Musgrove v. Silver, (2022)
82 Cal.App.5th 694
In a wrongful death action, an employer providing alcohol and drugs to an employee while on vacation fell outside the scope of his employment.

FACTS/PROCEDURE

On August 18, 2015, on a private island in Bora Bora, Carmel Musgrove ("Musgrove") drowned after drinking wine and ingesting cocaine. Musgrove, along with a group of 15 people, had been invited to the island by her boss Joel Silver ("Silver") to attend Jennifer Aniston's wedding. Going to Bora Bora was not a requirement of her job. She was invited to go if she wanted. However, if she went, she would be expected to spend "maybe 10 percent" of her time coordinating events for the other guests attending the wedding. Silver covered all of the group's expenses on the trip, including alcohol.

On the evening of the accident, the group ate dinner indoors because of stormy weather. After having some drinks with dinner, Martin Herold ("Herold") invited Musgrove to "party." After the two met up, they kissed, drank more wine, and ingested cocaine. At some point after midnight, Musgrove went back to her bungalow, disrobed and went for a swim. She was not seen the next day, and her body washed up onto shore the following night. Two autopsies confirmed that her cause of death was accidental drowning.

In August of 2017, Musgrove's parents—Ronald and Ann Musgrove ("collectively, Plaintiff's")— sued Herold and Silver for the wrongful death of their daughter. Plaintiff's alleged that Silver (1) was directly liable for Musgrove's death because he "caused her to be in a vulnerable state on the night" of her death, and (2) was vicariously liable for the negligence of Herold because Herold was "acting within the scope of his employment at the time of [Herold's] negligence." Silver moved for summary judgment. The court ruled that Silver was not directly liable for Musgrove's death because Silver had no "special relationship" with Musgrove that would legally obligate him to "assume control of her welfare." Further, the court ruled that Silver was not vicariously liable because Herold's conduct was outside the scope of his employment by Silver because (1) it was not an outgrowth of his employment as a chef or inherent working environment, (2) it was not typical of or broadly incidental to Herold's duties; and (3) it was neither a benefit to the company nor a customary incident of Herold's employment relationship with Silver, as Herold's work as a chef did not cause him to invite Musgrove to his bungalow.

HOLDING/DISCUSSION

The California Court of Appeal for the Second Appellate District affirmed. To hold Silver directly liable the Plaintiff's needed to establish either that (1) Silver placed Musgrove in peril and failed to protect her from the same peril, or (2) Silver has a special relationship that obligated him to protect her. The trial court found that Silver did not supply anyone with cocaine or have any knowledge that anyone was ingesting it. As to the alcohol, the California legislature has established that a private person cannot be held liable in tort for furnishing alcohol to another adult. Cal. Civ. Code Ann. § 1714, subd. (c).

Employers have a special relationship with their employees, which can give rise to a duty to control those employees to ensure that they do not harm third parties. Rest.3d Torts, § 40. This special relationship can give rise to a duty to protect those employees. *Brown v. USA Taekwondo*, 483 P.3d 159 (Cal. 2021). However, the court found that there was no special relationship between Musgrove and Silver because (1) Musgrove was employed by *Silver Pictures Entertainment*, not Silver himself, (2) California law provides that a person cannot

be liable in tort for furnishing alcohol to another adult, and (3) Silver's duty to protect his employees is limited to while they are "at work." As to vicarious liability, the appellate court agreed with the trial court that the undisputed facts establish as a matter of law that Herold was not acting within the scope of his employment. Plaintiff then argued that a line of cases held that employers were liable when an employee died in an auto accident after drinking too much at a company party that was both a thank you, and an exercise to improve employee morale and relationships. But the court pointed out that Silver did not have a company party where he furnished alcohol; he subsidized alcohol, and Herold went off on his own time and in his own space to consume more substances. Accordingly, the trial court did not err in granting Defendant's motion for summary judgment.