2015 IL App (1st) 133958-U

FIRST DIVISION
February 23, 2015

No. 1-13-3958



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| JACOB SEARS,<br><br>Plaintiff-Appellant/Cross-Appellee,<br><br>v.<br><br>PAP'S TAP, INC. and RAYMOND DRISH,<br><br>Defendants-Appellees/Cross-Appellants. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of Cook County.<br><br>No. 12 L 12426<br><br>Honorable Lynn M. Egan, Judge Presiding. |

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

**ORDER**

¶1 ***Held:*** In this personal injury case, the trial court properly granted summary judgment in favor of defendants because (1) plaintiff's alcohol-related claims were not valid tort claims under Illinois law; (2) plaintiff failed to establish the existence of an agency relationship between the individual and corporate defendants; (3) plaintiff's voluntary undertaking claim failed because defendants were not in an agency relationship; and (4) plaintiff's claims that the corporate defendant had a duty to prevent harm to plaintiff after he left the business premises were foreclosed by existing case law.

¶2 Plaintiff Jacob Sears appeals the trial court's order granting summary judgment in favor of defendants Pap's Tap, Inc.[1] and Raymond Drish on both counts of his first amended complaint. We affirm.

¶3 BACKGROUND

¶4 Pap's Tap is a neighborhood bar located at 5532 South Narragansett Avenue in Chicago. It is owned by Helen Paprota. On December 20, 2008, Sears and his friend Michael Galvin, both 18, went to Pap's Tap. They arrived around 10:00 p.m, took seats at the bar and ordered drinks. Both testified that they were not required to present identification when they entered the bar or ordered drinks.

¶5 At around 12:30 a.m. on December 21, 2008, defendant Raymond Drish arrived at Pap's Tap after finishing work at his catering business. Drish was accompanied by Michael Lange, one of his employees. Michael Behring, one of Drish's friends, also met him at Pap's Tap. Drish noticed Sears sitting at the bar and began talking to him. According to Galvin, Drish noticed that he and Sears were drinking Jameson whiskey, and so he "asked the bartender to put it up onto the bar, and we were pouring our own drinks." Galvin testified that he and Sears stopped paying for drinks once Drish began talking to them. Sears stated that he consumed "a couple shots of whiskey" and at least six (and possibly eight to fourteen) beers while he was at Pap's Tap.

¶6 Sears and Drish offered differing accounts of what happened next. According to Sears, later in the night, Drish told him and Galvin that Pap's Tap was closing and that he knew a bar to which they could go and that he would buy them drinks. Galvin then left Pap's Tap to pick up his girlfriend; he came back and offered Sears a ride home. Sears declined Galvin's offer and

[1] For ease of reference, we refer to both Pap's Tap, Inc., the nominal defendant in this case, and Pap's Tap, the bar, as Pap's Tap.

decided to leave with Drish. Drish and Sears then went to another bar. According to Sears, he was intoxicated and "more than drunk" when he left Pap's Tap. On the way to the second bar, Drish told Sears he would give him a ride home.

¶7 Sears claimed that Drish began making sexual advances to him at the next bar. Sears dismissed Drish's advances at first, but eventually he became irritated by Drish's conduct. Sears stated that he began to feel uncomfortable around Drish and feared for his safety. As a result, Sears left Pap's Tap on his own and before Drish left.

¶8 The weather at the time was extremely cold. According to Sears, as he was walking home his shoes became stuck in snow and ice and fell off multiple times. As a result of the extremely cold temperature, Sears's feet became numb. Due to the numbness in his feet, Sears eventually failed to notice that his shoes had come off again. As a result of having walked outside in extreme cold while not wearing shoes, Sears suffered severe frostbite to his feet, requiring the amputation of all of his toes and parts of his feet.

¶9 According to Drish, he did not offer to take Sears to another bar while at Pap's Tap. Instead, he planned on giving Sears a ride home from Pap's Tap. While Sears and Drish were sitting in Drish's vehicle waiting for it to warm up, Sears asked Drish what else he was doing that night. Drish told Sears he was going to a "gay bar." Sears stated that he was "cool with that" and asked to come along. Drish agreed to bring Sears, and they went to a bar called Escapades. Drish stated that although he did not stay near Sears the entire time they were at Escapades, he did try to find Sears when he was leaving to see if Sears needed a ride home. Drish was unable to locate Sears, so he left Escapades.

¶10 On June 13, 2013, Sears filed his first amended complaint. Count 1 was a claim for common law negligence against Pap's Tap, Inc. Sears alleged that Pap's Tap owed him a "legal

duty to take reasonable steps and exercise the degree of care and vigilance practicable under the circumstances in order to prevent injury to business invitees such as Plaintiff." Paragraph 16 of his complaint alleged that Pap's Tap breached that duty:

> "a. By serving plaintiff alcohol and intoxicating liquors despite plaintiff having not attained the legal drinking age;
>
> b. By failing to take appropriate measures to verify that plaintiff had attained the legal age before serving him alcoholic beverages;
>
> c. By serving plaintiff large and excessive amounts of alcohol thereby allowing him to become intoxicated;
>
> d. By failing to take reasonable measures to discourage, limit or prevent plaintiff from consuming, and continuing to consume, alcohol while on and upon its premises;
>
> e. By failing to recognize plaintiff's obvious intoxication, and by continuing to serve him alcohol even after defendant knew or should have known of plaintiff's intoxication;
>
> f. By failing to offer plaintiff the opportunity to remain on the premises in order to mitigate or eliminate plaintiff's impairment caused by the effects of alcohol;
>
> g. By failing to provide plaintiff with a safe means of transportation home; and
>
> h. By failing to provide plaintiff with safe transportation home once it undertook through its agent, servant and employee to

provide plaintiff with transportation from its premises at the time of closing."

¶11 In addition, Sears alleged in paragraph 17 that Pap's Tap owed him a duty "to be free from negligence and to act with reasonable care in its business operations." In paragraph 18, he alleged that Pap's Tap breached this duty:

"a. By allowing defendant Drish to use his ability to control and influence Pap's business operations in order to facilitate underage consumption of intoxicating liquors by plaintiff;

b. By failing to consistently and regularly take appropriate measures to insure that patrons had attained legal drinking age before serving intoxicating liquors, which directly influenced plaintiff's decision to patronize Pap's Tap on December 20, 2008 and December 21, 2008;

c. By ejecting plaintiff from the vehicle driven by its agent, servant and employee Drish without taking reasonable measures to insure plaintiff's safety;

d. By ejecting plaintiff from the vehicle driven by its agent, servant and employee Drish without recognizing plaintiff's intoxicated condition and the danger posed to plaintiff by virtue of his intoxicated condition as a result of alcohol served by defendant;

e. By ejecting plaintiff from the vehicle driven by its agent, servant and employee Drish in an unfamiliar location while intoxicated; and

> f. By ejecting plaintiff from the vehicle driven by its agent, servant and employee Drish without insuring plaintiff had the means or capacity to return home from the location where he was driven to."

¶12 Pap's Tap and Drish filed separate motions for summary judgment arguing that Sears's claims were predicated on the fact that he received alcohol and were thus governed by the Liquor Control Act (Act) (235 ILCS 5/1-1 *et seq*. (West 2008)). On November 26, 2013, the trial court granted defendants' motions and entered judgment in their favor on both counts of Sears's complaint. The trial court held that Sears's claims were governed by the Act because they arose from the gift or sale of alcohol to Sears. The court ruled that Sears's claims were barred by the Act because (1) Sears was the intoxicated person and (2) Sears brought his claims outside the Act's one-year statute of limitations. The court further found that (a) Drish was not an agent of Pap's Tap; (b) Sears had not presented evidence that Drish ejected him from his car; (c) defendants did not have a duty to provide Sears with a ride home; and (d) defendants did not engage in a voluntary undertaking giving rise to a duty to provide Sears with a ride home.

¶13 On December 19, 2013, Sears timely filed his notice of appeal. On May 9, 2014, Drish filed a bankruptcy petition pursuant to chapter 7 of the Bankruptcy Code (11 U.S.C. § 701, *et seq.* (West 2014)) in the United States Bankruptcy Court for the Northern District of Illinois. Drish's bankruptcy petition listed Sears as a creditor. On June 16, 2014, this court entered an order staying Sears's appeal pending the resolution of Drish's bankruptcy. On August 28, 2014, the bankruptcy court entered an order discharging Drish from his debts. See *In re Raymond G. Drish, Jr.*, No. 14-17710 (Bankr. N.D. Ill. Aug. 28, 2014). Sears was sent notification of the discharge on August 30, 2014. See *Id.* (Bankr. N.D. Ill. Aug. 30, 2014). On September 15, this

court lifted the stay on Sears's appeal and on September 23, this court entered an order dismissing (1) Sears's appeal with respect to Drish and (2) Drish's cross-appeal.

¶14 ANALYSIS

¶15 Sears appeals from the trial court's entry of summary judgment in favor of Pap's Tap. Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). "In considering a motion for summary judgment, all reasonable inferences must be drawn strictly against the moving party and liberally in favor of the opponent." *Weedon v. Pfizer, Inc.*, 332 Ill. App. 3d 17, 20 (2002). We review an order granting or denying summary judgment *de novo*. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 13.

¶16 In granting summary judgment in favor of Pap's Tap and Drish, the trial court held that plaintiff's claims were governed by the Act. Sears did not, however, bring a statutory cause of action pursuant to the Act. Instead, Sears brought tort claims sounding in negligence against Pap's Tap and Drish. Accordingly, we believe that the trial court relied on an incorrect premise by applying the Act to Sears's complaint and granting summary judgment to Pap's Tap (1) on the basis that the Sears was precluded from bringing a claim under the Act because he was the intoxicated person and (2) because Sears's complaint was filed outside the Act's one-year statute of limitations. However, we may affirm the decision of the trial court on any basis in the record. *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009). We therefore proceed to the merits of Sears's appeal.

¶17 The sole issue on appeal is whether the trial court properly granted summary judgment to Pap's Tap. To resolve that issue, we must consider the following: (1) whether Sears's tort claims

are viable under Illinois law; (2) whether Pap's Tap had a duty to provide Sears with a ride home; (3) whether Pap's Tap engaged in a voluntary undertaking to give Sears a ride home; and (4) whether Drish was an agent of Pap's Tap such that his actions may be imputed to Pap's Tap.

¶18 We first consider whether Sears's tort claims are viable under Illinois law. "The historic common law rule, adhered to in this State, is that there is no cause of action for injuries arising out of the sale or gift of alcoholic beverages." *Charles v. Seigfried*, 165 Ill. 2d 482, 486 (1995). "The rationale underlying the rule is that the drinking of the intoxicant, not the furnishing of it, is the proximate cause of the intoxication and the resulting injury." *Id.* "As a matter of public policy, the furnishing of alcoholic beverages is considered as too remote to serve as the proximate cause of the injury." *Id.*

¶19 In 1872, the Illinois legislature carved out an exception to this general rule by passing the Dram Shop Act. *Id.* The Dram Shop Act provided third parties injured by an intoxicated person with a cause of action against the establishment which provided the intoxicant to the intoxicated person. *Id.* at 487. The Dram Shop Act is presently included in the Liquor Control Act, which provides injured third parties with a similar cause of action. *Id.* By passing and repeatedly amending the Dram Shop Act, the Illinois legislature "has preempted the entire field of alcohol-related liability." *Id.* at 488 (citing *Cunningham v. Brown*, 22 Ill. 2d 23 (1961)).

¶20 We have carefully reviewed Sears's complaint, giving special attention to the allegations contained in paragraphs 16(a) through (h) and 18(a) through (f) which set forth the manner in which Pap's Tap purportedly breached its duties to Sears. We find that the allegations contained in paragraph 16(a) through (h) and 18 (a) and (b) are predicated on the gift or sale of alcohol to Sears. In paragraph 16(a), for example, Sears alleges that Pap's Tap, Inc. breached its duty of

care to him "[b]y serving plaintiff alcohol and intoxicating liquors despite plaintiff having not attained the legal drinking age[.]"

¶21 Likewise, in paragraph 16(b) Sears alleges that Pap's Tap was negligent because it did not verify that he was 21 years old before serving him alcohol. *Id.*¶ 16(b); see also *Id.*¶ 16(c) (defendant breached duty of care to by serving Sears alcohol and "allowing him to become intoxicated"); *Id.* ¶ 16(d) (defendant breached duty of care by failing to prevent Sears from consuming alcohol on its premises); *Id.* ¶ 16(e) (defendant breached duty of care by "failing to recognize [Sears's] obvious intoxication" and serving him alcohol after defendant "knew or should have known of [Sears's] intoxication"); *Id.* ¶ 16(f) (defendant breached duty of care by failing to offer [Sears] the choice to remain on the premises to "mitigate or eliminate [Sears's] impairment" caused by his consumption of alcohol); *Id.* ¶ 16(g) (defendant breached duty of care by failing to provide Sears with a way to get home); *Id.* ¶ 16(h) (defendant breached duty of care by failing to provide Sears with a way to get home once Drish undertook to give him a ride home); *Id.*¶ 18(a) (defendant breached duty by allowing Drish to facilitate Sears's consumption of alcohol); *Id.*¶ 18(b) (defendant breached duty by failing to take steps to prevent minors from obtaining alcohol, thereby influencing Sears to go to Pap's Tap).

¶22 Sears's reliance on *Harris v. Gower, Inc.*, 153 Ill. App. 3d 1035 (1987) and *Gilman v. Kessler*, 192 Ill. App. 3d 630 (1989), is unavailing. In *Harris*, the plaintiff's husband went to a bar, became intoxicated to the point of unconsciousness, and was then removed from the bar by three bar employees and placed inside his vehicle in the bar's parking lot, where he froze to death. 153 Ill. App. 3d at 1036-37. The plaintiff sued the bar and three employees for negligence. *Id.* at 1036. The appellate court ruled that the plaintiff had brought valid negligence claims because she predicated her claims not on the fact that the defendants provided her

husband with alcohol but rather on the fact that the defendants caused her husband's death by placing him outside in freezing temperatures after he became intoxicated. *Id.* at 1038.

¶23 The present case is distinguishable from *Harris*. First, unlike in *Harris*, Sears does not allege that he suffered any injury at Pap's Tap. Rather, Sears claims that he suffered a severe frostbite injury while walking home from a bar which he went to after leaving Pap's Tap. Second, unlike in *Harris,* Sears was not placed in peril by Pap's Tap or one of its employees. The evidence shows that, unlike the unconscious husband in *Harris,* Sears made a conscious decision to (1) decline Galvin's offer of a ride home and (2) leave Pap's Tap with Drish.

¶24 In *Gilman*, the plaintiff brought common law negligence and Dram Shop claims against two bars which served a patron alcohol after the plaintiff was injured in a fight with the patron. 192 Ill. App. 3d at 633. The plaintiff claimed that the defendant bars served alcohol to the patron prior to the fight and that the patron was intoxicated. *Id.* at 639. With respect to the plaintiff's negligence counts,

> "the jury was instructed *** that plaintiffs had the burden of proving each of the following: (1) that defendant was negligent by failing to keep the tavern premises safe when he knew or should have known of the danger presented to plaintiff by [the patron], in that defendant failed to make any comment to [the patron] about his conduct or condition or failed to request [the patron] to leave the tavern, failed to call the police, or failed to take any steps to protect [plaintiff]; (2) [plaintiff] was injured; and (3) the conduct of defendant was a proximate cause of the injury." *Id.* at 640-41.

The quoted jury instruction makes clear that the plaintiff's negligence claim was predicated not on the defendant bars serving alcohol to plaintiff, but rather on the fact that the defendant placed plaintiff in peril by failing to control the actions of a dangerous third party on the premises.

¶25 We find *Gora v. 7-11 Food Stores*, 109 Ill App. 3d 109 (1982), instructive. In *Gora*, the plaintiff allegedly suffered severe frostbite requiring amputations to his right hand after he became drunk and passed out unconscious in a snow embankment after consuming alcohol which he purchased while underage from a convenience store owned by the defendant. *Id.* at 110. The court ruled that the plaintiff could not maintain a common law cause of action to recover for his injuries. *Id.* at 112 (citing *Cunningham v. Brown*, 22 Ill. 2d 23, 25-26, 28 (1961)).

¶26 Accordingly, we hold that Sears's claims contained in paragraphs 16(a) through (h) and 18(a) and (b) of his first amended complaint are not valid tort claims under Illinois law. Furthermore, we find that Sears's common-law claims are preempted by the Act and that we are thus precluded from recognizing the validity of these claims. See *Seigfried*, 165 Ill. 2d at 488 (citing *Cunningham*, 22 Ill. 2d 23).

¶27 We next consider whether Pap's Tap may be held responsible for Drish's actions. Before we address the substantive merit of Sears's argument on this issue, however, we must first consider the issue of forfeiture. In his response to Pap's Tap's and Drish's motions for summary judgment, Sears argued that Drish was an actual, apparent, and implied agent of Pap's Tap. The trial court resolved the issue by holding that Drish (1) was not an employee of Pap's Tap and (2) was not working at Pap's Tap as an employee or volunteer on December 20 and 21, 2008.

¶28 On appeal, Sears only argues that Drish was an actual agent of Pap's Tap. In addition, Sears apparently disclaims the need to show that, assuming Drish was an agent of Pap's Tap, that

he was acting within the scope of his agency on the night in question, arguing "there are no distinctions in Drish's status at Pap's Tap, Inc."

¶29 "[W]here an appellant does not present an argument in its opening brief, the appellant forfeits the issue." *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Sears has failed to provide this court with any argument concerning whether Drish was an apparent agent of Pap's Tap. He has also failed to provide any argument establishing that, assuming Drish was an agent of Pap's Tap, that he was acting within the scope of his agency on December 20 and 21, 2008. Sears has therefore forfeited both issues. *Vancura*, 238 Ill. 2d at 369.

¶30 Sears's forfeiture of the issue of whether Drish was acting within the scope of his purported agency relationship with Pap's Tap on December 20 and 21, 2008, is fatal to his effort to hold Pap's Tap liable for Drish's actions. "Proof of actual agency, or *respondeat superior,* requires a showing that *** the alleged conduct of the agent or employee fell within the scope of the agency or employment." *Wilson v. Edward Hospital*, 2012 IL 112898, ¶ 18. Thus, because he has forfeited the scope of agency issue, Sears cannot establish Pap's Tap's liability for Drish's actions.

¶31 Forfeiture aside, Sears's vicarious liability argument fails on the merits. Sears contends that Drish was an actual agent of Pap's Tap. "[A]ctual agency may be either express or implied." *Cove Management v. AFLAC, Inc.*, 2013 IL App (1st) 120884, ¶ 23. "Express authority is actual authority granted explicitly by the principal to the agent, while implied authority is actual authority proven circumstantially by evidence of the agent's position." *Id.* "Although the question of whether an agency relationship exists is a question of fact, a court may decide this issue as a matter of law if only one conclusion may be drawn from the undisputed

facts." *Buckholtz v. MacNeal Hospital*, 337 Ill. App. 3d 163, 172 (2003). Sears has not directed us to any evidence of a direct grant of authority by Pap's Tap to Drish (and none is contained in the record), and thus we must conclude that Drish was not an express agent of Pap's Tap.

¶32 Therefore, we proceed to consider whether Drish was an implied agent of Pap's Tap. Sears points to the following allegations in support of his argument that Drish was an agent of Pap's Tap: (1) Drish and Paprota have been close friends for forty years; (2) Drish considers Paprota to be a second mother, and Paprota consider Drish to be a son; and (3) Drish has volunteered at Pap's Tap since 2005 or 2006, during which time he has (a) made bank deposits for Pap's Tap; (b) taken inventory and ordered liquor; and (c) maintained Pap's Tap's Facebook account. In addition, Sears also points out that Drish was permitted behind the bar.

¶33 Sears offers the following analysis regarding Drish. First, he contends that the banking activities Drish engaged in evidence an agency relationship because "in order to validly endorse bank deposit slips on behalf of Pap's Tap, Inc., Drish must necessarily possess actual agency authority from Pap's Tap, Inc." Second, Sears argues that "Drish *** is allowed behind the bar, showing that he had the capacity to conduct transactions for patrons on the bar's behalf." Third, he suggests that "[i]f Drish had chosen to *** offer a coupon or happy hour discount on the Facebook page, the legal relationships of Pap's Tap, Inc. would have necessarily been affected." Finally, he asserts that Paprota "consented to participation in an employee-sharing system with Drish" in which Drish would arrange for his workers to substitute shifts at Pap's Tap, showing that Drish "had actual authority to create employer-employee relationships on behalf of Pap's Tap, Inc."

¶34 Sears's arguments are not persuasive. As a preliminary matter, we note that many of the factual assertions referred to above are not supported by the record. For example, no one ever

testified that Drish endorsed banking documents on behalf of Pap's Tap. Furthermore, Sears's assertion that Drish conducted transactions for customers is not supported by any evidence of record, and indeed is contradicted by Drish's deposition testimony, wherein he stated (1) that he does not tend bar at Pap's Tap; (2) he never poured drinks for patrons while volunteering; and (3) he never supervised employees.

¶35 In addition, there is no evidence in the record suggesting that Drish possessed the ability to manipulate the prices charged by Pap's Tap. Finally, Sears's contention that Drish possessed the ability to create employer-employee relationships on behalf of Pap's Tap is belied by the evidence in the record. Paprota testified that she retained the right and ability to reject Drish's substitute workers. Lange testified that he began working at Pap's Tap after Drish's business closed in May 2012 and that Paprota was the final decision maker with respect to accepting Drish's substitute workers and Drish did not hire or fire employees at Pap's Tap. There is thus no evidence that Drish had the ability to create employer-employee relationships on behalf of Pap's Tap.

¶36 We note that Kimberly Slattery, a bartender at the Squeeze Inn, a bar Drish managed, testified that Drish told her that he managed Pap's Tap and that she believed that Drish paid employees at Pap's Tap. However, Sears abandoned Slattery's testimony on appeal, as his brief fails to cite any portion of her testimony. As a result, our consideration of this testimony is circumscribed, as Sears's decision to omit it from his brief deprived Pap's Tap of the opportunity to press any number of the foundational challenges made by its counsel during Slattery's deposition. In any event, Slattery also testified that she has not visited Pap's Tap since 2007 and that she never saw Drish tend bar at Pap's Tap, and that she has no firsthand knowledge of the incident giving rise to Sears's lawsuit. Therefore, even when considered in the light most

favorable to Sears, and ignoring the fact that he has abandoned her testimony on appeal, we do not believe that Slattery's testimony creates a genuine issue of material fact regarding whether Drish was an agent of Pap's Tap.

¶37 We find that there is no genuine issue of material fact raised in the record that Drish was an agent of Pap's Tap. According to Drish, he only volunteered at Pap's Tap once or twice a week for between 15 minutes to 2 hours. Drish did not draw a paycheck from Pap's Tap, he did not receive a W-2 form, and he testified that he was not employed by Pap's Tap. The only compensation Drish received, as far as the record reveals, was occasional free drinks from Paprota. Although Drish did occasionally take inventory and order alcohol for Pap's Tap, make bank deposits, and maintain the bar's Facebook page, we do not believe that these facts are sufficient to establish an agency relationship between Drish and Pap's Tap. It is telling that Sears's strongest arguments in support of an agency relationship—namely that Drish (1) endorsed banking documents; (2) conducted transactions for patrons behind the bar; (3) could have affected the bar's prices; and (4) created employer-employee relations via an "employee sharing system"—are categorically devoid of factual support in the record.

¶38 Moreover, Sears's agency argument is undermined by the lack of evidence establishing that Drish was acting within the scope of his purported agency on the night when he met Sears. According to Angelique Matuzas, the bartender working when Sears, Galvin and Drish were at Pap's Tap together, Drish was at Pap's Tap as a patron. Lange testified that on the night in question, he joined Drish at Pap's Tap after finishing working at Drish's business. According to Lange, Drish was at Pap's Tap as a customer. Drish testified that any time spent at Pap's Tap other than the time he was volunteering was as a patron. The evidence showed that Drish arrived at Pap's Tap around 12:30 a.m. on December 21, 2008, after finishing work at his business.

Drish socialized and consumed alcohol at Pap's Tap before leaving with Sears and going to a different bar. These actions are categorically distinct from the tasks Drish performs for Pap's Tap while volunteering, and, we believe, were clearly outside the scope of his purported agency relationship with Pap's Tap. Similarly, Drish's act of leaving Pap's Tap, going to a different bar with Sears and purchasing alcohol there was clearly outside the scope of any conceivable agency relationship he might have had with Pap's Tap. See *Alms v. Baum*, 343 Ill. App. 3d 67, 78 (2003). We thus find that the trial court did not commit error by granting summary judgment to Pap's Tap on Sears's agency-related claims.

¶39 We next consider Sears's voluntary undertaking claim. Sears alleged that Pap's Tap was negligent because Drish failed to carry through with a voluntary undertaking to give Sears a ride home. We begin by noting that the trial court granted summary judgment to Drish *and* Pap's Tap on Sears's voluntary undertaking claim. Sears's argument relating to this claim, however, only addresses Drish's liability. Sears has thus forfeited the issue with respect to Pap's Tap. *Vancura*, 238 Ill. 2d at 369.

¶40 Forfeiture aside, Sears's claim against Pap's Tap still fails. As pled, Sears's voluntary undertaking claim is dependent upon Sears's ability to hold Pap's Tap responsible for Drish's conduct. Because we have concluded that Drish was not an agent of Pap's Tap and that, even if he was, he was not acting within the scope of his agency at the relevant time, Sears's voluntary undertaking claim fails.

¶41 Finally, we consider Sears's claim that Pap's Tap had a duty to provide Sears with a safe means of transportation home. "[D]etermining whether a duty should be imposed involves considerations of public policy." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 436 (2006). To determine whether a duty exists, courts ask "whether defendant and plaintiff stood in such a

relationship to one another that the law imposed upon defendant an obligation of reasonable conduct for the benefit of plaintiff." *Bruns*, 2014 IL 116998, ¶ 14 (quoting *Ward v. K Mart Corp.*, 136 Ill. 2d 132, 140 (1990)). "The 'relationship' referred to in this context acts as a shorthand description for the sum of four factors: (1) the reasonable foreseeability of the injury, (2) the likelihood of the injury, (3) the magnitude of the burden of guarding against the injury, and (4) the consequences of placing that burden on the defendant." *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 18. Whether a duty of care exists is a question of law for the trial court which we review *de novo*. See *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 20.

¶42 In Illinois, as a general rule, business owners are not liable to business invitees for injuries which occur away from the premises. See *Wilk v. 1951 West Dickens, Ltd.*, 297 Ill. App. 3d 258, 262 (1998); *Fitzpatrick v. Carde Lounge, Ltd.*, 234 Ill. App. 3d 875, 879 (1992). Illinois courts have long held that "requiring a business operator to protect its patrons from injuries that occur after the patron leaves the premises places an unjustifiable burden on the operator ***." See *Fitzpatrick*, 234 Ill. App. 3d at 879 (quoting *Badillo v. DeVivo*, 161 Ill. App. 3d 596, 599 (1987); see also *Gustafson v. Mathews*, 109 Ill. App. 3d 884, 888 (1982).

¶43 We find *Wilk* and *Fitzpatrick* instructive. While Sears alleges that Pap's Tap breached an alleged duty to him while he was at Pap's Tap, Sears's injury was spatially and temporally remote from Pap's Tap. Specifically, Sears's injury occurred far away from Pap's Tap's physical premises hours after Sears (1) declined an offer of a safe ride home from Galvin and (2) freely chose to leave Pap's Tap with Drish and go to a competing establishment with him where Sears consumed more alcohol. Because Sears's injuries occurred well after he left Pap's Tap and well away from its physical premises, *Wilk* and *Fitzpatrick* preclude the imposition of a duty of

care on the part of Pap's Tap to prevent those injuries. We thus decline to recognize a duty of care on the part of Pap's Tap to provide Sears with a safe means to return home.

¶44 Sears also claims that Pap's Tap had a duty to provide him with a safe means of getting home once Drish undertook to take him home. This argument has two fatal flaws. First, Sears's injury still occurred away from Pap's Tap long after he left, and so *Wilk* and *Fitzpatrick* preclude imposing such a duty on Pap's Tap.[2] Second, because we have found that Drish was not an agent of Pap's Tap, it is impossible for Drish's alleged offer of a ride home to Sears to give rise to a duty of care on the part of Pap's Tap to provide Sears with a safe way to return home.

¶45 Finally, we note that Sears alleged in paragraphs 18(c) through (f) that he was ejected by Drish from his vehicle after leaving Pap's Tap. The trial court granted summary judgment to Pap's Tap on these claims. Neither party addressed these specific claims on appeal. As a result, Sears has forfeited these issues. *Vancura*, 238 Ill. 2d at 369. For completeness, however, we note that Sears never testified that he was ejected from Drish's vehicle and thus we conclude that the court did not commit error by granting summary judgment in favor of Pap's Tap on these claims.

¶46 CONCLUSION

¶47 The order of the trial court granting summary judgment in favor of Pap's Tap is affirmed.

¶48 Affirmed.

[2] Using Google Maps, we find that Pap's Tap and Escapades are 2.1 miles apart. We arrive at this figure using the address for Pap's Tap provided in Sears's complaint, 5532 South Narragansett Avenue in Chicago, and the approximate location of the second bar provided by Sears in his complaint, 63rd Street and Harlem Avenue in Chicago. See *People v. Stiff*, 391 Ill. App. 3d 494, 504 (2009) (taking judicial notice of distances computed by Google Maps).