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Protecting the Rights of Injured Workers

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Illinois Court Rejects Restatement Tort Claim

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In *Tilschner v. Spangler*, No. 2–10–0111, the Appellate Court of Illinois, Second District, considered the viability of a [personal injury lawsuit](#) based on claims seeking to impose liability for the failure to control a third party's actions.

In this case, the plaintiff was a guest at a party and was injured when another guest set off fireworks. She alleged in her complaint that the defendant, the party host, failed to protect her from the acts of the second party guest who ignited the fireworks that caused her injuries. Specifically, she alleged that by operation of section 318 of the Restatement, the defendant knew or should have known of his ability to control the other guest and of the need to exercise such control, and thus had a duty to prevent the other party guest from creating an unreasonable risk of bodily harm to her.

Unfortunately for the plaintiff, the Court disagreed, holding that the Supreme Court of Illinois had never adopted section 318 of the Restatement, and thus that cause of action was not viable in Illinois:

A restatement is not binding on Illinois courts unless it is adopted by our supreme court... Thus, we must determine whether our supreme court has adopted section 318 of the Restatement (Second) of Torts; if it has not, Spangler owed no duty to Patricia... The restatement that we adopt today is that our supreme court has not adopted section 318 of the Restatement (Second) of Torts. Therefore, count II of Patricia's third-amended complaint, interpreted in the light most favorable to her, fails to allege a duty recognized by our supreme court and fails to set forth a cause of action on which relief may be granted. The trial court did not err in granting Spangler's section 2–615 motion to dismiss with prejudice.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles [workers' compensation](#) and [personal injury cases](#). Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.

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