

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Rachel Ohlin,	:	
	:	No. 25AP-621
Plaintiff-Appellant,	:	(C.P.C. No. 23CV-6236)
v.	:	
	:	(REGULAR CALENDAR)
Amy Machol et al.,	:	
	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on October 20, 2026

On brief: *Law Office of David A. Bressman, David A. Bressman, and Jedidiah I. Bressman*, for appellant. **Argued:** *Jedidiah I. Bressman*.

On brief: *Ritzler, Coughlin & Paglia, Ltd., Michael A. Paglia, and Jonathon M. Angarola*, for appellees, Amy Machol and Alexa Machol. **Argued:** *Jonathon M. Angarola*.

On brief: *Mark G. Kafantaris*, for appellees, N. High Tobacco for Less, LLC, and Marwan S. Kouzal. **Argued:** *Mark G. Kafantaris*.

APPEAL from the Franklin County Court of Common Pleas

DINGUS, J.

{¶ 1} Plaintiff-appellant, Rachel Ohlin, appeals from a judgment of the Franklin County Court of Common Pleas in her action against defendants-appellees, Amy and Alexa Machol (“the Machols”), and N. High Tobacco for Less, LLC, and business owner, Marwan S. Kouzal (“the liquor permit holders”). For the following reasons, we affirm in part and reverse in part.

I. Facts and Procedural History

{¶ 2} On September 1, 2023, Ohlin initiated a negligence and negligence per se action against numerous defendants, including the Machols and other individuals. The claims arose from events occurring on October 24, 2021 that resulted in Ohlin sustaining significant injuries in an automobile accident.

{¶ 3} As pertinent to this appeal, Ohlin alleged the following facts in the complaint. On October 24, 2021, when Ohlin was under 18 years old, she was invited to the Machols' house after attending Bishop Watterson High School's homecoming dance. At the house, Ohlin was provided alcohol by the house owner, Amy Machol, and other partiers, including Alexa Machol. Despite Ohlin becoming intoxicated, she was given keys to someone's automobile. Ohlin left the party and crashed the vehicle into a guardrail and sustained permanent and substantial injuries.

{¶ 4} On January 4, 2024, the Machols filed a motion for judgment on the pleadings pursuant to Civ.R. 12(C). On March 6, 2024, and with leave of the trial court, Ohlin filed an amended complaint. In addition to reasserting the above allegations, Ohlin named the liquor permit holders as defendants and alleged that these defendants sold alcohol to some of the individual defendants, who were under the age of 21 years old, and that these sales proximately caused Ohlin's injuries. On April 30, 2024, the liquor permit holders filed a motion to dismiss pursuant to Civ.R. 12(B)(6).

{¶ 5} On May 23, 2024, the trial court filed a decision and entry granting the Machols' motion for judgment on the pleadings and the liquor permit holders' motion to dismiss. The court thus entered judgment in favor of these defendants, but noted that claims against other defendants, not involved in this appeal, remained pending. In July 2025, the court filed a decision and entry resolving the claims against the remaining defendants.

{¶ 6} Ohlin timely appeals.

II. Assignments of Error

{¶ 7} Ohlin assigns the following two assignments of error for our review:

[I.] The trial court erred in dismissing Rachel Ohlin's claims against social-host Defendants Amy Machol, Alexa Machol since there was clear evidence that they violated R.C. 4301.69.

[II.] The Dram Shop Act Does Not Shield Defendant Permit Holders When Alcohol Is Furnished to Minors.

(Sic passim.)

III. Discussion

{¶ 8} In her first assignment of error, Ohlin contends the trial court erred in dismissing her claims against the Machols. Her second assignment of error alleges the court erred in finding that the Dramshop Act shields liquor permit holders from liability for alcohol that they furnish to minors. Thus, in this appeal, Ohlin challenges the court's dismissal of her negligence per se claims against the liquor permit holders pursuant to Civ.R. 12(B)(6), and against the Machols pursuant to Civ.R. 12(C).

{¶ 9} Under Civ.R. 12(B)(6), a defendant may move to dismiss a complaint for failure to state a claim upon which relief can be granted. A Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of the complaint itself and any attached documents. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975); *State ex rel. Monica G. Justice v. State*, 2026-Ohio-1467, ¶17 (10th Dist.); see Civ.R. 10(C) (attachments to the complaint are considered part of the complaint for all purposes). Ohio is a notice pleading state, and, as such, does not require parties to plead their claims with particularity outside of the requirements described in Civ.R. 9(B). *Maternal Grandmother v. Hamilton Cty. Dept. of Job & Family Servs.*, 2021-Ohio-4096, ¶ 10. "Ohio law does 'not require a complaint to contain anything more than *brief and sketchy* allegations of fact to survive a motion to dismiss under the notice pleading rule.' " (Emphasis in original.) *Ohio Neighborhood Preservation Assn. v. Alaura*, 2023-Ohio-1281, ¶ 10 (10th Dist.), quoting *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 146 (1991) (Moyer, C.J., concurring.).

{¶ 10} Pursuant to Civ.R. 12(C), "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." A motion for judgment on the pleadings, pursuant to Civ.R. 12(C), "has been characterized as a belated Civ.R. 12(B)(6) motion for failure to state a claim upon which relief can be granted." *Tran v. State*, 2009-Ohio-6784, ¶ 10 (10th Dist.). In ruling on a motion for judgment on the pleadings, however, a trial court is permitted to "consider both the complaint and answer." *Zhelezny v. Olesh*, 2013-Ohio-4337, ¶ 8 (10th Dist.).

{¶ 11} When presented with a motion for judgment on the pleadings, or a motion for failure to state a claim upon which relief can be granted, a court must construe all the material allegations of the complaint as true and must draw all reasonable inferences in favor of the non-moving party. *Argote-Romero v. Laz Parking Ltd., L.L.C.*, 2025-Ohio-400 (10th Dist.); *Zhelezny* at ¶ 8 (10th Dist.). A court may grant a motion filed pursuant to either Civ.R.12(B)(6) or (C) only if it appears beyond doubt that the non-moving party can prove no set of facts entitling it to relief on the claims asserted in the complaint. *Colt's Neck Homeowners Assn. v. Franklin Cty. Bd. of Commrs.*, 2026-Ohio-2751; *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, 2016-Ohio-3038, ¶ 10. Such motions present questions of law. *Craig v. Sagraves*, 2025-Ohio-4960, ¶ 8 (10th Dist.); *Pond v. E & E Towing & Recovery, L.L.C.*, 2024-Ohio-800, ¶ 11 (10th Dist.). Consequently, a trial court's decision on either a Civ.R.12(B)(6) or (C) motion is reviewed on appeal under a de novo standard without deference to the court's decision. *Dunlop v. Ohio Dept. of Job & Family Servs.*, 2017-Ohio-5531, ¶ 10 (10th Dist.); *RotoSolutions, Inc. v. Crane Plastics Siding, L.L.C.*, 2013-Ohio-4343, ¶ 13 (10th Dist.).

{¶ 12} In this action, Ohlin alleges negligence claims premised on duties imposed under statutory law (negligence per se claims). To establish negligence, a plaintiff must prove: (1) the existence of a duty, (2) a breach of that duty, and (3) an injury proximately resulting from the breach. *A.M. v. Miami Univ.*, 2017-Ohio-8586, ¶ 32 (10th Dist.). "The distinction between negligence and 'negligence *per se*' is the means and method of ascertainment. The first must be found by the jury from the facts, the conditions and circumstances disclosed by the evidence; the latter is a violation of a specific requirement of law or ordinance, the only fact for determination by the jury being the commission or omission of the specific act inhibited or required." *Swoboda v. Brown*, 129 Ohio St. 512, 522 (1935). "The concept of negligence per se allows the plaintiff to prove the first two prongs of the negligence test, duty and breach of duty, by merely showing that the defendant committed or omitted a specific act prohibited or required by statute; no other facts are relevant." *Lang v. Holly Hill Motel, Inc.*, 2009-Ohio-2495, ¶ 15. Where a legislative enactment imposes a specific duty for the safety of others, failure to perform that duty is negligence per se. *Eisenhuth v. Moneyhon*, 161 Ohio St. 367 (1954), paragraph two of the syllabus.

{¶ 13} Negligence is without legal consequence unless it is a proximate cause of an injury. *Whiting v. Ohio Dept. of Mental Health*, 141 Ohio App.3d 198, 202 (10th Dist. 2001), citing *Osler v. Lorain*, 28 Ohio St.3d 345, 347 (1986). To show proximate causation, foreseeability of injury resulting from the negligent act must be found. *Mussivand v. David*, 45 Ohio St.3d 314, 321-22 (1989), citing *Di Gildo v. Caponi*, 18 Ohio St.2d 125, 127 (1969). “The rule of proximate cause “requires that the injury sustained shall be the natural and probable consequence of the negligence alleged; that is, such consequence as under the surrounding circumstances of the particular case might, and should have been foreseen or anticipated by the wrongdoer as likely to follow his negligent act.” ’ ’ *Eastman v. Stanley Works*, 2009-Ohio-634, ¶ 40 (10th Dist.), quoting *Jeffers v. Olexo*, 43 Ohio St.3d 140, 143 (1989), quoting *Ross v. Nutt*, 177 Ohio St. 113, 114 (1964). Ordinarily, proximate cause is a question of fact for the jury. *Eastman* at ¶ 42, citing *Strother v. Hutchinson*, 67 Ohio St.2d 282, 288 (1981).

{¶ 14} We first address Ohlin’s claims against the Machols. Public policy strongly supports discouraging social hosts from furnishing alcohol to underage persons. To this end, R.C. 4301.69 creates a statutory duty on a social host to refrain from serving beer or intoxicating liquors to an underage person. *Hoeflinger v. AM Mart, L.L.C.*, 2017-Ohio-7530, ¶ 45 (6th Dist.). As pertinent here, R.C. 4301.69 states:

(A) Except as otherwise provided in this chapter, no person shall sell beer or intoxicating liquor to an underage person, shall buy beer or intoxicating liquor for an underage person, or shall furnish it to an underage person, unless given by a physician in the regular line of the physician’s practice or given for established religious purposes or unless the underage person is supervised by a parent, spouse who is not an underage person, or legal guardian.

...

(F) No parent, spouse who is not an underage person, or legal guardian of a minor shall knowingly permit the minor to violate this section or section 4301.63, 4301.633, or 4301.634 of the Revised Code.

R.C. 4301.69(A) and (F). As used in this statute, a “minor” is “a person under the age of eighteen years,” and an “underage person” means a person under the age of 21 years. R.C. 4301.60(H)(4) and (5). Violation of R.C. 4301.69 is negligence per se, and it “thus

establishes the duty and breach elements of a negligence action.” *Wesley v. Walraven*, 2013-Ohio-473, ¶ 41 (4th Dist.), citing *Huston v. Konieczny*, 52 Ohio St.3d 214, 218 (1990).

{¶ 15} Here, Ohlin’s amended complaint alleged that the Machols furnished alcohol to her in violation of R.C. 4301.69(A), and that this breach of duty proximately caused her injuries. The Machols, citing *Noe v. Housel*, 2020-Ohio-1537 (6th Dist.), argue that R.C. 4301.69 is a criminal statute and does not provide a private cause of action. They also argue that, even assuming this statute provides for a private cause of action, liability is limited to third parties injured by an intoxicated person.

{¶ 16} We reject the Machols’ reliance on *Noe*. In *Noe*, the court held that “the statute at issue, R.C. 4301.69(B), pertains to a criminal offense and does not provide appellants with a private right of action.” *Id.* at ¶ 16. In reaching this conclusion, the court noted that “[w]hen courts have found civil liability for a violation of R.C. 4301.69, it is related to a former version of the statute which tracked the language of the current R.C. 4301.69(A) prohibiting the sale, buying, or furnishing of alcohol to an underage person.” *Id.* at ¶ 15. Because Ohlin alleges social host liability under current R.C. 4301.69(A), not under R.C. 4301.69(B), the Machols’ reliance on *Noe* is misplaced.

{¶ 17} Thus, as to Ohlin’s claims against the Machols, the dispute centers on whether the Machols can be liable in tort to Ohlin, despite Ohlin not being an innocent third party injured by an intoxicated person. Generally, “the common law rule precludes recovery by ‘third persons injured by an intoxicated individual, against the provider of the alcoholic beverages, regardless of whether the provider is a commercial proprietor or a social host.’ ” *Lytal v. Crawl for Cancer, Inc.*, 2018-Ohio-2017, ¶ 11 (10th Dist.), quoting *Settlemyer v. Wilmington Veterans Post No. 49, Am. Legion, Inc.*, 11 Ohio St.3d 123, 125 (1984). See *Great Cent. Ins. Co. v. Tobias*, 37 Ohio St.3d 127, 129 (1988) (noting that, as a general rule, social hosts are not subject to liability for injuries caused by their intoxicated guests because the proximate cause was the voluntary consumption of the alcohol); *Gonzalez v. Posner*, 2010-Ohio-2117, ¶ 20 (6th Dist.). “This rule is consistent with both the common law principle that there is no duty to affirmatively act to protect another and the policy that individuals should be responsible for their drinking.” *Homan v. George*, 127 Ohio App.3d 472, 476 (10th Dist. 1998). See *Hoeflinger*, 2017-Ohio-7530, at ¶ 51 (6th Dist.) (estate of intoxicated, underage adult who died in a single car accident precluded from

recovery against social host providing the intoxicating beverages to the deceased); *Gwin v. Phi Gamma Delta Fraternity*, 1997 Ohio App. LEXIS 4658 (8th Dist. Oct. 16, 1997) (ruling that no cause of action exists against social hosts who provided intoxicating beverages to an underage adult who suffered injury due to his own intoxication).

{¶ 18} There are circumstances, however, in which a social host may be civilly liable to an injured party in connection with a person's intoxication. In *Mitseff v. Wheeler*, 38 Ohio St.3d 112 (1988), the Supreme Court of Ohio addressed the issue of whether the defendant social host "violated a duty for which he could be held civilly liable to a third person for damages to such person arising as a consequence of" the social host having served alcoholic beverages to a minor. *Id.* at 113. In answering this question of law, the Supreme Court held that "a social host has a duty to refrain from furnishing alcohol to a minor and may be civilly liable for damages to third persons if said duty is violated." *Id.*

{¶ 19} The Machols argue that because Ohlin is not a third-party plaintiff injured by a minor who was provided alcohol by a social host, the principles imposing liability on a social host set forth in *Mitseff* do not apply. Relatedly, the Machols contend that Ohlin has no cognizable claim against them because she assumed the risks associated with her voluntary intoxication. Thus, because Ohlin was not an innocent third-party, but was injured as a result of her own voluntary intoxication, the Machols contend that they cannot be liable for any injuries she sustained. We are unpersuaded. Even though *Mitseff* involved injuries to third parties, a basic premise of the Supreme Court's holding is instructive—namely, the Court's express finding that, pursuant to R.C. 4301.69, "a social host has a duty to refrain from furnishing alcohol to a minor." *Id.* at 113. It is this duty that renders a social host susceptible to civil liability for injuries sustained by third parties proximately caused by the violation of that duty. And this duty exists "to protect the consumer of the beverage from his or her own conduct and to protect the public from such conduct." *Gressman v. McClain*, 40 Ohio St.3d 359, 362 (1988). Therefore, as applied to the facts alleged here, the Machols, as social hosts, had a duty not to furnish alcohol to Ohlin, a minor, but they violated this duty.

{¶ 20} We also reject the Machols' argument that Ohlin's voluntary intoxication, or assumption of the risk, precludes their liability for Ohlin's injuries. The Machols are correct that voluntary intoxication can bar recovery from an alcohol furnisher, as this concept

incorporates principles of primary assumption of the risk. In *Gonzalez*, 2010-Ohio-2117 (6th Dist.), the Sixth District Court of Appeals observed: “As a matter of public policy, an individual therefore generally owes no duty to protect a voluntarily intoxicated underage adult from his own negligent activity. . . . An underage adult’s voluntary decision to drink and drive is considered a primary assumption of risk.” *Id.* at ¶ 15. Primary assumption of risk, which is a bar to recovery in a negligence action, requires the “ ‘plaintiff to expose himself or herself “reasonably and voluntarily” to an obvious or known danger that would relieve the defendant from any duty to protect the plaintiff.’ ” *Id.*, quoting *Cole v. Broomsticks, Inc.*, 107 Ohio App.3d 573, 577 (1995). “ ‘ “The effect of raising primary assumption of the risk as a defense is to state, as a matter of law, that defendant owes no duty to plaintiff.” ’ ” *Id.*, quoting *Westray v. Imperial Pools & Supplies, Inc.*, 133 Ohio App.3d 426, 432 (1990), quoting *Collier v. Northland Swim Club*, 35 Ohio App.3d 35, 37 (1987). Furthermore, “[u]nder the doctrine of primary assumption of the risk, a plaintiff who voluntarily engages in a recreational activity or sporting event assumes the inherent risks of that activity and cannot recover for injuries sustained in engaging in the activity unless the defendant acted recklessly or intentionally in causing the injuries.” *Main v. Gym X-Treme*, 2012-Ohio-1315, ¶ 9 (10th Dist.). The Machols seek to extend these principles to a minor, who becomes voluntarily intoxicated, on the basis that minors are deemed to assume the risks associated with being a participant in or a spectator at a sport or a recreational activity.

{¶ 21} In *Gentry v. Craycraft*, 2004-Ohio-379, the Supreme Court considered whether a duty was owed to a four-year-old watching other children hammer together a chair. In reviewing this issue, the Supreme Court emphasized public policy supporting “ ‘vigorous and free participation in recreational or sports activities,’ ” while also considering the risks associated with those activities. *Id.* at ¶ 10, quoting *Marchetti v. Kalish*, 53 Ohio St.3d 95, 99 (1990). The Supreme Court deemed the risks associated with a sport or recreational activity as accepted, regardless of actual knowledge or consent. *Id.* at ¶ 11. Applying these principles to the facts, the Supreme Court found that a 4 year old child primarily assumed the risk of being a spectator to backyard play involving other children hammering nails into a chair. *Id.* at ¶ 14. The Supreme Court therefore held that “[i]n a personal injury action brought for injuries sustained while an individual is a participant in

or a spectator at a sport or recreational activity, the age of the participant or spectator and whether he or she was capable of appreciating the inherent risks is immaterial. Instead, recovery is dependent upon whether the defendant's conduct was either reckless or intentional." *Id.* at syllabus. Citing *Gentry*, the Machols reason that because primary assumption of the risk applies to minors, Ohlin's voluntary consumption of alcohol meant that she assumed the risks associated with that conduct, absolving them of any duty. The trial court adopted this reasoning and found that the duty owed to a social guest should be the same, whether the guest is 17 years old (a minor) or 18 years old (an adult). We disagree.

{¶ 22} Although Ohio law deems a participant or a spectator of a sport or recreational activity, regardless of age, as accepting the risks associated with that activity, alcohol consumption by minors cannot appropriately be considered a sport or recreational activity for this purpose. Unlike the recreational or sports activities, which are encouraged, underage drinking is not simply discouraged—it is illegal. R.C. 4301.69(E)(1). Thus, applying the primary assumption of the risk doctrine here would contradict public policy and the Supreme Court's finding that, pursuant to R.C. 4301.69, a social host has a duty not to furnish alcohol to minors. *Mitseff*, 38 Ohio St.3d at 113. It is common knowledge that, despite its illegality and harm to decision-making and brain development, underage alcohol consumption is pervasive in our society. And minors—whether due to curiosity, cultural or peer pressure, or otherwise—are particularly vulnerable to the dangers of this activity. "[C]hildren have a " 'lack of maturity and an underdeveloped sense of responsibility,' " leading to recklessness, impulsivity, and heedless risk-taking [and] "are more vulnerable . . . to negative influences and outside pressures," including from their family and peers." *State v. Nicholas*, 2020-Ohio-3478, ¶ 94 (2d Dist.), quoting *Miller v. Alabama*, 567 U.S. 460, 471 (2012), quoting *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005).¹ To absolve the Machols of any liability because Ohlin, a minor, voluntarily consumed furnished alcohol would effectively (and wrongfully) deem the minor as bearing more responsibility than the

¹ Because of this lack of maturity and development, minors are treated differently in numerous areas of law. For example, R.C. 3109.01 states that only persons "of the age of eighteen years or more, who are under no legal disability, are capable of contracting and are of full age for all purposes." Pursuant to R.C. 3503.01(A), only United States citizens who are 18 years old or older may vote in elections. And, except in cases of bindover to the adult criminal system, "[j]uvenile courts possess exclusive jurisdiction over children alleged to be delinquent for committing acts that would constitute a crime if committed by an adult." *In re M.P.*, 2010-Ohio-599, ¶ 11, citing R.C. 2151.23(A), 2152.10, and 2152.12.

social hosts in this circumstance. The duty exists to protect minors (and others) from their own poor decision-making, and a minor's voluntary consumption of furnished alcohol does not change this—the likelihood of this voluntariness merely reinforces the importance of the duty itself. Consequently, we hold that a minor's voluntary consumption of alcohol furnished by a social host does not absolve the host from liability for injury sustained by that minor proximately caused by the host's breach of duty.

{¶ 23} For these reasons, we conclude that Ohlin pleaded viable negligence per se claims against the Machols. Because the trial court erred in granting the Machols' motion for judgment on the pleadings pursuant to Civ.R. 12(C), we sustain Ohlin's first assignment of error.

{¶ 24} Next, we address Ohlin's claims against the liquor permit holders. Ohlin's amended complaint alleges that these defendants committed a breach of duty by selling alcohol to persons under the age of 21, and that this breach proximately caused her injuries. These claims implicate both R.C. 4301.69, discussed above, and R.C. 4399.18, Ohio's Dramshop Act.

{¶ 25} "Ohio historically refused to recognize claims against tavern owners for any injuries caused by their intoxicated patrons." *Klever v. Canton Sachsenheim, Inc.*, 1999-Ohio-117, ¶ 6. See *Lesnau v. Andate Ents., Inc.*, 2001-Ohio-1591, ¶ 6 ("Historically, common law in Ohio prohibited a cause of action against a liquor permit holder for injury caused by an intoxicated person."). In *Smith v. The 10th Inning, Inc.*, 49 Ohio St.3d 289, 291 (1990), the Supreme Court weighed public policy considerations, particularly "commonsense public policy," in deciding whether an intoxicated patron may bring a cause of action against a liquor permit holder under R.C. 4301.22(B) for injuries that patron sustained due to that intoxication. The Supreme Court found that "one of the strongest reasons compelling rejection of such a cause of action" is "that an adult who is permitted to drink alcohol must be the one who is primarily responsible for his or her own behavior and resulting voluntary actions." *Id.* at 291. The Court therefore held that an intoxicated patron of a liquor-serving establishment could not maintain a cause of action against the liquor permit holder for injuries resulting from his intoxication. *Id.* Thus, under this precedent, a liquor permit holder generally could not be civilly liable for injury caused by a voluntarily intoxicated adult patron, whether that injury was to himself or others.

{¶ 26} In 1986, after the operative facts in *Smith*, the General Assembly enacted R.C. 4399.18, Ohio’s Dramshop Act, which “embodies [the] general, common-law rule that a person (or his representative) may not maintain a cause of action against a liquor permit holder for injury resulting from the acts of an intoxicated person,” except under certain circumstances. *Klever*, at ¶ 6. R.C. 4399.18 provides in pertinent part as follows:

A person has a cause of action against a permit holder or an employee of a permit holder for personal injury, death, or property damage caused by the negligent actions of an intoxicated person occurring off the premises or away from a parking lot under the permit holder’s control only when both of the following can be shown by a preponderance of the evidence:

(A) The permit holder or an employee of the permit holder knowingly sold an intoxicating beverage to at least one of the following:

(1) A noticeably intoxicated person in violation of division (B) of section 4301.22 of the Revised Code;

(2) A person in violation of section 4301.69 of the Revised Code.

(B) The person’s intoxication proximately caused the personal injury, death, or property damage.

R.C. 4399.18(A) and (B).

{¶ 27} This “statute creates a narrow exception . . . to the basic premise of non-liability by providing that ‘a person’ has a cause of action against a permit holder or its employee for off-premises injury caused by an ‘intoxicated person’ ‘only when’ certain criteria are met.” (Emphasis in original.) *Klever* at ¶ 6, quoting R.C. 4399.18. *See Keaton v. Gordon Biersch Brewery Restaurant Group*, 2006-Ohio-2438, ¶ 47 (10th Dist.) (“R.C. 4399.18 provides a cause of action against a liquor permit holder or its employees for off-premises injuries caused by an ‘intoxicated person’ under certain limited circumstances.”). Pursuant to R.C. 4399.18, a liquor permit holder may be held liable for death or injury to a third person if the liquor permit holder “knowingly sold an intoxicating beverage” to either a “noticeably intoxicated person” or an underage person, and that person’s intoxication proximately caused injury or death to the third person.

R.C. 4399.18(A)(1). “It is well established . . . that the Dram Shop Act provides the exclusive remedy against liquor permit holders for the negligent acts of intoxicated patrons.” *Jirousek v. Sladek*, 2020-Ohio-5382, ¶ 8 (11th Dist.). This statute “does not, however, address or otherwise limit causes of action against a liquor permit holder or its employees for injuries caused by a non-intoxicated person.” *Keaton* at ¶ 47.

{¶ 28} In *Klever*, 1999-Ohio-117, which involved events occurring after the enactment of R.C. 4399.18, the Supreme Court addressed the issue of whether this statute precludes a “cause of action by an intoxicated, underage patron (or his representative) against a liquor permit holder for injuries (or death) that the intoxicated, underage patron inflicts upon himself.” *Id.* at ¶ 8. The Court concluded “that the language of R.C. 4399.18 prevents that result as to any intoxicated adult patron.” *Id.* The Court reasoned in part that “[t]he phrasing and structure of R.C. 4399.18 do not countenance a reading that allows the contemplated ‘intoxicated person’ (the person causing the injury) to be one and the same with the contemplated injured ‘person’ (the person with the authorized cause of action). Specifically, the statutory language envisions that the injured person and the intoxicated person be two *different* persons.” (Emphasis in original.) *Id.* at ¶ 9. In this way, R.C. 4399.18 “simply cannot be construed as providing a cause of action to the ‘intoxicated person’ himself.” *Id.* See *Hoeflinger*, 2017-Ohio-7530, at ¶ 39 (6th Dist.) (“Under the express terms of R.C. 4399.18, the purchaser of alcohol and the harm-doer must be the same person. That is, the statute allows a claim against a liquor permit holder/its employees for injuries that occur off the premises when they knowingly sell to a noticeably intoxicated/underage person and ‘the person’s intoxication proximately caused the personal injury, death, or property damage.’” R.C. 4399.18(B).).

{¶ 29} In addition to resolving whether the language of R.C. 4399.18 allowed the cause of action against the serving liquor permit holder by an adult underage intoxicated person with self-inflicted injuries, the Supreme Court in *Klever* analyzed whether the rationale applied in *Smith*, rooted in notions of personal responsibility and public policy, “should apply to an underage adult drinker.” *Klever* at ¶ 11. That is, the *Klever* court addressed “whether the *Smith* bar to recovery applies where the intoxicated patron has not attained the legal drinking age (twenty-one) but has attained the age of majority (eighteen).” *Id.* at ¶ 5. As to this issue, the *Klever* court “reject[ed] the proposition that the

public policy setting the drinking age at twenty-one trumps the personal responsibility policy favored in *Smith*.” *Id.* at ¶ 13. The *Klever* court also cited, with approval, the Supreme Court of Hawaii’s refusal to permit “a voluntarily intoxicated underage adult to recover for his self-inflicted injuries.” *Id.* at ¶ 14, citing *Winters v. Silver Fox Bar*, 71 Haw. 524 (1990). The *Klever* court resolved that “[l]ike the Supreme Court of Hawaii, we believe that to place persons between the ages of eighteen and twenty-one within a protected class for Dramshop liability purposes would be ‘inconsistent with the expression of legislative intent to treat those within [the] age bracket of eighteen to twenty years as responsible adults in all other respects.’ ” *Id.*, quoting *Winters* at 531-32.

{¶ 30} Based on these findings, the Supreme Court in *Klever* held that “in Ohio there is no cause of action against a liquor permit holder by a voluntarily intoxicated patron (or his representative) who is ‘underage’ pursuant to R.C. 4301.22(A)(1) and 4301.69, but who has attained the age of majority, for self-inflicted injury (or death) due to being intoxicated.” *Klever*, 1999-Ohio-117, at ¶ 15.

{¶ 31} Here, the trial court found that Ohlin’s claims against the liquor permit holders could not succeed under R.C. 4399.18 because it was not alleged that Ohlin was injured as the result of the intoxication of another individual, minor or adult. We agree. Pursuant to *Klever*, Ohlin cannot present a viable claim against the liquor permit holders under R.C. 4399.18 because she, the injured party, was the intoxicated person. That is, under this statute, as construed in *Klever*, the injured party plaintiff and the intoxicated party must be two different individuals. Therefore, we find that the trial court did not err in dismissing, pursuant to Civ.R. 12(B)(6), Ohlin’s claims against the liquor permit holders premised on R.C. 4399.18. But this statute does not preclude Ohlin’s action against the liquor permit holders insofar as she alleges that the liquor permit holders sold alcohol to a minor, and that this sale—being a breach of their duty imposed under R.C. 4301.69—proximately caused her injuries.

{¶ 32} Although R.C. 4399.18 is the “exclusive remedy against liquor permit holders for the negligent acts of intoxicated patrons,” *see Jirousek*, 2020-Ohio-5382, ¶ 8 (11th Dist.), this matter does not involve alleged injury due to the intoxication of a liquor establishment patron. In other words, the limitations on a liquor permit holder’s liability, set forth in this statute, do not apply. Thus, the issue becomes whether, notwithstanding

R.C. 4399.18's inapplicability, Ohlin still has a viable cause of action for the liquor permit holders' alleged violation of R.C. 4301.69.

{¶ 33} The liquor permit holders argue that, even if Ohlin's claims against them are not limited by R.C. 4399.18, they owed her no duty because the amended complaint only alleges that they sold alcohol to underage persons; it does not allege that they sold alcohol to minors (the protected group of which Ohlin is a member). Indeed, Ohlin's amended complaint alleges that the liquor permit holders were negligent per se for having violated R.C. 4301.69 by selling alcohol to persons under 21 years old, and that this negligence proximately caused her injuries. Ohlin acknowledges that her amended complaint does not specifically allege that the liquor permit holders sold alcohol to a minor. She asserts, however, that she informed the trial court that discovery showed that at least one person who brought alcohol, purchased from the liquor permit holders, to the party, was 17 years old. She also contends that her amended complaint allegation placed the liquor permit holders on notice that she alleged their civil liability premised on the violation of R.C. 4301.69, that is, premised on the breach of their duty to minors imposed by that statute.

{¶ 34} As to Ohlin's reference to information revealed during discovery, that reference is unavailing on the issue presented. " 'It is axiomatic that discovery under the Civil Rules is generally outside the scope of the pleadings.' " *Fluellen v. Miller*, 2024-Ohio-265, ¶ 13 (10th Dist.), quoting *Winkle v. Southdown, Inc.*, 1993 Ohio App. LEXIS 4295, *5 (2d Dist. Sept. 3, 1993), citing *Poulos v. Parker Sweeper Co.*, 44 Ohio St.3d 124 (1989). Thus, this information could not be considered in reviewing the liquor permit holders' motion to dismiss. We agree, however, that Ohlin placed the liquor permit holders sufficiently on notice of her negligence per se claims against them based on the alleged sale of alcohol to a minor in violation of R.C. 4301.69. *See State ex rel. Walgate v. Kasich*, 2016-Ohio-1176, ¶ 47 ("[A]t the pleading stage, we presume that general allegations embrace the specific facts necessary to support a claim."). While not all underage persons are minors, all minors are underage persons. Thus, Ohlin's allegations encompass the facts necessary to support her claim.

{¶ 35} Lastly, as to the issue of proximate causation, the liquor permit holders argue that Ohlin's amended complaint fails to sufficiently allege facts showing this necessary

element of her claims against them. We disagree. At this procedural stage, Ohlin simply needed to generally allege that causal connection, not detail the facts that may support the establishment of that claim element. Whether the facts, as fully developed through discovery and possibly at trial, ultimately support and prove Ohlin's allegation that her injuries were the natural and probable consequence of a negligent act, must be determined at trial, or at summary judgment, if appropriate.

{¶ 36} For these reasons, we conclude that the trial court erred in dismissing, pursuant to Civ.R. 12(B)(6), Ohlin's negligence per se claims against the liquor permit holders premised on their alleged violation of R.C. 4301.69, but not brought pursuant to R.C. 4399.18.

{¶ 37} Accordingly, we sustain in part, and overrule in part, Ohlin's second assignment of error.

IV. Disposition

{¶ 38} Having sustained Ohlin's first assignment of error and sustained in part and overruled in part her second assignment of error, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, and remand this matter to that court for further proceedings in accordance with the law and consistent with this decision.

*Judgment affirmed in part and reversed in part;
cause remanded.*

BEATTY BLUNT and EDELSTEIN, JJ., concur.
