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## 1999 Survey of Rhode Island Law: Cases: Remedies

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**Remedies.** *DePasquale v. Venus Pizza*, 727 A.2d 683 (R.I. 1999). Under section 3-14-10(e) of the Rhode Island General Laws, a nonreckless defendant may seek contribution from a reckless defendant where the two defendants act as joint tortfeasors in producing a single injury. A single injury is produced where one tortfeasor recklessly serves alcohol to an intoxicated person, and a nonreckless driver strikes that person with an automobile. In addition, a joint tortfeasor does not extinguish his right to contribution by entering into a settlement agreement releasing all defendants.

#### FACTS AND TRAVEL

In *DePasquale v. Venus Pizza*,<sup>1</sup> the decedent, Joseph Martinelli (Martinelli), died as a result of being struck by Carmino C. DePasquale's (DePasquale) automobile while walking down Route 3 in Coventry, Rhode Island.<sup>2</sup> Prior to the accident, Martinelli spent about four hours drinking twelve sixteen-ounce beers at a restaurant owned and operated by Venus Pizza (Venus).<sup>3</sup> According to a witness statement, the decedent was seen staggering on the road just prior to the accident.<sup>4</sup> Minutes later, DePasquale struck Martinelli with his car.<sup>5</sup> According to DePasquale's written statement, Martinelli walked out in front of DePasquale's vehicle, and DePasquale could not avoid hitting him.<sup>6</sup> No evidence exists in the record of negligence on the part of DePasquale.<sup>7</sup>

Martinelli's daughter brought a wrongful death claim against DePasquale.<sup>8</sup> DePasquale and Martinelli's daughter entered into a settlement agreement which released DePasquale, Venus, and DePasquale's insurer from all claims.<sup>9</sup> The agreement made no mention as to whether DePasquale would seek indemnification or contribution from Venus.<sup>10</sup>

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1. 727 A.2d 683 (R.I. 1999).
  2. *See id.* at 684.
  3. *See id.*
  4. *See id.*
  5. *See id.*
  6. *See id.*
  7. *See id.*
  8. *See id.*
  9. *See id.* at 684-85.
  10. *See id.* at 685.

After entering into this settlement, DePasquale brought an action against Venus seeking contribution and/or indemnification from Venus.<sup>11</sup> DePasquale's complaint alleged that Venus had violated Rhode Island's Liquor Liability Act,<sup>12</sup> in that "their agents or servants recklessly served alcoholic beverages to [decedent] who was a visibly intoxicated individual or intentionally served said [decedent] knowing him to be visibly intoxicated and consciously disregarding the obvious and substantial risk that the serving of alcoholic beverages to said [decedent] would cause physical harm."<sup>13</sup>

Venus moved for dismissal of the case or, in the alternative, for summary judgment.<sup>14</sup> The trial court granted Venus' motion for summary judgment,<sup>15</sup> finding that Venus' violation of the Liquor Liability Act was a separate injury from DePasquale's striking Martinelli with his car.<sup>16</sup> The trial court also found that DePasquale waived his claim for indemnification or contribution against Venus by entering into a settlement agreement with Martinelli's estate.<sup>17</sup> DePasquale appealed.<sup>18</sup>

#### ANALYSIS AND HOLDING

##### *Joint Tortfeasors*

The trial court concluded that DePasquale and Venus were not joint tortfeasors by relying on *Wilson v. Krasnoff*.<sup>19</sup> In *Wilson*, the Rhode Island Supreme Court held that a tortfeasor who inflicted an injury on the plaintiff and the physicians that negligently treated the plaintiff's injury were not joint tortfeasors.<sup>20</sup> The trial justice in the instant case concluded that "there might have been two injuries. One, [the decedent] might have [had] too much

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11. *See id.*

12. R.I. Gen. Laws § 3-14-4 (1956) (1998 Reenactment).

13. *DePasquale*, 727 A.2d at 686.

14. *See id.* at 685.

15. *See id.* The court notes that the record is unclear as to which motion was actually granted. *See id.* at 685 n.1. Since the trial justice considered matters outside the pleadings however, the court treats the dismissal as the granting of a motion for summary judgment. *See id.* (citing *Ewing v. Frank*, 234 A.2d 840, 841 (1967)).

16. *See id.* at 686.

17. *See id.* at 685.

18. *See id.* at 684.

19. 560 A.2d 335 (R.I. 1989).

20. *See id.* at 341.

cerveza, and the second, that he found himself—a bumper being too close to his body . . . And the latter was the cause of death.”<sup>21</sup>

The Rhode Island Supreme Court distinguished *Wilson* from the instant case, stating that the injuries in *Wilson* did not involve the same injury, but rather a series of injuries occurring over a year on several distinct occasions.<sup>22</sup> The court noted that *Lawrence v. Pokara*,<sup>23</sup> which held that a driver and a pub that served alcohol to that driver were joint tortfeasors with respect to a person injured by that driver, was the controlling case.<sup>24</sup>

The court then analyzed the statutes supporting DePasquale’s claim against Venus. Under Rhode Island’s Liquor Liability Act,<sup>25</sup> there is a right to recovery for a decedent’s estate where a defendant recklessly served alcohol to that decedent.<sup>26</sup> Furthermore, Rhode Island General Laws section 3-14-10(e) provides that “[i]n cases of reckless conduct, nonreckless defendants have a right of either indemnification or contribution from any reckless defendants.”<sup>27</sup>

DePasquale alleged in his complaint that Venus recklessly or intentionally served Martinelli, who was visibly intoxicated.<sup>28</sup> The supreme court agreed with DePasquale’s assertion that there was no evidence that he himself was reckless in causing the accident, and that a material issue of fact existed with respect to whether Venus recklessly served Martinelli.<sup>29</sup> Therefore, the court concluded that the trial court should not have granted summary judgment.<sup>30</sup> If DePasquale could establish Venus recklessly served Martinelli, his own non-recklessness in hitting Martinelli, and that Martinelli’s consumption of alcohol was the proximate cause of the accident, then a jury could conclude that Venus was a joint tortfeasor and that DePasquale was entitled to contribution from Venus.<sup>31</sup>

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21. *DePasquale*, 727 A.2d at 686.

22. *See id.* at 685-86.

23. 606 A.2d 987 (R.I. 1992).

24. *See id.* at 988.

25. *See* R.I. Gen. Laws § 3-14-4 (1956) (1998 Reenactment).

26. *See DePasquale*, 727 A.2d at 686.

27. R.I. Gen. Laws § 3-14-10(e) (1956) (1998 Reenactment).

28. *See DePasquale*, 727 A.2d at 686.

29. *See id.*

30. *See id.*

31. *See id.*

*Waiver of Right to Contribution*

The supreme court also held that the trial court erred when finding "as a matter of law that the execution of the release evidences the intent of the DePasquales not to seek any contribution from the defendant."<sup>32</sup> Subsequent to the ruling of the trial justice, the Rhode Island Supreme Court decided the case of *Hawkins v. Gadoury*.<sup>33</sup> In *Hawkins*, the plaintiff sought contribution from the defendant after settling a claim arising from an automobile accident brought by an injured third party.<sup>34</sup> The settlement released both Hawkins and Gadoury, although no claim was brought against Gadoury.<sup>35</sup>

The *Hawkins* court held that under Rhode Island General Laws section 10-6-5, the plaintiff did not waive the right to contribution by entering into the settlement agreement.<sup>36</sup> Under the statute, "[a] joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement."<sup>37</sup> The court held that the legislature would not have included the language pertaining to tortfeasors whose liability was not extinguished by settlement had it intended that only tortfeasors whose liability had been finally adjudicated after a trial were entitled to contribution.<sup>38</sup> Furthermore, a contrary reading of the statute would decrease the incentive to enter into settlement agreements.<sup>39</sup>

Therefore, based on its prior ruling in *Hawkins*, the Rhode Island Supreme Court overturned the trial justice's ruling that DePasquale waived his right to contribution from Venus by entering the settlement agreement with Martinelli's estate.

32. *Id.*

33. 713 A.2d 799 (R.I. 1998). Although the supreme court held the trial justice's ruling was in error, it noted that the trial justice "did not have the benefit of our recent opinion in *Hawkins*." *DePasquale*, 727 A.2d at 686.

34. *See Hawkins*, 713 A.2d at 801.

35. *See id.*

36. *See id.* at 806.

37. *DePasquale*, 727 A.2d at 686-87 (quoting R.I. Gen. Laws § 10-6-5 (1956) (1997 Reenactment)).

38. *See Hawkins*, 713 A.2d at 806.

39. *See id.*

## CONCLUSION

The Rhode Island Supreme Court determined that a nonreckless defendant may seek contribution and/or indemnification from a reckless defendant where the two defendants are joint tortfeasors producing a single injury. Where a nonreckless defendant claims that another defendant acted recklessly, there is a factual dispute over whether the two defendants are joint tortfeasors, and summary judgment is improper. In addition, a joint tortfeasor does not waive his right to contribution by entering a settlement agreement releasing all defendants.

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