

# Supreme Court Ruling Sets Higher Standard of Proof for Plaintiffs in Dram Shop Cases

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The Michigan Supreme Court recently ruled that plaintiffs must provide “clear and convincing” evidence to overcome the rebuttable presumption of non-liability for all but the last retail licensee that serves alcohol to a visibly intoxicated person.

The case of *The Estate of Lance Nathan Reed vs. HB Resort Enterprises, Inc., a/k/a Eagles Nest* (case #127703) resolved the issue regarding what level of proof is required to establish visible intoxication in a dram shop case. The Supreme Court held that a higher level of proof is required to prove visible intoxication against any bar that is not the last retail licensee that serves alcohol to a visibly intoxicated person.

The Supreme Court ruled that MCL 436.1801(8) creates a rebuttable presumption of non-liability for all but the last retail licensee that serves alcohol to a visibly intoxicated person. The Supreme Court held that a plaintiff could rebut this presumption only by *clear and convincing evidence*. The Supreme Court held that the plaintiff has to prove visible intoxication by the enhanced standard as opposed to the normal standard of proof required in a civil case – that being by preponderance of the evidence.

The Supreme Court went on to address the issue of what type of proof of visible intoxication is required in all dram shop cases. It held that in order to establish “visible intoxication” under MCL 436.1801(3), a plaintiff must present evidence of actual, visible intoxication. The Supreme Court held that the plaintiff cannot establish its claim without such evidence and cannot rely only on suppositions drawn from blood alcohol tests and other circumstantial evidence. Further, the Supreme Court held that the standard of “visible intoxication” focuses on the objective manifestations of intoxication.

In the case of “*The Estate of Nathan Reed*,” the plaintiff presented expert evidence from toxicologists as to their expert expectations as to the alleged intoxicated person’s (AIP) visible intoxication but did not present evidence from eyewitnesses as to visible intoxication at the time the AIP was served. The Supreme Court held that “Expert post hoc analysis may demonstrate that (the AIP) was *actually* intoxicated but does not establish that others witnessed his *visible* intoxication.” The Supreme Court reasoned, in a footnote at page 14, that “plaintiffs’ experts’ reports demonstrated only their own expectation of (the AIP’s) visible intoxication, not that he actually was visibly intoxicated.”

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This case makes it far more difficult for a plaintiff to prove visible intoxication against any bar, especially any bar that is not the last retail licensee that serves the AIP.