

## Case Brief

### Case Name & Citation

*Childs v Desormeaux*, 2006 SCC 18, [2006] 1 SCR 643.

### Procedural History

This is an appeal by the plaintiff (Ms. Childs) to the Supreme Court of Canada. The Ontario Court of Appeal dismissed Ms. Childs' previous appeal and the trial judge ruled in favour of the defendant.

### Facts

The plaintiff (Childs), was seriously injured as a result of an intoxicated driver (Desormeaux), and brought an action against the hosts of a party that the defendant (Desormeaux) attended on January 1, 1999 prior to the accident. The plaintiff claims that the social hosts of the party are at fault for the injuries she suffered (paralysis), as they provided the venue in which the defendant became intoxicated, and knowingly allowed him to leave the premises in his vehicle while intoxicated. The defendant was impaired at the time of the accident, exceeding the legal blood alcohol limit. Mr. Desormeaux pled guilty to a series of criminal charges arising from these events and received a 10-year sentence. According to the plaintiff, a duty of care is owed to her by the social hosts, for if they had exercised better control/influence over the party at which Mr. Desormeaux was drinking, the injuries she sustained would have been avoided.

### Issue(s)

Does the social host who invited guests to an event where alcohol was served owe a legal duty of care to third parties injured by intoxicated guests? (Par 8)

### Decision

Appeal dismissed. Social host does not owe a duty of care.

## Reasons

### Rule/Test:

The rule set out in *Anns v Merton*, as applied in *Cooper v Hobart*, which continues to be the appropriate test to apply where the question of whether a duty of care should be imposed in a new situation, requires a 2 stage assessment:

#### Stage 1:

- Was the harm that occurred a reasonably foreseeable consequence of the defendant's act? This consideration of reasonable foreseeability must be supplemented by the notion of proximity, which is assessed based on factors arising from the relationship between the plaintiff and the defendant, including considerations of policy.

#### Stage 2:

- If a *prima facie* duty of care is established under Stage 1, are there residual policy considerations outside the relationship of the parties that may negative the imposition of a duty of care?

### Application of the Rule/Test:

- This is the first time this court has considered the duty of care that the plaintiffs allege in this case. The case does not fall within, and is not analogous to, a category of cases in which a duty of care has previously been recognized. The duty proposed in this case is novel.
- The existence of a duty of care on the part of commercial providers of alcohol under the *Liquor Control Act* cannot be extended by simple analogy to the hosts of a private party.
- The hosts in this circumstance were not found to owe a duty of care to public users of the highway because sufficient proximity and foreseeability were not established. Even if foreseeability were established, no duty would arise because the wrong alleged is a

failure to act or nonfeasance in circumstances where there was no positive duty to act.  
(Par 26)

- The application of stage 2 is not necessary in this case.

### **Ratio**

Social hosts of parties where alcohol is served do not owe a duty of care to public users of highways who may become injured as a result of intoxicated guests, as they do not maintain a relationship of sufficient proximity.

### **Notes**

Though the court did not apply Stage 2, it did comment that providing a venue for individuals to socialize and consume alcohol is within the parameters of non dangerous conduct and more would be required to establish a danger or risk that would result in the social hosts owing a duty of care. If/when the social hosts had exacerbated the situation and increased risk for guests, exercised paternalistic relationships of supervision and control, or exercised a public function or engaged in a commercial enterprise that included implied responsibilities to the public, a *prima facie* duty of care would arise and contrary policy considerations at Stage 2 would occur.