

No. 1-12-2340

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARGARET SKRZYPKOWSKI, Special Administrator of the Estate of MONIKA SKRZYPKOWSKI, Deceased,	)	Appeal from the Circuit Court of Cook County
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
JOSH SIMMONS, TREVOR BARKER, and RACHEL DEWEY,	)	No. 08 L 14393
	)	
Defendants-Appellees,	)	Honorable Michael R. Panter, Judge Presiding.
	)	
(Kevin Schuh, Michael Schuh, Patricia Schuh, Reed Dewey, Susan Dewey, Jiten Patel, Piyush L. Patel, Lalbhai Patel, LMP Corp., Volume Liquors, a partnership, and Ramon Dante Garcia-Camilo),	)	
	)	
Defendants.	)	
	)	

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted defendants' motions to dismiss counts XIII, XIV,

and XV of the sixth amended complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), as plaintiff failed to allege a claim of civil conspiracy.

¶ 2 Plaintiff, Margaret Skrzykowski, as special administrator of the estate of Monika Skrzykowski (plaintiff), appeals an order of the circuit court of Cook County dismissing counts XIII, XIV, and XV of her sixth amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)) against defendants Josh Simmons (Simmons), Trevor Barker (Barker), and Rachel Dewey (Dewey) (collectively the defendants). On appeal, plaintiff contends she sufficiently alleged a cause of action for civil conspiracy against each of the defendants. For the reasons which follow, we affirm the decision of the circuit court.

¶ 3 BACKGROUND

¶ 4 On December 31, 2008, plaintiff filed her initial complaint against Kevin Schuh (Schuh) alleging a cause of action pursuant to the Illinois Wrongful Death Act (740 ILCS 180/1 (West 2008)). Plaintiff's complaint asserted that on December 6, 2008, Schuh, a minor, struck and killed plaintiff's decedent, Monika Skrzykowski (Monika), also a minor, with a vehicle while driving under the influence of alcohol. Plaintiff's complaint was subsequently amended on several occasions to include other parties and causes of action.¹ The fourth amended complaint included the conspiracy allegations involved in this appeal, but contained typographical errors

¹ Kevin Schuh, Michael Schuh, Patricia Schuh, Reed Dewey, Susan Dewey, Jiten Patel, Piyush L. Patel, Lalbhaim Patel, LMP Corp., Volume Liquors, and Ramon Dante Garcia-Camilo are not parties to this appeal.

which were immediately corrected by the filing of the fifth amended complaint. On June 29, 2011, the trial court issued a memorandum order dismissing the conspiracy counts alleged in the fifth amended complaint with prejudice. Plaintiff thereafter filed a motion to reconsider the dismissal of the conspiracy counts as alleged in the fifth amended complaint.² On October 19, 2011, the trial court denied plaintiff's motion to reconsider, but vacated the "with prejudice" language from the June 29, 2011, order. On November 3, 2011, the trial court permitted plaintiff to file the sixth amended complaint, which is the pleading at issue.

¶ 5 Counts XIII, XIV, and XV of plaintiff's sixth amended complaint alleged actions for civil conspiracy against Dewey, Simmons, and Barker. Count XIII sought pecuniary loss pursuant to the Wrongful Death Act. 740 ILCS 180/1 (West 2008). Count XIV sought damages for pain and suffering. Count XV sought medical and funeral expenses.

¶ 6 All three conspiracy counts assert the following common facts regarding Dewey, Simmons, and Barker (collectively the defendants). On December 6, 2008, defendants and Schuh were minors and high school classmates. On that same date Ramon Dante Garcia-Camilo (Garcia-Camilo) (who was over 21 years of age) knowing it was unlawful to purchase, possess, or consume alcohol by minors, entered into an agreement with defendants and Schuh to unlawfully purchase alcoholic beverages for a party attended by defendants and Schuh and held at Dewey's residence that evening. Plaintiff alleged defendants, Schuh, and Garcia-Camilo purchased beer and vodka at Volume Liquors for consumption by defendants and other under-

² The record on appeal does not contain plaintiff's motion to reconsider or the notice of motion for the motion to reconsider.

aged party guests in furtherance of the agreement. Schuh consumed the unlawfully purchased alcohol, became intoxicated at the party, and left by driving away in a vehicle owned by his parents.³ Schuh, while allegedly driving under the influence, struck Monika, a pedestrian, with the vehicle causing her death. Plaintiff alleged "[a]s a direct, proximate and foreseeable result of the unlawful acts of the Defendants *** Defendant Kevin Schuh became intoxicated and drove [the] automobile, striking Plaintiff's decedent, Monika Skrzykowski, causing her painful death."

¶ 7 On November 30, 2011, Barker filed a motion to dismiss the conspiracy counts alleged in the sixth amended complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)). Simmons and Dewey each filed separate but similar motions to dismiss under section 2-615 of the Code on December 5, 2011, and December 19, 2011, respectively. On March 28, 2012, following briefing and hearing on the matter, the circuit court entered an order granting defendants' motions to dismiss the conspiracy counts with prejudice pursuant to section 2-615 of the Code for failure to state a cause of action. The trial court stated in the order that its ruling was based on the reasoning as set forth in the June 29, 2011, memorandum order dismissing the conspiracy counts as alleged in the fifth amended complaint. In the June 29, 2010, order, the trial court determined that the conspiracy to provide alcohol to Schuh was not in and of itself tortious conduct. The trial court reasoned that providing alcohol to a minor does not give rise to a private cause of action outside of what the legislature has codified in the Illinois Liquor Control Act of 1934 (Dramshop Act) (235 ILCS 5/6-20 (West 2008)). The trial court quoted our supreme court

³ The record states Quality Pool Maintenance, Inc. is the owner of the vehicle and that Schuh's parents are the owners of the company.

in which it stated, "it has been, and continues to be, well-established law that Illinois has no common law cause of action for injuries arising out of the sale or gift of alcoholic beverages; that the legislature has preempted the field of alcohol-related liability; and that any change in the law governing alcohol-related liability should be made by the General Assembly, or not at all."

Charles v. Seigfried, 165 Ill. 2d 482, 486 (1995).

¶ 8 In the March 28, 2012, order the trial court reserved ruling on a Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) finding. Subsequently, Dewey filed a brief in support of a finding that there was no just reason to delay enforcement or appeal.⁴ On June 14, 2012, the circuit court issued an order that stated, "The court to grant 304(a) motions on July 9, 2012, including motions of Rachel Dewey, Trevor Barker, [and] Josh Simmons." On July 9, 2012, the circuit court entered an order that stated in pertinent part, "This court finds pursuant to SCR 304(a) that there is no just reason to delay enforcement or appeal of this court's order of March 28, 2012 granting motions to dismiss of defendants Trevor Barker, Rachel Dewey, and Josh Simmons." Plaintiff filed the notice of appeal on August 7, 2012.

¶ 9 DISCUSSION

¶ 10 The issue presented by plaintiff on appeal is whether the trial court erred in dismissing counts XIII, XIV, and XV of her sixth amended complaint with prejudice. Defendants, however,

⁴ The trial court's order of June 14, 2012, indicates Barker, Simmons, and Dewey presented motions requesting Rule 304(a) language. No such motions are included in the record. There is no transcript of the hearing in the record; therefore, we do not know whether the defendants made oral motions. Barker, however, was the only defendant who requested a Rule 304(a) finding in his motion to dismiss.

assert this court lacks jurisdiction to entertain the appeal. As the question of jurisdiction is paramount, we first turn to consider whether we have jurisdiction. See *In re Adoption of S.G.*, 401 Ill. App. 3d 775, 779-80 (2010) (the appellate court has a duty to determine whether it has jurisdiction prior to considering the merits of the appeal).

¶ 11

I. Jurisdiction

¶ 12 Defendants assert this court lacks jurisdiction because the circuit court agreed to render a Rule 304(a) finding on June 14, 2012, but impermissibly delayed effectiveness of that finding to July 9, 2012. Defendants contend that the delay amounts to an impermissible extension of time to file an appeal.

¶ 13 An order finally disposing of some but not all claims can be appealed pursuant to Illinois Supreme Court Rule 304(a). Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Rule 304(a) states in pertinent part:

"If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims *only if the trial court has made an express written finding* that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party." *Id.* (emphasis added).

A circuit court's decision to issue a Rule 304(a) finding is within the sound discretion of the court. *Matson v. Department of Human Rights*, 322 Ill. App. 3d 932, 938 (2001). Without express written language referencing appealability the matter is not appealable. See *In re*

Application of Du Page County Collector, 152 Ill. 2d 545, 550-51 (1992); *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 543 (2011). This is because, "[a] circuit court's declaration that an order is 'final and appealable,' without reference to the justness of delay, or even reference to immediate appealability, evinces no application of the discretion Rule 304(a) contemplates." *Palmolive Tower*, 409 Ill. App. 3d at 544.

¶ 14 The June 14, 2012, written order contained no reference to immediate appealability. This order, therefore, was not in compliance with Rule 304(a) and thus plaintiff was not required to appeal within 30 days of June 14, 2012. The July 9, 2012, order, however, did include the required language when it stated, "there is no just reason to delay enforcement or appeal of this court's order of March 28, 2012 granting the motion to dismiss of defendants Trevor Barker, Rachel Dewey and Josh Simons." Therefore, as of July 9, 2012, plaintiff had 30 days to appeal the circuit court's dismissal of the three counts for civil conspiracy. Plaintiff timely filed her notice of appeal on August 7, 2012.

¶ 15 The cases defendants cite are inapposite. In *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 145 (1994), appellant's counsel followed the circuit court's direction to file a motion to vacate after more than 30 days had lapsed since the entry of the final and appealable judgment. *Id.* Our supreme court considered whether the appellate court erred in taking jurisdiction over the appeal where the notice of appeal was not filed in conformance with Supreme Court Rule 303. *Id.* The supreme court concluded the appellate court lacked jurisdiction to consider the appeal, as more than 30 days had passed since the entry of the final and immediately appealable order. *Id.* at 151. The order at issue in the present case, however, is a final order which was not appealable except

under Rule 304(a). Such an order is only appealable upon an express written order by the circuit court finding no just reason to delay the appeal. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

Because *Mitchell* involved a final order, which is immediately appealable pursuant to Rule 303, it is not applicable to the case at bar.

¶ 16 Defendants also rely on *Meyer v. Blue Cab Co.*, 129 Ill. App. 3d 440, 441 (1984), for the proposition a trial court has no authority to extend the time for filing a notice of appeal. In *Meyer*, the circuit court entered an order dismissing plaintiff's complaint with prejudice and also "stayed 'the enforcement or appeal of this order for a period of 60 days.'" *Id.* Noting there is "no doubt" the circuit court lacks authority to extend an appeal, we determined, pursuant to Rule 303, the appellant's notice of appeal was untimely filed 60 days after the entry of a final and appealable judgment and therefore we lacked jurisdiction. *Id.* Defendants again incorrectly attempt to equate the requirements of jurisdiction pursuant to Rule 303 with what is required under Rule 304(a). Supreme Court Rule 304(a), however, only applies to final orders which do not resolve the entire suit and are not appealable under Rule 303. Moreover, the time for rendering such a Rule 304(a) finding and entering the requisite order is within the sound discretion of the circuit court. See *Matson*, 322 Ill. App. 3d at 938. Accordingly, this court has jurisdiction to entertain this appeal pursuant to Rule 304(a).

¶ 17 II. Civil Conspiracy

¶ 18 On appeal, plaintiff contends the circuit court erred in dismissing counts XIII, XIV, and XV of her sixth amended complaint with prejudice pursuant to section 2-615 of the Code. 735 ILCS 5/2-615 (West 2010). Plaintiff contends the circuit court incorrectly determined that her

civil conspiracy claims based on the purchase of alcohol were preempted by the Dramshop Act (235 ILCS 5/6-20 (West 2008)), and were not recognized causes of action.

¶ 19 A motion to dismiss brought pursuant to section 2-615 of the Code attacks the legal sufficiency of a complaint by alleging defects on the face of the complaint. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). When ruling on a section 2-615 motion, the relevant question is whether, taking all well-pleaded facts as true, the allegations in the complaint, construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Canel v. Topinka*, 212 Ill. 2d 311, 317 (2004). A motion to dismiss should not be granted with prejudice "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009). Illinois is a fact-pleading state; conclusions of law and conclusory allegations unsupported by specific facts are not deemed admitted. *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 767 (2007). We review an order granting a section 2-615 motion to dismiss *de novo*. *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008). We are not bound by the trial court's reasoning and may affirm on any basis supported by the record. *Rabin v. Karlin and Fleisher, LLC*, 409 Ill. App. 3d 182, 186 (2011).

¶ 20 *Civil Conspiracy and the Dramshop Act*

¶ 21 In this case, plaintiff argues that she has sufficiently alleged a cause of action in civil conspiracy as there was: (1) an agreement between Schuh, Barker, Simmons, Dewey, and Garcia-Camilo; (2) to participate in an unlawful act, the purchase and consumption of alcoholic beverages by minors in violation of section 6-20(e) of the Dramshop Act (235 ILCS 5/6-20(e))

(West 2008); and (3) an overt unlawful act committed in furtherance of the conspiracy, the purchase of alcoholic beverages by minors in violation of section 6-20(a) of the Dramshop Act (235 ILCS 5/6-20(a) (West 2008)).

¶ 22 Civil conspiracy is an intentional tort. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 133 (1999). A civil conspiracy claim functions to extend liability in tort beyond the active wrongdoer to those individuals who merely planned, assisted or encouraged the wrongdoer's acts. *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 62 (1994). Civil conspiracy "requires proof that a defendant 'knowingly and voluntarily participates in a common scheme to commit an unlawful act or a lawful act in an unlawful manner.'" *McClure*, 188 Ill. 2d at 102, (quoting *Adcock*, 164 Ill. 2d at 64). The necessary elements of a civil conspiracy include: (1) an agreement between two or more persons; (2) to participate in an unlawful act, or a lawful act in an unlawful manner; (3) an injury caused by an unlawful overt act performed by one of the parties; and (4) the overt act was done pursuant to and in furtherance of the common scheme. *Canel and Hale, Ltd. v. Tobin*, 304 Ill. App. 3d 906, 920 (1999).

¶ 23 Conspiracy is not a separate and distinct tort in Illinois. *Hurst v. Capital Cities Media, Inc.*, 323 Ill. App. 3d 812, 822-23 (2001). It is the act performed in pursuit of the agreement that may create liability. *Weber v. Cueto*, 253 Ill. App. 3d 509, 518 (1993). There is no cause of action unless an overt, tortious, or unlawful act is done that, in absence of the conspiracy, would give rise to a claim for relief. *Illinois Traffic Court Driver Improvement Educational Foundation v. Peoria Journal Star, Inc.*, 144 Ill. App. 3d 555, 562 (1986).

¶ 24 Here, plaintiff seeks to hold defendants liable *in tort* for the injury caused by Schuh's

intoxicated and negligent driving based on their joint purchase and consumption of alcohol as minors. Plaintiff predicates her conspiracy claim on defendants' violation of the Dramshop Act and cites section 6-20 of the Dramshop Act which states as follows:

"(a) Any person to whom the sale, gift or delivery of any alcoholic liquor is prohibited because of age shall not purchase, or accept a gift of such alcoholic liquor or have such alcoholic liquor in his possession.

* * *

(d) No person shall purchase, accept delivery or have possession of alcoholic liquor in violation of this Section.

(e) The consumption of alcoholic liquor by any person under 21 years of age is forbidden.

(f) Whoever violates any provision of this Section shall be guilty of a Class A misdemeanor." 235 ILCS 5/6-20 (West 2008).

This provision, however, does not provide for a civil cause of action and, therefore, cannot be the basis of plaintiff's conspiracy cause of action. The question remains whether a cause of action exists for the defendant's purchase of alcohol outside of the Dramshop Act.

¶ 25 In *Charles*, 165 Ill. 2d 482 (1995), our supreme court stated that, "all binding precedent on the subject teaches us that the General Assembly has preempted the entire field of alcohol-related liability through its passage and continual amendment of the Dramshop Act." *Id.* at 491. The rationale behind this rule is that the consumption of alcohol, and not the furnishing of alcohol, is the proximate cause of the intoxication and the resulting injury. *Id.* In *Charles*, the

plaintiffs asked the supreme court to recognize "a cause of action against social hosts for serving alcoholic beverages to minors who are subsequently injured." *Id.* at 483. The court, in considering the issue, said it is well-settled in Illinois that there is no common law cause of action for injuries arising out of the sale or gift of alcoholic beverages. *Id.* at 491. Our supreme court declined to depart from the rules of preemption and against social host liability as created by our legislature and stated, "[a]fter careful and considered judgment, we hold only that adhering to *stare decisis* is the wisest course of action." *Id.* at 492.

¶ 26 Plaintiff contends *Charles* is inapplicable to the case at bar, as it deals primarily with the sale and serving of alcoholic beverages to minors and not the purchase and later consumption of alcoholic beverages by minors as alleged here. Defendants' reading of *Charles* is narrow. We find this argument unpersuasive as courts have consistently rejected attempts to create causes of action beyond the Dramshop Act and determined that the legislature has preempted the area of alcohol-related liability by the enactment of the Dramshop Act. See *id.*; *Wakulich v. Mraz*, 203 Ill. 2d 223, 229 (2003). In *Charles*, our supreme court stated that "a dramshop cause of action is *sui generis* and exclusive" and that it "has consistently refused to recognize any cause of action for alcohol-related liability beyond those explicitly provided for in the Dramshop Act." *Charles*, 165 Ill. 2d at 489. In addition, the court, citing a long line of cases, stated, "[o]ur appellate court has generally adhered to this fundamental rule and has declined to create a new cause of action, regardless of whether the case involved adults, underage persons, or minors; liquor vendors or social hosts." *Id.* at 490 (and cases cited therein). The legislature has not taken action to alter this interpretation and therefore it is presumed to have acquiesced in the supreme court's

construction of the Dramshop Act. *Wakulich*, 203 Ill. 2d at 233; *Charles*, 165 Ill. 2d at 492.

Therefore, we decline to create an exception to the Dramshop Act in the present case.

¶ 27 Plaintiff further asserts the cases *Simmons v. Homatas*, 236 Ill. 2d 459 (2010), *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 155 Ill. App. 3d 231 (1987), and *Haben v. Anderson*, 232 Ill. App. 3d 260 (1992), are applicable. Each of these cases, however, are factually and legally distinguishable from the case at bar.

¶ 28 In *Simmons*, the decedents were fatally injured due to the intoxicated driving of John D. Homatas who had been at a strip club which did not serve alcohol, but allowed customers to consume alcohol while on the premises. *Simmons*, 236 Ill. 2d at 461. Plaintiffs filed a cause of action alleging the operator of the club, On Stage, negligently encouraged Homatas, a patron, to consume alcoholic beverages until he became intoxicated and required him to drive off the premises, which resulted in the collision that killed plaintiffs' decedents. *Id.* Plaintiffs' complaint alleged both common law negligence and liability under the Dramshop Act (235 ILCS 5/6-21 (West 2008)). *Id.* at 462-63. The circuit court granted, in part, On Stage's motion to dismiss. *Id.* at 463. The circuit court concluded that the Dramshop Act did not apply to On Stage because it did not provide alcohol to its patrons. *Id.* The circuit court also recognized legislative preemption in the field of alcohol-related liability. *Id.* The circuit court allowed plaintiffs' remaining common law counts to proceed, but sought guidance as to whether defendant owed a duty of care to each plaintiff by certifying questions for interlocutory appeal. *Id.* at 464. On review in the supreme court, the court, citing a long line of cases, held that the plaintiffs could not allege a Dramshop Act cause of action because On Stage did not serve alcohol. *Id.* at 468-69.

¶ 29 The supreme court, however, determined that On Stage could be held liable to the plaintiffs, not as a result of the provision of alcohol, but as a result of the encouragement of or assistance in, tortious conduct. A duty towards the plaintiffs' decedents arose because On Stage "took on the burden of determining whether Homatas was dangerously intoxicated when club employees discovered him vomiting in the restroom, a likely result of his intoxication. On Stage, on its own initiative, made this determination and expelled Homatas from the club." *Simmons*, 236 Ill. 2d at 475. On Stage valet employees were directed to bring Homatas to his vehicle. Our supreme court found the complaint in *Simmons* sufficient to state a cause of action for common law negligence under section 876 of the Restatement of Torts (Restatement (Second) of Torts § 876 (1979)), which addresses the liability of a defendant for harm resulting to a third person from the tortious conduct of another. *Id.* at 478. The court further stated, "[i]n doing so, On Stage acquired a duty not to encourage and assist Homatas in the tortious conduct of driving while intoxicated" and concluded "that the Dramshop Act does not preempt plaintiffs' common law claims in this case, and does not preclude imposing a duty of care on On Stage." *Id.*

¶ 30 *Simmons*, however, does not apply to the present case, because plaintiff does not allege any facts that defendants encouraged or assisted Schuh in driving while intoxicated. Nor does the complaint allege defendants knew Schuh was intoxicated, expelled him from the party, and directed him to drive away. Because no such cause of action has been alleged by plaintiff in the case at bar, we decline to find *Simmons* applicable.

¶ 31 Both *Quinn* and *Haben* are equally inapplicable, as each dealt with alcohol-related injuries or death sustained during incidents of hazing and did not relate to defendants' purchase

of alcohol. *Quinn*, 155 Ill. App. 3d at 236; *Haben*, 232 Ill. App. 3d at 262. Each case was predicated on the Hazing Act (720 ILCS 5/12C-50 (West 2012)).⁵ In *Quinn*, the 18-year-old plaintiff was a pledge of the defendant fraternity and was required to participate in the defendant's initiation ceremony in order to become a member of the fraternity. *Id.* at 233. As part of the ceremony, the plaintiff was directed to drink " 'a 40-ounce pitcher of beer without letting it leave his lips or until he vomited.' " *Id.* Later, the plaintiff was brought to a tavern and directed to drink from an eight-ounce bottle of whiskey. *Id.* Members of the fraternity then purchased more liquor for the pledges. *Id.* at 234. As a result, the plaintiff became extremely intoxicated and suffered neurological damage. *Id.*

¶ 32 We held that the defendant fraternity owed a duty to the plaintiff, noting that it was drawing "perilously close" to the extensive case law prohibiting common law causes of action for negligently distributing alcohol. *Id.* at 234-35. Nevertheless, we concluded that the current factual scenario consisted of "more than the mere furnishing of alcohol" and, thus, was distinguishable from the social host-guest relationship cases. *Id.* at 237. In reaching this determination, we found it significant that the plaintiff was required to drink to intoxication in order to become a member of the fraternity. *Id.* In narrowly construing the duty, we held that a cause of action existed based on two factors: (1) the plaintiff was required to drink, therefore, the case was distinguishable from the social host-guest situation; (2) the legislature enacted a statute

⁵ *Quinn* and *Haben* involved a prior version of the Hazing Act (Ill. Rev. Stat. 1985, ch. 144, par. 221) and (Ill. Rev. Stat., 1990 Supp., ch. 144, par. 220.9 et seq.), respectively. This version of the Hazing Act, however, was repealed effective January 1, 2013, and replaced with the statute cited above.

against hazing, indicating a social policy against embarrassing or endangering our youth through thoughtless or meaningless activity. *Id.* at 237-38.

¶ 33 Similarly, in *Haben*, the plaintiff commenced a wrongful death action against defendants, members of the Lacrosse Club at Western Illinois University. *Haben*, 232 Ill. App. 3d at 262.

The defendants participated in the initiation of the plaintiff's decedent into the club, which included requiring the plaintiff's decedent to drink alcohol in excess and then participate in various strenuous physical activities. *Id.* at 262-63. The plaintiff's decedent became highly intoxicated and lost consciousness. *Id.* at 263. He was then carried to a defendant's dorm room, laid on the floor, and left alone. *Id.* Occasionally a defendant would check on him. *Id.* The plaintiff's decedent was discovered dead the next day from acute ethanol intoxication. *Id.*

¶ 34 We determined that the plaintiff properly alleged a negligence cause of action because the plaintiff set forth facts that there was "a *de facto* requirement to consume alcohol for membership in an organization, and that there was a violation of the Hazing Act." *Id.* at 267. In particular, we noted that although Illinois courts have "repeatedly held that common law negligence liability does not exist where a social host has provided liquor to a minor guest," plaintiff alleged defendants owed the decedent a duty to act reasonably and protect him. *Id.* at 264-65. Moreover, because the drinking was part of a hazing ritual, the decedent's "will to drink or not drink may have been overcome by the requirement to achieve the much valued status and by pressure that he was receiving." *Id.* at 266. We concluded the cause of action was similar to the one alleged in *Quinn* and that the defendants owed the plaintiff's decedent a duty to act reasonably to protect him. *Id.* at 265.

¶ 35 The present matter differs significantly from *Haben* and *Quinn*, as we have considered incidents of hazing to be "a situation which consists of more than the mere furnishing of alcohol." *Quinn*, 155 Ill. App. 3d at 237; *Haben*, 232 Ill. App. 3d at 265 (referencing *Quinn*). In particular, we found the fraternal organization in *Quinn* had a duty based on the fact the plaintiff was required to drink to intoxication and there was a statute in place prohibiting such action. *Id.* at 237-38. Similarly, in *Haben*, the plaintiff alleged that Club membership was "a much valued status, that drinking was a de facto requirement for membership in the club, and that the decedent was 'pressured' to drink." *Haben*, 232 Ill. App. 3d at 265; Ill. Rev. Stat., 1990 Supp., ch. 144, par. 220.9 et seq. In the present case, plaintiff has not alleged that Schuh's drinking to intoxication was a result of hazing or being forced to drink. Further, plaintiff has not alleged defendants owed or assumed a duty toward Monika. Accordingly, plaintiff has not produced any authority for the proposition that a conspiracy cause of action can exist here.

¶ 36 Plaintiff's conspiracy counts rise or fall on the claim that the minor defendants violated section 6-20 of the Dramshop Act. In fact, this section only provides for criminal liability. 235 ILCS 5/6-20(f) (West 2008). Because no common law cause of action regarding alcohol-related liability can exist outside of the Dramshop Act, plaintiff's conspiracy claim fails and, therefore, the circuit court correctly dismissed counts XIII, XIV, and XV with prejudice. See *Hurst*, 323 Ill. App. 3d at 822-23.

¶ 37 *Plaintiff Fails to Establish a Tortious Act in Furtherance of the Conspiracy*

¶ 38 Assuming for the sake of argument that a common law cause of action for conspiracy could exist as to defendants' alleged agreement to illegally purchase alcohol, plaintiff fails to

allege that Schuh's negligent driving was in furtherance of such a conspiracy. To adequately allege a cause of action for civil conspiracy, plaintiff must establish the unlawful overt act which caused the injury must have been done in furtherance of the conspiracy to purchase and consume alcohol. See *Canel & Hale, Ltd.*, 304 Ill. App. 3d at 920. A civil conspiracy claim turns not on the agreement itself, but on the tortious acts performed in furtherance of the agreement. *Adcock*, 164 Ill. 2d at 63. "It is only where means are employed, or purposes are accomplished, which are themselves tortious, that the conspirators who have not acted but have promoted the act will be held liable." (Internal quotation marks omitted) *Id.*

¶ 39 We note that plaintiff does not argue that Schuh's negligent driving was the tortious act committed in furtherance of the conspiracy. Plaintiff instead argues on appeal that the purchase of alcohol is the tortious act in furtherance of the conspiracy, but does not mention causation. Based on the allegations of the sixth amended complaint, Schuh's negligent driving is the tortious act which proximately caused Monika's death. The relevant question, then, is whether Schuh's negligent driving could *ever* be alleged to be an act in furtherance of the conspiracy to purchase and consume alcohol. On this point we find *Miller* instructive, as it reconfirms that a conspiracy action "is viable only if a member of the conspiracy commits a tort in furtherance of it." *Miller*, 2012 IL App (2d) 110546, ¶ 41. *Miller* involved the death of Kyle Christian due to a heroin overdose. *Id.* at ¶ 42. After purchasing and ingesting heroin with the defendants, Kyle was left in an automobile while the defendants purchased heroin for a second time and then went to a restaurant. The plaintiff argued in part that Kyle's death was a result of a civil conspiracy to purchase and use heroin of which the defendants were a part. *Id.* Plaintiff pointed to two

possible acts which were in furtherance of Kyle's death: the group, after purchasing and consuming heroin, (1) waited in a restaurant for the heroin to wear off instead of rendering aid to Kyle; and (2) did not contact the police because of fear of arrest. *Id.* We determined that it was speculative that defendants would have provided aid or called police for assistance if they had not consumed heroin. *Id.* We stated the conspiracy to purchase and use heroin was "clearly an insufficient basis to impose liability. Undoubtedly, facts exist to conclude that a conspiracy to purchase heroin existed; however, Kyle's death did not result from a tortious or unlawful act in furtherance of that conspiracy." *Id.* We found that Kyle's death did not result from the defendants' later conspiracy to purchase heroin after leaving Kyle in a vehicle alone and "had nothing to do with Kyle." *Id.* at ¶ 45.

¶ 40 In the case at bar, the alleged conspiracy was the purchase and consumption of alcohol by the minor defendants. There are no allegations beyond the purchase and consumption which would support a conclusion that Schuh's acts of getting into a car and driving negligently were in furtherance of that alleged agreement. Plaintiff has not pled in any way that Schuh's decision to operate a vehicle was in furtherance of the agreement to unlawfully purchase and consume alcohol. In fact, based on the allegations of the sixth amended complaint, it appears that the conspiracy had already been completed, and the goals accomplished, prior to Schuh's tortious act.

¶ 41 Plaintiff relies on two cases which are distinguishable from the case at bar, *Fritz v. Johnston*, 209 Ill. 2d 302 (2004) and *Scott v. Aldi, Inc.*, 301 Ill. App. 3d 459 (1998). In *Fritz*, the plaintiff alleged the defendants attempted to induce him to resign from his position by filing false police reports. *Fritz*, 209 Ill. 2d at 317-318. The plaintiff further alleged one of the defendants

did in fact file a false report. *Id.* at 317. Our supreme court determined the plaintiff failed to state a cause of action for civil conspiracy because his pleading lacked specificity as to the agreement between defendants to force the plaintiff from his position. *Id.* at 318.

¶ 42 Our supreme court, however, did conclude the plaintiff's civil conspiracy claim was not wholly deficient, as the plaintiff was able to establish the other elements of the cause of action:

"The allegation that defendants were attempting to induce him to resign by filing false reports with the Illinois State Police sufficiently charged that defendants were pursuing a lawful purpose by unlawful means. The allegation that Johnston [a defendant] did in fact file a false report with the State Police satisfies the third element, the actual commission of an overt unlawful act by one of the conspirators." *Id.* at 317.

The plaintiff in *Fritz* alleged the filing of the false police report was done *in furtherance* of the conspiracy to induce the plaintiff to resign his position by filing false police reports.

¶ 43 In *Scott*, plaintiff alleged Aldi (a supermarket chain), through its agents or employees, entered into an agreement with other parties to operate an unlawful vehicle-for-hire business on its premises. *Scott*, 301 Ill. App. 3d at 460-61. Plaintiff further alleged Aldi knew or should have known the owners or drivers of the unlawful taxi service were not licensed by the City of Chicago, lacked proper liability insurance, failed to have the vehicles properly inspected, failed to have a proper emblem, and failed to have valid chauffeur's licenses in violation of various provisions of the Chicago Municipal Code. *Id.* at 461. Plaintiff set forth facts which established she was escorted by an Aldi employee from the check-out counter to the front of the store where the employee summoned a for-hire vehicle. *Id.* This vehicle became involved in a collision with

a car driven by a defendant, killing the driver and injuring plaintiff. Although the driver carried an insurance policy, the insurer denied coverage on the ground that the car was being used in a for-hire business at the time of the collision. *Id.*

¶ 44 An issue in *Scott*, which is relevant to this appeal, was whether tortious conduct in furtherance of civil conspiracy existed. Plaintiff alleged numerous violations of the Chicago municipal code and chapter 8 of the Illinois Vehicle Code, which we stated were enacted to protect the public for injuries inflicted by such vehicles. *Id.* at 463. We determined a violation of these statutes was evidence of negligence and thus, could form the basis of a civil conspiracy claim. *Id.* We defined the civil conspiracy at issue to be a conspiracy "to operate vehicles negligently" and ultimately determined "the operation of an unlicensed, uninsured for-hire vehicle service is not only unlawful, but also tortious conduct *in furtherance* of the alleged conspiracy." *Id.* (emphasis added). Therefore, plaintiff sufficiently set forth facts to establish a cause of action for civil conspiracy. *Id.* at 464, 466. *Scott* thus illustrates the point that the overt act which causes the injury for which the plaintiff seeks to recover must be committed *in furtherance* of the conspiracy. *Id.* at 463. In the present case, plaintiff cannot allege any fact that Schuh's tortious act was in furtherance of the conspiracy to purchase and consume alcohol and, thus, her complaint was properly dismissed with prejudice.

¶ 45 In sum, plaintiff cannot predicate her civil conspiracy claim on the purchase and consumption of alcohol in violation of section 6-20 of the Dramshop Act. Furthermore, the sixth amended complaint fails to allege a tortious act committed in furtherance of the conspiracy which injured plaintiff's decedent. Accordingly, the trial court did not err in dismissing counts XIII,

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XIV, and XV of plaintiff's sixth amended complaint based on civil conspiracy with prejudice.

See *Tedrick*, 235 Ill. 2d at 161; 735 ILCS 5/2-615 (West 2010).

¶ 46

CONCLUSION

¶ 47 For all the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 48 Affirmed.