knowingly serve alcohol to habitual addicts be held responsible for the damages caused thereby, without the added (and unstated) requirement, urged by Petitioner, that written notice have first been furnished to the liquor establishment.

This case presents to this Court its first opportunity to interpret Section 768.125's applicability to a tavern's liability for serving liquor to a known alcoholic. Previous decisions by this Court involving this statute have been decided in the context of unlawfully serving minor patrons. The distinction is crucial and, once clearly understood, reveals that the basis for much of the Petitioner's argument is unfounded.

Both the Petitioner and the decision upon which it primarily relies<sup>1/</sup> assert that Section 768.125 can be construed solely as a

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<sup>1/</sup> Ellis v. N.G.N. of Tampa, Inc., 561 So.2d 1209 (Fla. 2d DCA 1990).

limitation upon pre-existing liability, citing this Court's decisions in Migliore v. Crown Liquors of Broward, 448 So.2d 978 (Fla. 1984), and the more recent decisions dealing with the nonliability of social hosts, Dowell v. Gracewood Fruit Company, 559 So.2d 217 (Fla. 1990) and Bankston v. Brennan, 507 So.2d 1385 (Fla. 1987). Both the Petitioner and the Second District appear to assume from these decisions that this Court would extend the same interpretation to cases involving a commercial vendor who serves a known alcoholic. However, this Court has not yet addressed this aspect of Section 768.125, Fla.Stats., and it is the Academy's belief that a proper view of the legislative history and purpose of this statute will compel the conclusion that the Legislature intentionally omitted any written notice requirement in imposing civil liability.

In Migliore, this Court interpreted Section 768.125 as establishing limits upon the expanding civil liability of liquor establishments for the serving of underage drinkers. That conclusion was supported in large part by the fact that when the Legislature enacted Section 768.125, it did so against a backdrop of cases expanding liability for serving underage drinkers, such as Prevatt v. McClennan, 201 So.2d 780 (Fla. 2d DCA 1967), and that the Legislature was presumed to be acquainted with those judicial decisions in enacting this legislation. Migliore, supra at 980-981.

That rationale cannot, however, be used to support the claim that the Legislature intended to similarly limit a vendor's liability for serving a known alcoholic. This is so for two

reasons: first, at the time the legislation was passed there were no reported decisions establishing liability in such situations; and second, the legislative history reveals a deliberate intent by the Legislature to provide a more effective deterrent to taverns serving alcoholics by eliminating the requirement of written notice.

As the Second District pointed out in Ellis, the original version of this bill presented to the House provided that liability would be imposed only if the liquor vendor were convicted of a violation of Section 562.50, Fla.Stats. Ellis, supra at 1213. An amendment thereto was offered by Representative Gustafson to relax the requirements for imposing liability by eliminating the prerequisite of a criminal conviction. As Representative Gustafson pointed out, the statute with the amendment "...simply provides that if you knowingly serve a person who is habitually addicted to alcoholic beverages, then you will be responsible." The amendment was passed and incorporated into the statute. During the floor debate, Representative Gustafson argued that the conviction requirement was too onerous because the criminal statute's requirement of a written notice made it very unlikely that a conviction could be obtained.

Considered in its entirety (A.1-2), it is evident from the debate that this amendment was intended to liberalize the provisions of the act as it applied to liability for serving habitual drunkards, in an attempt to meet the objections of those who opposed a "reverse dram shop act" in the first place. In

other words, it is apparent there were members of the Legislature opposed in principle to the limitation of liability, as a concept, and that this amendment was intended to partially meet those concerns.

Although the Ellis court reviewed this same colloquy and reached the opposite conclusion, its reasoning cannot withstand analysis. The court opined that what was troubling the Legislature was the requirement of a previous conviction and not the requirement of notice per se. That conclusion does not logically follow, however, since a conviction could not be obtained without written notice, and thus the two requirements are inextricably intertwined. Eliminating only the conviction requirement while retaining the written notice requirement would have accomplished nothing, and would have rendered the amendment meaningless. As this Court pointed out in Johnson v. Feder, 485 So.2d 409 (Fla. 1986), the Court must assume that the Legislature acts purposefully and that its statutory provisions are intended to have some useful purpose. Id. at 411.

Section 768.125, Fla.Stats., clearly contains no requirement that the vendor's knowledge be obtained solely in the form of a written notice by the alcoholic's family. This Court has previously held that it may not add words to a statute not placed there by the Legislature. Chaffee v. Miami Transfer Company, Inc., 288 So.2d 209, 215 (Fla. 1974). The plain meaning of statutory language is the first consideration in determining legislative intent, and this Court has consistently refused to depart from that plain meaning even where the Court is convinced

that the Legislature intended something not expressed therein. St. Petersburg Bank and Trust Company v. Hamm, 414 So.2d 1071, 1073 (Fla. 1982).

We suggest that the Second District in Ellis has violated that provision of statutory construction by assuming that the Legislature intended to include a written notice requirement. The fallacy of such an assumption is underscored by the fact that the Legislature expressly refused to require a criminal conviction as a prerequisite to the imposition of liability, precisely because the underlying requirement of written notice was practically impossible to obtain.

The Ellis court justified its interpretation of the statute by relying upon the rule that statutes which relate to the same or a closely related subject should be regarded as in pari materia and should be construed together, citing Ferguson v. State, 377 So.2d 709 (Fla. 1979). That rule of statutory construction, however, does not require or permit the wholesale importation of the language of one statute into that of another, as the Second District did here; rather, it is the purpose of that rule to illuminate the meaning of a statute by viewing the legislative treatment of the problem as a whole, so that all statutes relating to the same subject matter may be given effect, if this can be done by any fair and reasonable construction. Ferguson, supra at 711. Here, there is no contradiction or anomaly between the Legislature's decision in 1945 to require written notice as a prerequisite to conviction under Section

562.50, Fla.Stats., and its decision in 1980 to impose civil liability where the vendor's knowledge is established by some other form of evidence. The plain language of the statute should be given its ordinary meaning, namely that a vendor who knows that the person he is serving is an alcoholic may become liable as a result.

Both the Fifth District in the present case and the First District in Pritchard v. Jax Liquors, Inc., 499 So.2d 926 (Fla. 1st DCA 1986), rev. den. 511 So.2d 298 (Fla. 1987), have interpreted Section 768.125 as permitting the "knowledge" requirement of the statute to be proved in some manner other than by the written notice required for conviction under the criminal statute. Although Pritchard was decided after Migliore, this Court apparently recognized that Pritchard did not conflict with Migliore (which dealt with only serving alcohol to minors), since it declined to review Pritchard. We submit that the result reached by the Fifth District in the present case and the First District in Pritchard was the correct one, that the Fifth District's decision should be approved, and that the Ellis court's interpretation of the statute be specifically disapproved.

Even the Ellis court recognized that the written notice requirement "will place little impediment in the destructive path of the drunkard," Id. at 1215, but concluded nonetheless that the liquor server could not be civilly or criminally liable unless it had received that notice. It is the Academy's view, however, that the Legislature was fully aware of the problem and acted

intentionally to ease the requirement for imposition of liability upon a commercial vendor who serves liquor to a known alcoholic. Both the language of the statute itself and the legislative history support this conclusion, and we urge this Court to so hold.


CONCLUSION

For the reasons set forth above and in the Respondent's brief, the Academy urges the Court to approve the Fifth District's opinion in the present case, and to specifically disapprove the Second District's decision in Ellis to the extent that it requires written notice as a prerequisite to imposition of liability under Section 768.125, Florida Statutes.

Respectfully submitted,

ACADEMY OF FLORIDA TRIAL LAWYERS

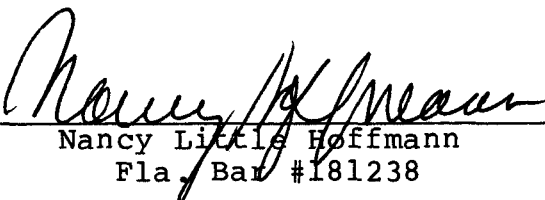
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing and attached has been served by mail this 13th day of December, 1990, to: Marguerite H. Davis, Esquire, Florida Defense Lawyers' Association, 215 South Monroe Street, Suite 400, Tallahassee, Florida 32301; John Upchurch, Esquire, Post Office Box 191, Daytona Beach, Florida 32015; Daniel Lee Hoag, No. 104692, Baker Correctional Institute, Post Office Box 500, Oulstee, Florida 32072; Ava F. Tunstall, Esquire, Counsel for Respondent, Post Office Box 29128, Orlando, Florida 32802; and Elizabeth C. Wheeler, Esquire, Post Office Box 531086, Orlando, Florida 32853-1086, Counsel for Petitioners.

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