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**ORIGINAL**

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA**

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

APR - 1 2021

JOHN D. HADDEN  
CLERK

NANCY CAROL MEGEE, as Personal )  
 Representative of and on behalf of )  
 Estate of David Anthony McGee, )  
 )  
 Plaintiff/Appellant, )  
 )  
 v. )  
 )  
 EL PATIO, LLC, an Oklahoma Limited )  
 Liability Company; and DYLAN SCOTT )  
 WELCH, an Individual, )  
 )  
 Defendants/Appellees. )

**#119449**

No.: \_\_\_\_\_  
CUSTER County Case No.: CJ-2021-3

**PETITION IN ERROR**

- PETITION IN ERROR
- AMENDED OR SUPPLEMENTAL PETITION
- CROSS PETITION
- COUNTER-PETITION
- DATE FIRST PETITION IN ERROR FILED: \_\_\_\_\_

-----ORIGINAL-----  
 Recd by \_\_\_\_\_  
 Marshall \_\_\_\_\_  
 Reynolds \_\_\_\_\_  
 Cert mailed \_\_\_\_\_  
 Updated \_\_\_\_\_

**I. TRIAL COURT HISTORY**

COURT/TRIBUNAL: District Court Of Custer County  
 COUNTY: Custer County  
 CASE NO.: CJ-2021-3  
 JUDGE: The Honorable Jill C. Weedon  
 NATURE OF CASE: Personal Injury Involving Alcohol

**NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:**

Clayton B. Bruner, on behalf of the Appellants, Nancy Carol Megee, as Personal Representative of and on behalf of the Estate of David Anthony McGee.

**THE APPEAL IS BROUGHT FROM: (Check one)**

- Judgment, Decree or Final order of District Court.
- Appeal from order granting summary judgment or motion to dismiss where motion filed after October 1, 1993 (Accelerated procedure under Rule 1.36).
- Appeal from Revocation of Driver's License (Rule 1.21(b)).
- Final Order of Other Tribunal.  
(Specify Corporation Commission, Insurance Department,

\_\_\_\_\_ Tax Commission, Court of Tax Review, Banking Board or  
 \_\_\_\_\_ Banking Commissioner, etc. \_\_\_\_\_ )  
 \_\_\_\_\_ Interlocutory Order Appealable by Right.  
 \_\_\_\_\_ Other \_\_\_\_\_

**II. TIMELINESS OF APPEAL**

1. Date judgment, decree or order appealed was filed: March 15, 2021.
2. *If decision was taken under advisement*, date judgment, decree or order was mailed to parties: n/a
3. Does the judgment or order on appeal dispose of *all* claims by and against *all* parties? X Yes \_\_\_ No.  
 If not, did district court direct entry of judgment in accordance with 12 O.S. Supp.1995 § 994? \_\_\_ Yes \_\_\_ No.  
 When was this done?
4. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? \_\_\_ Yes \_\_\_ No.
5. If none of the above applies, what is the *specific* statutory basis for determining the judgment or order is appealable? 12 O.S. §952(b)(3)
6. Were any post-trial motions filed? No.  

<u>Type</u>	<u>Date Filed</u>	<u>Date Disposed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
7. This Petition is filed by: X Delivery to Clerk, or  
 \_\_\_ Mailing to Clerk by U.S. Certified Mail,  
 Return Receipt Requested, on \_\_\_\_\_  
 (Date)

**III. RELATED OR PRIOR APPEALS**

List all prior appeals involving same parties or same trial court proceeding: None.

List all related appeals involving same issues: None.  
 (Identify by Style, Appeal Number, Status, and Citation, if any. If none, so state.)

**IV. SETTLEMENT CONFERENCE**

Is appellants willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? \_\_\_ Yes X No

**V. RECORD ON APPEAL**

\_\_\_\_\_ A Transcript will be ordered.

\_\_\_\_\_ No Transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal  
\_\_\_\_\_ A Narrative Statement will be filed  
  X   Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).

**VI. JUDGMENT, DECREE OR ORDER APPEALED -- EXHIBIT "A"**

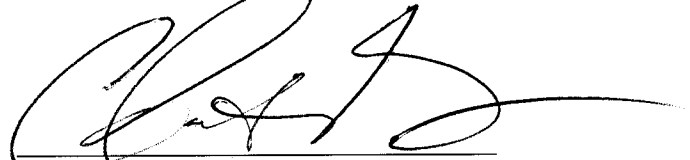
Certified copy of March 22, 2015, Journal Entry is attached as Exhibit "A"

**VII. SUMMARY OF CASE -- EXHIBIT "B"**

**VIII. ISSUES TO BE RAISED ON APPEAL -- EXHIBIT "C"**

**IX. NAME OF COUNSEL OR PARTY, IF PRO SE**

**ATTORNEY FOR APPELLANT**



Clayton B. Bruner, Esquire

CLAYTON B. BRUNER, P.L.L.C.

222 W. Tom Stafford

Weatherford, Oklahoma 73096

Telephone: (580) 772-7721

Facsimile: (580) 772-1116

**ATTORNEY FOR PLAINTIFFS/APPELLANTS**

DATE: April 1, 2021

**X. CERTIFICATE OF MAILING TO ALL PARTIES AND  
COURT CLERK**

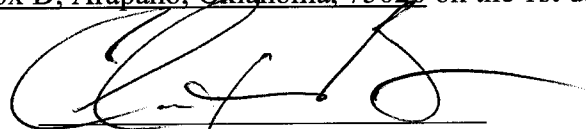
I hereby certify that a true and correct copy of the Petition in Error was hand-delivered this 1st day of April, 2021 to

Mr. Richard Healy, Esquire  
Mr. Heath Garwood, Esquire  
LYTLE SOULE & FELTY, P.C.  
1200 Robinson Renaissance  
119 North Robinson Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 235-7471  
Facsimile: (405) 232-3852  
Email: [healy@lytlesoule.com](mailto:healy@lytlesoule.com)  
[garwood@lytlesoule.com](mailto:garwood@lytlesoule.com)

**ATTORNEYS FOR  
DEFENDANTS/APPELLEES**

by delivering at Appellees' address, above.

I further certify that a copy of the Petition in Error was mailed to, or filed in, the Office of Custer County, Court Clerk Staci Hunter, P.O. Box D, Arapaho, Oklahoma, 73620 on the 1st day of April, 2021.



Clayton B. Bruner

# **EXHIBIT A**

IN THE DISTRICT COURT OF CUSTER COUNTY  
STATE OF OKLAHOMA

FILED  
DISTRICT COURT  
Custer County, Okla.

MAR 22 2021

STACI HUNTER  
COURT CLERK

NANCY CAROL MEGEE, as Personal )  
Representative of and on behalf of )  
Estate of David Anthony McGee, )

Plaintiffs, )

vs. )

Case No. CJ-2021-3

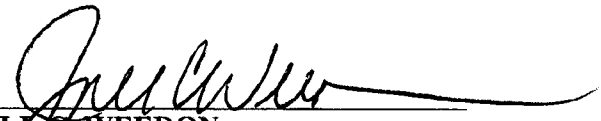
EL PATIO, LLC, an Oklahoma Limited )  
Liability Company; and DYLAN SCOTT )  
WELCH, an Individual, )

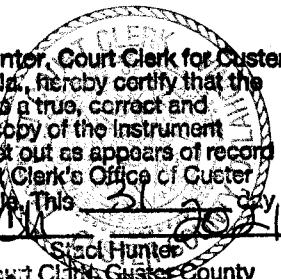
Defendants. )

JOURNAL ENTRY

NOW on the 15th day of March, 2021, Defendants El Patio, LLC and Dylan Scott Welch's Motion to Dismiss comes on for hearing. The Court, having reviewed the briefs and responses of the parties; hearing the arguments of counsel; and being advised on the premises; finds that Defendants' Motion to Dismiss should be and is hereby GRANTED.

IT IS SO ORDERED this 21 day of March, 2021.

  
JILL C. WEEDON  
JUDGE OF THE DISTRICT COURT

I, Staci Hunter, Court Clerk for Custer County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the Court Clerk's Office of Custer County, Okla. This 21 day of March, 2021.  
  
By Staci Hunter Deputy

# **EXHIBIT B**

The present appeal concerns Oklahoma's dram shop liability doctrine, and specifically, this Court's holding in the case of *Ohio Casualty Company v. Todd*, 1991 OK 54, 813 P.2d 508 ("*Todd*"). This appeal seeks to create a limited exception to this Court's holding in *Todd* pursuant to the heinous facts at issue, and it seeks to create a new common law duty that holds individuals and businesses responsible for betting noticeably intoxicated persons to drive. On or about January 19, 2019, Dylan Welch ("Welch"), on behalf of his employer, El Patio, intentionally and negligently over-served alcohol to David Anthony Megee ("Mr. Megee") which ultimately resulted in his wrongful death. According to investigators, Mr. Megee was served 17 alcoholic beverages by four different servers for over seven hours. According to witnesses, employees of El Patio bet Mr. Megee \$200.00 to drive to Oklahoma City ("OKC") later in the evening and meet them at the OK Corral, a bar in OKC. Welch admits he was aware of the \$200.00 bet, and he admits he even discussed the bet with Mr. Megee prior to his departure that night. Welch also admits he over-served Mr. Megee, Mr. Megee was extremely intoxicated, and Mr. Megee was in no condition to drive. Welch was ultimately convicted of criminal charges for over-serving Mr. Megee. Neither Welch nor El Patio's other supervisors and managers did anything to prevent Mr. Megee from getting behind the wheel of his vehicle to attempt to collect the \$200.00. Mr. Megee exited the El Patio at 10:49 p.m. to attempt to collect the \$200.00 bet. Mr. Megee reached speeds of 97 mph on his way to OKC. Tragically, Mr. Megee ran into the rear-end of a tractor trailer on I-40 near El Reno, Oklahoma. Mr. Megee was pronounced dead thereafter by the investigating troopers. The primary motivating factor for Mr. Megee's trip to Oklahoma City was the bet made by El Patio employees. Thus, this appeal seeks to create an exception to the first-party dram shop liability doctrine in Oklahoma as set forth in *Todd*, *supra*. Further, it seeks to create new common law in Oklahoma to hold individuals and businesses responsible for betting noticeably intoxicated people to drive, *regardless* of the sale of alcohol.



# **EXHIBIT C**

1. Whether the underlying facts of this case warrant the creation of a limited exception to Oklahoma's first-party dram shop liability doctrine and this Court's holding in *Ohio Casualty Company v. Todd*, 1991 OK 54, 813 P.2d 508 to provide Plaintiff/Appellant with a cause of action against Defendants/Appellees?

2. Whether a cause of action exists under current Oklahoma law to hold individuals and businesses responsible for betting noticeably intoxicated persons to drive a vehicle regardless of the sale of alcohol?

3. Whether a common law cause of action under the present facts should be created under Oklahoma law to hold individuals and businesses responsible for betting noticeably intoxicated persons to drive a vehicle regardless of the sale of alcohol?