Rel: November 6, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2025-0883

Walmart, Inc.

v.

Bonnie Estell, as the personal representative of the Estate of James E. Reed, deceased

Appeal from Baldwin Circuit Court
(CV-22-900460)

MENDHEIM, Justice.

Walmart, Inc. ("Walmart"), appeals from the Baldwin Circuit Court's order denying its postjudgment motion for a judgment as a matter of law following a jury trial in which a verdict was rendered in favor of Bonnie Estell, as the personal representative of the estate of James E. Reed, deceased, that awarded $900,000 in compensatory damages. We affirm.

I. Facts

At the time of the incident that precipitated this lawsuit, Jackson Andrew Walters was a 20-year-old student at the University of Alabama. Walters traveled to Gulf Shores on spring break in March 2022 with two other friends. On March 15, 2022, Walters went to a Walmart store located in Orange Beach and decided to purchase alcohol despite the fact that he was underage. Walters took the items he was purchasing to a self-checkout kiosk and scanned several items, including a bottle of Cooks-brand California Champagne and a 12-pack of Truly's Hard Seltzer.[1] When the champagne was scanned, it triggered an alert that alcohol was being purchased, which required a Walmart employee to

[1]Truly's Hard Seltzer contains a mixture of vodka and fruit juice. In this instance, Walter purchased Truly-brand "Original Lemonade."

verify that the purchase was legal in order to complete the transaction. A Walmart cashier, Secret Harris, came over to the self-checkout kiosk to check Walters's ID. Walters handed Harris a purported Georgia driver's license that indicated he was 21 years old. Walters testified that it was a "fake ID" that he had obtained "through a friend at the University of Alabama" for $40. A video of the transaction shown to the jury indicates -- and Orange Beach Walmart General Manager Nelson Eric White agreed -- that Harris "had that ID in her hand for less than five seconds" before she returned it to Walters and approved the transaction. However, White also testified that Harris met the requirements of the training she had received for alcohol sales from Walmart and the Alabama Beverage Control ("ABC") Board because, he said, "[i]n the ABC training, that's all it says, is to look at the ID, make sure and verify it's that person, and that they look at the age of 21."

An expert witness who testified on Estell's behalf, Ronald Tobb, stated that a visual inspection revealed three indications that Walters's Georgia driver's license was fake. First, there was a crisp edge around the picture of the person instead of a "feathered edge." Second, the color of the fake ID was "a little fuller in color." Third, the location of the

signature on the fake ID was under the picture instead of bordering the picture. Tobb also testified that, if Walmart had paid for a service that scans IDs, the fake license would have been identified within three seconds.

Walters testified that the next day, March 16, 2022, he went to a friend's beach house in Gulf Shores and that he took the alcohol he had purchased at Walmart with him. Walters stated that, starting around 1:00 p.m., he drank at least four of the Truly-brand beverages. He then drove to get dinner, admitting that he was "under the influence of alcohol" when he started to drive. The first restaurant Walters went to had a long wait time, so he and his friends decided to go to a different restaurant. On his way, Walters turned north onto Highway 180.

Reed was 80 and Estell was 72 at the time of the incident that precipitated this lawsuit, and they had been married for nearly 18 years. Reed and Estell lived in Indiana. They were both retired from employment, and their kids were grown, so they spent much of their time together traveling around the country in a truck camper.

In March 2022, one of their grandchildren, Ely, had spring break, and Reed and Estell decided to take him to "Gulf Shores so he [could]

experience the beach." Ely was 11 years old at that time. For the excursion, the trio traveled in the truck camper to Gulf State Park. On March 16, 2022, the three explored the area -- Estell and Ely on bicycles and Reed on a mobility scooter that allowed him to stand up or sit down, depending on his preference. They went into town using side streets: they ate dinner at a small restaurant and then stopped for some ice cream. On their way back to Gulf State Park, they traveled along a bike path on East 16th Street heading east. Estell and Ely were ahead of Reed on their bicycles when they came to a stop sign at the intersection of 16th Street and Highway 180. They crossed Highway 180 and then stopped at the other side to wait for Reed.

Estell and Ely watched as Reed crossed Highway 180 on his scooter. However, as Reed crossed, his scooter appeared to waver a bit, and then Reed was hit by a car traveling north on Highway 180. Estell testified:

> "A. [Estell:] I play[ed] mama bear at that point. I [saw] something happening. I'm thinking, I've got to help.
>
> "I turn around and get off my bike, throw it to the ground.
>
> "I turn around, and [Reed's] gone; he's underneath the car.
>
> "'Oh, my God.'

"So I ran up to the car and I mean, you've already heard the evidence, so the scooter is in the street, he's under the car. His legs are literally sticking out under the car and facing towards where it came out of. I just see his legs. It's like Dorothy and the house falling on the witch. All I see is the legs.

"And I literally went under the car and started talking to him.

"He was laying like this with his hands up here, and he couldn't talk; he tried to talk.

"He had blood coming out of here.

"He tried to talk, but he couldn't; you could see it in his eyes; you could see it in his mouth. He was trying, but he couldn't.

"And finally, the gentleman, the policeman that was here [Detective Timothy Lester], he told me I had to leave; that they were going to administer CPR on him.

"And at that point, I realized I didn't even know where Ely was.

"And I talked to the policeman and told him what he needed, what he wanted.

"And I ran to find out where Ely was, and he was still on the side of the road in the grass. A man was sitting with him. That was my day."

An eyewitness, Dustin Lee Spencer, testified:

"Q. [Estell's counsel:] Okay. And again, you saw -- I don't want to put words in your mouth. Okay? Tell me what Mr. Walters's vehicle did?

"A. He was slowed down, and then the next thing you know, he guns it.

"He hits that gentleman and rolled over him, backs up again, hits him and then goes forward and starts dragging him until everybody starts yelling. 'Stop. Stop.'

"Q. Okay. Were you able to -- let me ask you this. What happened after he stopped?

"A. He sat in his truck for a second.

"Q. And then when the gentleman gets out, you could tell there was something wrong with him.

"A. He was just stumbling, couldn't talk to nobody. He was just hollering and screaming. He just didn't care.

"....

"Q. Were you able to observe Mr. Reed?

"A. I was in the parking lot. I was helping them trying to get help at first.

"So the Fire Department got there and the gentleman was underneath the tires, stuck.

"And he's hollering and screaming. There's nothing you could really do until they got there, so I did not go over there and talk to him personally.

"Q. Did he appear to be in pain?

"A. Yes, sir. Very badly."

Reed was flown to a hospital, but he died of his injuries upon arrival.

Walters admitted that, at the time he struck Reed, it was bright and sunny and nothing was obstructing his view and that he had noticed a bright-yellow pedestrian-crossing sign off to the side of the street. He also acknowledged that Reed would have had to cross two full lanes of traffic before he came to the lane in which Walters was driving. Walters testified that he never saw Reed before hitting him. Walters further stated:

"Q. [Estelle's counsel:] Did your intoxication play a role in this accident?

"A. Yes, sir, it did.

"Q. And do you acknowledge that you were, in fact, intoxicated on March 16, 2022?

"A. Yes, sir.

"Q. And was all of the alcohol you consumed that day alcohol you purchased from Walmart the day before?

"A. Yes, sir."

Detective Timothy Lester testified that Walters submitted to a breathalyzer test after he had been taken into custody following the accident and that "the results were a .11," which was above the legal limit

for blood-alcohol content. Detective Lester further stated that, following an investigation, manslaughter charges were brought against Walters in connection with Reed's death.

On April 12, 2022, Estell, through counsel, filed a "Petition to Appoint Special Administrator for the Sole Purpose of Collecting Damages for Wrongful Death" in the Morgan Superior Court in Morgan County, Indiana. In that petition, Estell stated that Reed had "died intestate on March 16, 2022"; that Reed's death was caused "by injuries resulting from an alleged wrongful tort committed ... by certain individuals, organizations, and/or entities, in the state of Alabama"; and that, as far as Estell was aware, Reed was "domiciled in Morgan County" at the time of his death and "left an automobile and a small checking account, both valued at under $50,000[ ] and no administration upon James E. Reed's estate is pending in the state of Indiana." Estell further stated that she was Reed's surviving spouse and requested "[t]hat a Special Administrator should be appointed for the estate of [Reed] for the sole purpose of bringing an action to recover damages for the wrongful

death of [Reed] pursuant to Indiana Code § 34-23-1-1[2] and pursuant to Indiana Code § 29-1-10-17.[3]" On April 13, 2022, the Morgan Superior

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[2]Section 34-23-1-1, Ind. Code Ann., is Indiana's wrongful-death statute, which, in pertinent part, provides:

> "Sec. 1. When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter, if the former might have maintained an action had he or she, as the case may be, lived, against the latter for an injury for the same act or omission. When the death of one is caused by the wrongful act or omission of another, the action shall be commenced by the personal representative of the decedent within two (2) years, and the damages shall be in such an amount as may be determined by the court or jury, including, but not limited to, reasonable medical, hospital, funeral and burial expenses, and lost earnings of such deceased person resulting from said wrongful act or omission. That part of the damages which is recovered for reasonable medical, hospital, funeral and burial expense shall inure to the exclusive benefit of the decedent's estate for the payment thereof. The remainder of the damages, if any, shall, subject to the provisions of this article, inure to the exclusive benefit of the widow or widower, as the case may be, and to the dependent children, if any, or dependent next of kin, to be distributed in the same manner as the personal property of the deceased. ..."

[3]Section 29-1-10-17, Ind. Code Ann., concerns the appointment of a special administrator of an estate and provides:

> "Sec. 17. An administrator collecting damages for personal injury resulting in the death of any decedent, may, at any time, file in the court where he was appointed his final report with respect to such proceeds, and the same may be approved by the court, and it shall not be necessary to publish

Court ordered that "Petitioner, Bonnie J. Estell, should be appointed as special administrator of the Estate of James E. Reed for the sole purpose of bringing an action concerning [Reed's] alleged wrongful death." Pursuant to that order, the Clerk of the Morgan Superior Court issued "Letters of Administration" to Estell on April 13, 2022.

On May 10, 2022, Estell commenced in the Baldwin Circuit Court an action "as the Personal Representative of the Estate of James E. Reed" against Walters and Walmart. The complaint appeared to assert claims under the Wrongful Death Act, § 6-5-410, Ala. Code 1975; the Dram Shop Act, § 6-5-71, Ala. Code 1975; and the Civil Damages Act, § 6-5-70, Ala. Code 1975. On June 10, 2022, Walmart filed an answer to the complaint.

On June 17, 2022, Estell and Walters requested a joint stipulation of dismissal of the claims against Walters.[4] On June 23, 2022, the trial

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> any notice of the final settlement of such estate unless the same is ordered by the court. In the event that said administrator was appointed for the sole purpose of collecting such damages it shall not be necessary to publish any notice of the issuance of letters of administration."

[4]The record on appeal indicates that Walters reached a settlement with Estell because, before and after the trial, Walmart argued that it was entitled to a setoff of the settlement amount against the judgment awarded to Estell.

court granted the requested dismissal of claims against Walters, leaving Walmart as the sole defendant in the action.

On January 12, 2024, Estell filed a motion for leave to file an amended complaint in which she expressed a desire to add herself as a plaintiff "in her personal capacity ... on the Dram Shop cause of action because the statute specifically allows the wife to recover." Estell also stated that originally she had also asserted claims under the Wrongful Death Act and the Civil Damages Act but that the "Dram Shop [Act] is the sole and exclusive remedy available to [Estell] pursuant to Alabama law for the death of James Reed." Estell also noted that "very little has been done to this point [in this case] because of the pending criminal case against Jackson Walters." On January 25, 2024, Estell filed an amended complaint "personally, and as next friend of James Reed," against Walmart. Estell asserted claims of negligent and wanton wrongful death "as next friend of James Reed," and claims under the Dram Shop Act "personally and as next friend of James Reed." On January 30, 2024, the trial court granted Estell's motion for leave to file the amended complaint.

On May 31, 2024, Estell and Walmart filed a "Joint Status Report" that informed the trial court that Walters's criminal case had concluded, which would enable the parties to take his deposition. However, the parties stated that they were not ready for trial.

On June 16, 2025, Walmart filed its summary-judgment motion. In that motion, Walmart argued that it could not be held liable because its cashier, Harris, "did everything she was trained to do and everything she was required legally to do under the ABC Administrative Code to ensure that Mr. Walters was of legal age to purchase alcohol." Walmart also contended that Estell's damages under the Dram Shop Act were limited to "loss of means of support" according to the language of the statute.

On July 9, 2025, Estell filed a response in opposition to Walmart's summary-judgment motion. Estell argued that, under Alabama's Administrative Code, Walters had not provided a "valid" driver's license to Walmart and, thus, that Walmart had violated the law by selling alcohol to Walters. Estell also contended that her damages were not limited to loss of support from Reed because she was asserting a claim for wrongful death under the Dram Shop Act. Estell stated that her amended complaint had mistakenly stated that she was filing her action

personally and as next friend of James Reed even though "[t]he proper plaintiff is Bonnie Estell as personal representative of the Estate of James E. Reed."

On July 15, 2025, the trial court denied Walmart's summary-judgment motion. On the same date, the trial court entered an order that stated: "By agreement, all pending counts in the complaint, or amended complaint, are hereby DISMISSED, with the exception of the Dram Shop action on behalf of the Estate, which is the sole count to be tried before the jury." (Capitalization in original.)

On August 8, 2025, Walmart filed a motion to reconsider the trial court's denial of Walmart's summary-judgment motion. In that motion, Walmart contended that Estell's

> "claims are an impermissible amalgamation of distinct causes of action under Alabama law. Despite repeated amendments and shifting representations, [Estell] has failed to assert a viable claim under either the Alabama Wrongful Death Act or the Dram Shop Act. The law is clear: these are separate and exclusive claims, with differing remedies, each with its own requirements and limitations. [Estell] is not the proper party to assert a wrongful death claim, and no wrongful death claim exists here. Further, the Dram Shop Act does not provide a remedy for death to the estate. Moreover, and finally, any personal claim under the Dram Shop Act has been abandoned."

The following day, August 9, 2025, Estell filed a motion to strike Walmart's motion to reconsider, noting that it had been filed three days before the scheduled trial and in derogation of the trial court's scheduling order that required dispositive motions to be filed by June 16, 2025. On August 11, 2025, the trial court denied Walmart's motion to reconsider and Estell's motion to strike.

The case was tried before a jury from August 11 to August 13, 2025. At the close of Estell's case, Walmart filed motion for a judgment as a matter of law. Walmart reiterated the arguments it had presented in its previous motions as well as several other arguments related to the evidence presented at the trial. The trial court denied Walmart's motion the same day. Walmart presented no witnesses or evidence after Estell rested her case.

Following closing arguments, the trial court charged the jury. Those charges began by making it clear to the jury the capacity in which Estell brought her action and the claim asserted against Walmart.

> "THE COURT: ... How did we come here in court today? Well, a Complaint was filed by Ms. Bonnie Estell as the personal representative of the Estate of Mr. James Reed against Walmart for a Dram Shop Violation. Walmart denies the allegation.

> "....
>
> "Ladies and gentlemen, this is a -- as you already have heard -- a one-count Complaint for violation of the Dram Shop Act.
>
> "Bonnie Estell, as the Personal Representative of the Estate of James Reed, filed this lawsuit against Walmart under what is called the Alabama Dram Shop Act.
>
> "The Dram Shop Act allows a lawsuit by a person who is injured by an intoxicated person.
>
> "The lawsuit is filed against an entity that provided the other person with the alcoholic beverages and caused the person to become intoxicated or contributed to that intoxication."

The trial court's instructions also made it clear that the focus of the case was Reed's death.

> "To recover, [the personal representative of Reed's Estate] must prove through reasonable satisfaction from the evidence all of [the] following:
>
> "Number one, that Walmart sold alcoholic beverages to Jackson Walters.
>
> "Number two, that the alcoholic beverages caused or contributed to Jackson Walters becoming intoxicated.
>
> "Number three, that furnishing of the alcoholic beverages to Jackson Walters was contrary to the Code of Alabama, as I just read, and/or the Alabama Alcoholic Beverage Control Board Administrative Code, to which I just read to you.

> "And Number four, that as a consequence of Jackson Walters's intoxicated conduct, James Reed died.
>
> "Ladies and gentlemen, if you find that [the personal representative of Reed's estate] proved each and every one of these elements of a violation of the Dram Shop Act, then you should find in favor of [the personal representative of Reed's estate].
>
> "....
>
> "Ladies and gentlemen, if you decide that Jackson Walters's intoxication caused in any way James Reed's death, then you must find for [the personal representative of Reed's estate] and apportion damages accordingly."

On August 13, 2022, the jury rendered its verdict, which stated: "We, the Jury, find in favor of Bonnie Estell, as personal representative of the estate of James Reed and against Walmart Inc. and award compensatory damages in the amount of Nine-hundred thousand Dollars ($900,000) and award punitive damages in the amount of: Zero Dollars ($0)." The trial court entered a judgment reflecting the verdict the same day.

On September 18, 2025, Walmart filed a "Renewed Motion for Judgment as a Matter of Law and Motion to Alter, Amend, or Vacate the Judgment." Walmart's postjudgment motion echoed the arguments it had repeatedly made before and during the trial.

> "Walmart is entitled to judgment because there is no cognizable claim for death under the Dram Shop Act and because Estell lacks standing to assert any claim on behalf of her deceased husband's estate. Additionally, Estell abandoned any personal claim she had under the Dram Shop Act and, in any event, the evidence is insufficient to prove the elements of a viable dram shop claim for her personally.
>
> "Additionally, Walmart renews its motion for a judgment as a matter of law on the ground that Walmart completely fulfilled its obligations to examine the fake ID presented to it, and therefore, under binding precedent from the Supreme Court of Alabama, Walmart may not be held liable for any violation of the Dram Shop Act, even if one assumed that there were a plaintiff with a viable claim (which there isn't)."

On October 6, 2025, the trial court denied Walmart's postjudgment motion. On November 17, 2025, Walmart appealed.

II. Standard of Review

> "The standard of review for a ruling on a motion for a judgment as a matter of law ('JML') is as follows:
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> > "'"When reviewing a ruling on a motion for a JML, this Court uses the same standard the trial court used initially in deciding whether to grant or deny the motion for a JML. Palm Harbor Homes, Inc. v. Crawford, 689 So. 2d 3 (Ala. 1997). Regarding questions of fact, the ultimate question is whether the nonmovant has presented sufficient evidence to allow the case to be submitted to the jury for a factual resolution. Carter v.

> Henderson, 598 So. 2d 1350 (Ala. 1992). The nonmovant must have presented substantial evidence in order to withstand a motion for a JML. See § 12-21-12, Ala. Code 1975; West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). A reviewing court must determine whether the party who bears the burden of proof has produced substantial evidence creating a factual dispute requiring resolution by the jury. Carter, 598 So. 2d at 1353. In reviewing a ruling on a motion for a JML, this Court views the evidence in the light most favorable to the nonmovant and entertains such reasonable inferences as the jury would have been free to draw. Id. Regarding a question of law, however, this Court indulges no presumption of correctness as to the trial court's ruling. Ricwil, Inc. v. S.L. Pappas & Co., 599 So. 2d 1126 (Ala. 1992)."
>
> "'Waddell & Reed, Inc. v. United Investors Life Ins. Co., 875 So. 2d 1143, 1152 (Ala. 2003).'
>
> "CSX Transp., Inc. v. Miller, 46 So. 3d 434, 450-51 (Ala. 2010)."

DISA Indus., Inc. v. Bell, 272 So. 3d 142, 148 (Ala. 2018).

III. Analysis

Walmart makes three arguments for why it believes the trial court erred in refusing to enter a judgment as a matter of law in its favor. First,

Walmart contends that it was error to allow Estell to assert a claim for the wrongful death of Reed under the Dram Shop Act. Second, Walmart argues that, even if there was a viable claim for Reed's death under the Dram Shop Act, Estell did not possess the proper legal capacity under Alabama law to assert such a claim. Third, Walmart argues that, under a legal test enunciated in McLeod v. Cannon Oil Corp., 603 So. 2d 889 (Ala. 1992), the trial court should have concluded that Walmart was "immune" from liability for Reed's death that resulted from the sale of alcohol to Walters. We examine each of the foregoing arguments in turn.

A. Wrongful Death and the Dram Shop Act

As we have already mentioned, Walmart contends that no cognizable claim for wrongful death exists under the Dram Shop Act and, therefore, that Estell's claim never should have been submitted to the jury. We start our examination of that contention by looking at the statute at issue. The version of the Dram Shop Act applicable in this case provided:

> "(a) Every wife, child, parent, or other person who shall be injured in person, property, or means of support by any intoxicated person or in consequence of the intoxication of any person shall have a right of action against any person who shall, by selling, giving, or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages,

> cause the intoxication of such person for all damages actually sustained, as well as exemplary damages.
>
> "(b) Upon the death of any party, the action or right of action will survive to or against his executor or administrator.
>
> "(c) The party injured, or his legal representative, may commence a joint or separate action against the person intoxicated or the person who furnished the liquor, and all such claims shall be by civil action in any court having jurisdiction thereof."

Former § 6-5-71, Ala. Code 1975.[5]

Concerning § 6-5-71, this Court has explained:

> "We conclude, based on these prior interpretations, that § 6-5-71 is penal in nature and that its purpose is to punish the owners of taverns who continue to serve customers after they have become intoxicated. The legislature intended to stop or to deter drunken driving facilitated by bar owners, in order to protect the public at large from tortious conduct committed by any intoxicated person who was served liquor by a bar owner while in an intoxicated condition. A right of action under § 6-5-71 runs in favor of two classes of persons[:] '(1) The person injured in person or property, [and] (2) [the] wife, child, parent, or other person ... who has been injured through loss of means of support because of personal injury to the person furnishing the means of support.' Ward[v. Rhodes, Hammonds & Beck, Inc.], 511 So. 2d [159,] 161 [(Ala. 1987)]. The phrase 'other person' constitutes a second class of claimants that encompasses 'anyone who is proximately

[5]Section 6-5-71, Ala. Code 1975, was substantively amended in 2023, but the amendment became effective on April 19, 2023. See Act No. 2023-25, Ala. Acts 2023. Therefore, the amended version is not applicable in this case.

> "injured in person, property or means of support by any intoxicated person or in consequence of the intoxication of any person." And ... this category of plaintiffs is as broad as proof of proximate cause will permit.' James[v. Brewton Motel Mgmt., Inc.], 570 So. 2d [1225,] 1229 [(Ala. 1990)] (quoting Ward, 511 So. 2d at 164). This Court has interpreted § 6-5-71 to encompass a broad spectrum of plaintiffs and will not now start limiting them to 'innocent' parties alone."

McIsaac v. Monte Carlo Club, Inc., 587 So. 2d 320, 324 (Ala. 1991).[6] Thus, there is no question that the person "injured" by the intoxicated person has a right of action against the entity that sold alcohol to the intoxicated person in violation of the law.

However, Walmart contends that "[t]he plain meaning of the Dram Shop Act is that no remedy is available for death, but only for various harms suffered by the living." Walmart's brief, p. 35. For support of that position, Walmart relies heavily upon this Court's holding and reasoning in Webb v. French, 228 Ala. 43, 152 So. 215 (1934).

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[6]The McIsaac Court concluded that the phrase "other person" in § 6-5-71 included the intoxicated person. That specific conclusion is altered by subsection (e) in amended § 6-5-71, which states: "Nothing contained in this section shall authorize the consumer of any alcoholic beverage to recover from the provider of the alcoholic beverage for injuries or damages suffered by the consumer caused by the consumer's ingestion of alcohol."

In Webb, it was alleged that Hawkins Westmoreland, while intoxicated, drove his car into another car in which Nellie Webb Stewart was a passenger. Both Westmoreland and Stewart were killed. The administrator of Stewart's estate, Odie Webb, sued Eunice French, the executrix of Westmoreland's estate, "claiming damages for death by wrongful act. [French argued] that no cause of action survives in such a case." 228 Ala. at 44, 152 So. at 216. Webb contended that a cause of action existed under the Dram Shop Act. The trial court agreed with French, concluding that there was no cause of action. On appeal, this Court agreed, explaining:

> "Count A seeks to present a case under Code, §§ 5674, 5675, which read:
>
> > "'5674. Wife, etc., shall have right of action for injury in consequence of sale or disposition of prohibited liquors or beverages. -- Every wife, child, parent, or other person who shall be injured in person, or property, or means of support by any intoxicated person, or in consequence of the intoxication of any person, shall have a right of action against any person who shall by selling, giving or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages, cause the intoxication of such person, for all damages actually sustained, as well as exemplary damages. [1909, p. 63, § 8.]

> "'5675. Survival and revival of actions. -- Upon the death of any party, the action, or right of action will survive to or against his executor or administrator. The party injured, or his legal representative, may bring a joint or separate action against the person intoxicated, or who furnished the liquor; and all such suits shall be by civil action in any court having jurisdiction thereof.'

"These statutes have not been heretofore construed. They are a codification of section 8 of the Act of August 25, 1909, Acts 1909, p. 63.

"This act, one of the companion prohibition bills of that special session, covers more than thirty pages, and, broadly speaking, may be deemed a prohibition enforcement measure.

"The construction of section 8, divided into two sections in the Code, is not free from difficulty. The first portion, now section 5674 of the Code, creates a cause of action against the bootlegger (to use a modern term) for personal injuries to third persons at the hands of one to whom the bootlegger has furnished prohibited liquor and the injury is the proximate consequence of intoxication from such liquor.

"It would seem the right of action runs in favor of two classes of persons:

"(1) The person injured in person or property.

"(2) Wife, child, parent, or other person (a dependent maybe) who has been injured through loss of means of support because of personal injury to the person furnishing the means of support.

"The damages recoverable are expressly declared to be the 'damages actually sustained, as well as exemplary damages.'

"The basis of the action is actual damages, nominal at least, with exemplary damages added at the discretion of the jury, because of willfulness, wantonness, aggravation, etc., under general law. 4 Michie's Digest, p. 649, § 70. In this, such action differs from suits under the Homicide Act [the predecessor of the Wrongful Death Act].

"[Webb] relies upon section 5675, as giving a right of action for death by wrongful act against the person inflicting the injury in consequence of his intoxication, and, in case of his death before suit, a cause of action against his personal representative.

"This statute speaks only of injuries to person or property. Throughout our legal system actions for personal injuries and actions for death from wrongfully inflicted injury are distinct.

"All death actions are statutory. At common law no such action was known. It never came into being, and no question of survival could arise. Kennedy v. Davis, 171 Ala. 609, 55 So. 104, [(1911)] Ann. Cas. 1913B, 225; White v. Ward, 157 Ala. 345, 47 So. 166 [(1908)], 18 L.R.A. (N.S.) 568; 17 C. J. p. 1181.

"It is obvious the statute in question gives a direct right of action to the wife, child, etc., for whatever statutory damages have been sustained.

"The question of survivor of the cause of action in such case would arise, it seems, upon the death of such plaintiff, the wife, etc., and the cause would survive to her personal representative, not the representative of the victim of personal injury causing death.

"But, if a new cause of action is here created for wrongful act causing death, to be instituted by the personal representative, to whom does the recovery inure?

"All our statutes creating a cause of action for death by wrongful act are for the benefit of the living.

"Both under the Homicide Act and Lord Campbell's Act, the action is for the benefit of the distributees or next of kin, not a part of the estate as such, but recovered by the personal representative as a statutory appointee for named beneficiaries.

"Under the Workmen's Compensation Law (Code 1923, § 7534 et seq.), the death benefit goes to named dependents.

"If a death action is contemplated under Code, § 5675, it is entirely silent on this point. For want of such provision, the recovery would become assets of the estate to be administered as other assets.

"One estate suing another for tort committed by one decedent against the other in their lifetimes is an anomaly in our law. No such intent is to be given a statute unless declared in plain and unambiguous terms. No such terms are used. The statute deals with personal injuries only.

"At common law the torts committed by a man went to the grave with him. Wynn v. Tallapoosa County Bank, [168 Ala. 469, 53 So. 228 (1910)].

"Code, § 5675, providing for a survival of the action and cause of action in favor of and against the personal representative of the parties may be given full effect, by confining it to causes of action accruing for personal injury not causing death, wherein the living has a just demand against the living for actual damages sustained by tortious act. In such case this statute seems to keep alive such demand in

> favor of the estate of the one against the estate of the other. Whether, in that case, suit must be brought while the tort-feasor lives, there is no occasion to decide."

Webb, 228 Ala. at 44-45, 152 So. at 216-17 (emphasis added).

In short, the Webb Court reasoned that no cause of action for the event of death was provided in the Dram Shop Act for two reasons. First, Webb concluded that what was subsection (a) of the applicable version of the Dram Shop Act in this case speaks only in terms of "injur[ies] in person or property" and not to death, while other statutes, such as the Wrongful Death Act, expressly mention death. Second, Webb concluded that the language of what was subsection (b) of the applicable version of the Dram Shop Act in this case is an ordinary "survival statute" that allows a personal representative to continue a claim already filed on behalf of a wife, child, parent, or other person who has been injured through loss of means of support because of personal injuries sustained by the person furnishing the means of support or allows the personal representative of a person directly injured by an intoxicated person to continue a claim for injury if the injury sustained did not cause the

person's death.[7] See, e.g., Foster v. Evergreen Healthcare, Inc., 716 N.E.2d 19, 24 n.6 (Ind. Ct. App. 1999) ("A so-called 'survival statute,' which enables a personal representative to initiate a personal-injury action for a wrongful act or omission that did not result in the decedent's death, is distinguishable from a 'wrongful death statute,' which allows a personal representative to bring an action for a wrongful act or omission that did cause the death of the decedent.").

The Webb Court's first conclusion -- that the absence of the word "death" in the applicable version of § 6-5-71(a) precludes the inclusion of a right of action for death in the statute -- runs into two immediate objections, one that is within the Dram Shop Act itself and another that arises from the logic of such an interpretation. In the Dram Shop Act, a recovery for loss of "means of support" may be predicated on the death of

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[7]Alabama's general survival statute is § 6-5-462, Ala. Code 1975, which provides:

> "In all proceedings not of an equitable nature, all claims upon which an action has been filed and all claims upon which no action has been filed on a contract, express or implied, and all personal claims upon which an action has been filed, except for injuries to the reputation, survive in favor of and against personal representatives; and all personal claims upon which no action has been filed survive against the personal representative of a deceased tort-feasor."

someone who an immediate family member "depended on ... as a means of financial support." Perez v. Roman's Rest., L.L.C., 392 So. 3d 730, 735 (Ala. 2023). For example, in James v. Brewton Motel Management, Inc., 570 So. 2d 1225, 1226 (Ala. 1990), the Court concluded that the minor children of a man who was "killed because of his own intoxication" had a right of action for loss of means of support under the Dram Shop Act. In Perez, the uncle of a deceased minor who had been killed in a single-car accident sued a nightclub that had allegedly served alcoholic beverages to the plaintiff's nephew. The plaintiff uncle asserted a Dram Shop Act claim, among others, contending that "he was injured in 'means of support' as a consequence of [his nephew's] death." 392 So. 3d at 735. This Court noted that

> "the class of potential plaintiffs falling within the 'other person' designation includes 'anyone who is proximately "injured in person, property or means of support by any intoxicated person or in consequence of the intoxication of any person." And ... this category of plaintiffs is as broad as proof of proximate cause will permit.'"

Id. at 735 (quoting Ward v. Rhodes, Hammonds & Beck, Inc., 511 So. 2d 159, 164 (Ala. 1987)). Thus, the Court agreed that the plaintiff uncle potentially could recover for his nephew's death, but it concluded that the uncle's claim failed because he had "presented no evidence, much less

substantial evidence, demonstrating that he had actually received any financial support from [his nephew] before the accident." Id. at 736. In short, an "injury" with respect to loss of means of support includes death, yet, relying on Webb, Walmart insists that death is not included as an "injur[y]" to a person who is directly harmed by an intoxicated person.

Estell observes that Walmart's logic would mean that "the Dram Shop Act affords no remedy because the injured person died from the very intoxicated conduct the statute was enacted to address." Estell's brief, p. 14. The trial court highlighted that anomaly in Walmart's argument in an exchange with Walmart's counsel during the trial.

> "THE COURT: Okay, Let me see if I understand your argument.
>
> "[Walmart's Counsel:] Yes.
>
> "THE COURT: If Walmart sells -- and let's take it to the absurd -- Walmart sells to a 16-year-old with no ID and that person consumes the alcohol and hurts somebody. Then the person who is hurt can sue whomever and have the Dram Shop Act.
>
> "[Walmart's Counsel:] Yes.
>
> "THE COURT: Okay. But if the person dies, then they just do a wrongful death against whatever the injury was, and then the seller of the alcohol is, I don't want to say off the hook, but there is no cause of action.

> "[Walmart's Counsel:] There is a cause of action.
>
> "THE COURT: What's the cause of action?
>
> "[Walmart's Counsel:] So Ms. Estell could have, if she had elected -- and for a while, we thought she had. The amended complaint actually says that Ms. Bonnie Estell is individually and has next friend, but then [Estell] has walked back from that.
>
> "Ms. Estell could have come in here today and said and presented testimony and evidence that said: I had to spend this much money on his funeral, and I lost all of, you know, some sort of Social Security benefits, and I lost the tax deduction that we have as a married couple, and we have been depriving -- if the person was under -- not retired, we could say we lost his income. And that would be what the statute expressly contemplates, every wife, child, parent and other person who has suffered a loss of means of support. And if it's in consequence of the intoxication and there's an intoxication and sale that's contrary to the provisions of the law, then they get that, and they can present that and they're entitled to recover those damages and then be at least theoretically entitled to some sort of punitives.
>
> "But here, they've chosen not to do that. They didn't present a single dollar of losses. Not one. There's no loss of means of support that was presented as part of their testimony. That's their choice. So we would say right there, it's over."

(Emphasis added.) In other words, the trial court noted that Walmart's argument (and Webb's holding) would mean that, under the Dram Shop Act, a person who is physically injured because of a person's becoming intoxicated has a right of action against the furnisher of the alcohol, but

that same person's estate has no right of action against the furnisher of the alcohol if the person's injury results in death and the action was not commenced before the death occurred. Under Walmart's view, instead of seeking to curtail intoxication, the Dram Shop Act encourages intoxicated behavior that causes the greatest harm because it provides no direct recovery for the event of death.

The Webb Court's second argument was that, in its view, § 6-5-71(b) is nothing more than an ordinary survival statute despite the fact that "the death of a party" is mentioned in that portion of the statute. As Walmart asserts in its brief, "[a] survival statute merely enables a personal representative to maintain an already-filed lawsuit where the plaintiff who filed it dies thereafter." Walmart's brief, p. 37. Walmart goes on to argue that because subsection (b) refers to the death of a "party," it must refer to suits that already have been filed. Thus, according to Walmart, because Reed died before any suit was filed against Walmart, subsection (b) does not support Estell's action commenced on behalf of the personal representative of Reed's estate. Under Walmart's view, the lawsuit of a person injured because of a person's becoming intoxicated survives the injured person's death only if

it was filed before death, and the recovery is for the injuries sustained before death, not for the event of death itself.[8] We note, however, that Webb itself does not so hold; Webb states that survival of an action for an injured person is "confin[ed] ... to causes of action accruing for personal injury not causing death." 228 Ala. at 45, 152 So. at 217.

Presumably Webb adopted the foregoing interpretation, rather than Walmart's position, because it recognized that subsection (b) states that "the action or right of action will survive to ... his executor or administrator." Former § 6-5-71(b) (emphasis added). If subsection (b) solely referred to lawsuits that already had been commenced, there would be no reason to include "the ... right of action" in its language. A right of action exists before a suit is filed; thus, contrary to Walmart's contention, subsection (b) is not solely referring to actions that already have been

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[8]Walmart summarizes its interpretation of § 6-5-71(b) this way:

> "In short, subsection (b) of the Dram Shop Act contemplates the possibility that a person with a cognizable claim for (1) personal injury, (2) property damage, or (3) loss of means of support may assert a claim via a civil action, then die before the action is resolved. The survival statute allows such a plaintiff to have his or her case prosecuted even after death."

Walmart's brief, p. 38.

commenced. So, Webb attempted to maintain the view that the Dram Shop Act "speaks only of injuries to person or property" and not to an "action[ ] for death," 228 Ala. at 44, 152 So. at 217, by holding that subsection (b) was referring to injuries that did not cause death.

However, "Alabama's Dram Shop Act created a new cause of action that did not exist at common law relating to the consequences of dispensing intoxicating liquor." Johnson v. Brunswick Riverview Club, Inc., 39 So. 3d 132, 138 (Ala. 2009). Subsection (b) states that, upon death, that new right of action will survive to the executor or administrator of the person who died. In other words, the statute clearly anticipates the possibility of the injured person's dying because of the consequences of intoxication and of "the right of action" -- the right to commence an action -- being held by the estate of the person who died.

As Estell observes, that possibility was presented to this Court in Wiggins v. Mobile Greyhound Park, LLP, 294 So. 3d 709 (Ala. 2019). The Wiggins Court succinctly described the case's facts as follows:

> "On June 6, 2015, a vehicle being driven by Willie McMillian struck from behind a vehicle being driven by [Katerial] Wiggins on Interstate 10 in Mobile County. Wiggins's fiancé, [Dominic G.] Turner, and their child, D.T., were riding in the backseat of the vehicle being driven by Wiggins when the collision occurred. As a result of the

> collision, Turner died and Wiggins and D.T. were injured. After obtaining evidence indicating that McMillian was under the influence of alcohol, law-enforcement officers arrested McMillian. He later pleaded guilty to reckless murder and was sentenced to imprisonment for 15 years.
>
> "In February 2016, Wiggins, in her individual capacity, on behalf of D.T., and on behalf of Turner's estate, sued McMillian. In relevant part, the complaint also named MGP [Mobile Greyhound Park, LLP,] and MGR [Mobile Greyhound Racing, LLP,] as defendants. Wiggins alleged that MGR and MGP operated a dog-racing track and that, on the day of the collision, MGR and MGP sold alcohol to McMillian at the dog-racing track while he was visibly intoxicated; she requested compensatory damages and punitive damages, pursuant to § 6-5-71, Ala. Code 1975 ('the Dram Shop Act'), for Turner's death and the injuries she and D.T. had sustained. (This action is hereinafter referred to as 'the dram-shop action.') Wiggins later filed a report of special damages in the dram-shop action that, in relevant part, included a request for damages under the Wrongful Death Act, § 6-5-410, Ala. Code 1975."

294 So. 3d at 711-12 (footnotes omitted; emphasis added). Subsequently, Montgomery Greyhound Racing, LLC ("MGR"), filed a summary-judgment motion as well as "a motion to strike Wiggins's 'claims for damages other than damages allowed under § 6-5-71, Ala. Code 1975.' In relevant part, MGR argued that any claim of 'wrongful death' asserted by Wiggins should be struck because, MGR argued, such claims 'are not allowed under the Dram Shop Act.'" Id. at 712. The Mobile Circuit Court granted MGR's summary-judgment motion and its "'motion to strike

[Wiggins]'s claim for damages for wrongful death.'" Id. at 713. Wiggins appealed.

Relevant to the present appeal is this Court's analysis regarding the Mobile Circuit Court's granting MGR's motion to strike Wiggins's claim for damages for wrongful death.

> "Wiggins next argues that the circuit court erred by granting MGR's motion to strike her request for damages arising from Turner's death. The circuit court adopted as its order regarding the motion to strike an order drafted by MGR. The order includes a lengthy analysis in support of the conclusion that a claim asserted under the Dram Shop Act is distinct from a claim asserted under the Wrongful Death Act. Although we agree with that basic conclusion, we find it unnecessary to summarize that analysis here.
>
> "In her complaint, Wiggins, as the administrator of Turner's estate, alleged that Turner died as a result of injuries he sustained in the collision. She requested an award of compensatory damages and punitive damages for Turner's death. As noted above, the Dram Shop Act provides a right of action 'for all damages actually sustained, as well as exemplary damages.' In relevant part, the Dram Shop Act also provides: '(b) Upon the death of any party, the action or right of action will survive to or against the executor or administrator.' § 6-5-71(b). Thus, the plain language of the Dram Shop Act provides for the relief sought in Wiggins's complaint.
>
> "Although Wiggins's complaint did not explicitly assert a claim under the Wrongful Death Act, she requested such damages in a report of special damages she filed in the circuit court. Moreover, Wiggins has consistently argued in the circuit court and on appeal that the relief she seeks is

> available to her under both the Dram Shop Act and the Wrongful Death Act. This Court has previously held that '[t]he Dram Shop Act provides the exclusive remedy for the unlawful dispensing of alcohol to an adult.' Johnson v. Brunswick Riverview Club, Inc., 39 So. 3d 132, 139 (Ala. 2009). 'In Alabama, one cannot recover for negligence in the dispensing of alcohol.' Williams v. Reasoner, 668 So. 2d 541, 542 (Ala. 1995).
>
> "Thus, Wiggins cannot assert both a claim under the Dram Shop Act and a claim under the Wrongful Death Act for the same injury. To the extent that the circuit court's order granting MGR's motion to strike is based on such a conclusion, it is affirmed. Our decision in that regard, however, does not alter the relief available to Wiggins under the Dram Shop Act for damages arising from Turner's death.
>
> "....
>
> "... To the extent that Wiggins seeks to recover damages stemming from Turner's death under both the Dram Shop Act and the Wrongful Death Act the circuit court's order granting MGR's motion to strike Wiggins's request for damages under the Wrongful Death Act is affirmed; Wiggins may recover only damages based on Turner's death under the provisions of the Dram Shop Act."

Id. at 728-29 (emphasis added).

Estell argues -- and the trial court clearly agreed with her -- that the decision in Wiggins demonstrates that Reed's death did not foreclose the personal representative of his estate from asserting a claim based on Reed's death against Walmart. Estell summarizes the holding in Wiggins this way: "[A] plaintiff may not obtain duplicative recovery under both

the Dram Shop Act and the Wrongful Death Act for the same injury, but that limitation 'does not alter the relief available to [Estell] under the Dram Shop Act for damages arising from [Reed's] death.'" Estell's brief, pp. 22-23 (quoting Wiggins, 294 So. 3d at 729). Estell adds in a footnote that, "[t]o the extent that Webb ... dictates a result to the contrary, it has been overruled, by implication, in Wiggins." Estell's brief, p. 22 n.1.

Walmart's response to Estell's use of Wiggins is to claim that, to the extent that the Court permitted Wiggins to assert a claim for Turner's death under the Dram Shop Act, it did so only because the parties involved did not disagree about that interpretation of the Dram Shop Act. But Walmart is simply incorrect about the parties' positions on the matter in question. As we already have noted, the Court in Wiggins recounted that, in her complaint, Wiggins had "requested compensatory damages and punitive damages, pursuant to § 6-5-71, Ala. Code 1975 ('the Dram Shop Act'), for Turner's death …." Wiggins, 294 So. 3d at 712. The Court's opinion likewise related that, in its summary-judgment motion, "MGR argued that any claim of 'wrongful death' asserted by Wiggins should be struck because, MGR argued, such claims 'are not allowed under the Dram Shop Act.'" Id. Thus, the same arguments that

the parties present here concerning the Dram Shop Act and a cause of action based on a person's death stemming from intoxication were raised in Wiggins.

Moreover, Walmart's contention that Wiggins does not conflict with the holding in Webb ignores this Court's plain conclusion in Wiggins. Wiggins held that Wiggins could not assert a claim for Turner's death under both the Wrongful Death Act and the Dram Shop Act, and so the trial court did not err in striking Wiggins's claim under the Wrongful Death Act. But the Court expressly stated that "Wiggins may recover ... damages based on Turner's death under the provisions of the Dram Shop Act." 294 So. 3d at 729.

The Wiggins Court did not rely on Webb because of its own considered interpretation of the Dram Shop Act's language and because of the weight of multiple decisions from this Court that were decided after Webb. For example, in Buchanan v. Merger Enterprises, Inc., 463 So. 2d 121, 122 (Ala. 1984), this Court observed:

> "Alabama's dram shop statute creates a civil action against a purveyor of alcoholic beverages in favor of any person, or the personal representative of any person, injured or killed by an intoxicated person when the beverages causing the intoxication were dispensed 'contrary to the provisions of law.' Section 6-5-71, Code of Alabama 1975."

(Emphasis added.) Buchanan also related:

> "From 1909, when the dram shop statute was first passed, until the present time, with the sole exception of the short hiatus during which the events complained of in this case took place, Alabama has recognized a cause of action under the dram shop statute for injury or death caused by an intoxicated individual where the intoxicated person was sold alcohol in the manner alleged in this case."

Id. at 123 (emphasis added). In Evans v. Sunshine-Jr. Stores, Inc., 587 So. 2d 312 (Ala. 1991), the Court reiterated:

> "Under Alabama's Dram Shop Act, any person or the personal representative of any person injured or killed by an intoxicated person has a cause of action against one who 'by selling, giving or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages, cause[s] the intoxication of such person.' Ala. Code 1975, § 6-5-71."

Id. at 314 (superseded on other grounds, as recognized in Ex parte Tulley, 199 So. 3d 812, 815 (Ala. 2015)) (emphasis added). In Krupp Oil Co. v. Yeargan, 665 So. 2d 920, 924 (Ala. 1995), the Court stated:

> "Inherent in the legislature's intent to implement governmental supervision of alcohol sales is the public interest in preventing alcohol-related injuries and deaths. ...
>
> "The legislature, in the Dram Shop Act, has stated its intent to provide for a cause of action when injury or death results from the 'selling, giving or otherwise disposing of' alcohol 'contrary to ... law.' "

(Emphasis added.)

When Walmart was confronted with statements from the foregoing cases in the trial court, its counsel merely attempted to distinguish them by claiming that the references to death were "just ... an offhand remark." On appeal, Walmart ignores those cases entirely, offering no explanation as to why this Court has repeatedly stated that the Dram Shop Act provides a cause of action for death against those who sell alcohol contrary to law.[9]

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[9]In addition to the multiple cases that have stated that the Dram Shop Act provides a cause of action when death results from intoxication brought about by the illegal furnishing of alcohol, our courts have entertained multiple cases in which the personal representative of the estate of someone killed due to intoxication asserted a claim for death under the Dram Shop Act. See, e.g., Williams v. Reasoner, 668 So. 2d 541, 542 (Ala. 1995) (a case in which parents, as administrators of their deceased son's estate, asserted a Dram Shop Act claim "to recover damages for the wrongful death of their son"); Jones v. BP Oil Co., 632 So. 2d 435 (Ala. 1993) (a case in which the father of a minor killed in a car accident commenced an action individually and as the personal representative of his son's estate against the gas station that sold alcohol to a minor who was the passenger in the vehicle that struck the plaintiff son's vehicle); Parker v. Miller Brewing Co., 560 So. 2d 1030 (Ala. 1990) (a case in which the mother of a minor killed in a single-car accident after the minor had become intoxicated at a party commenced an action in her capacity as administratrix of her daughter's estate that asserted a Dram Shop Act claim against a retailer who had sold alcohol to two other minors who had brought alcohol to the party); Beeson v. Scoles Cadillac Corp., 506 So. 2d 999 (Ala. 1987) (a case in which the administratrixes of the estates of two people who were killed in a car accident that occurred after a party at which alcohol was served asserted Dram Shop Act claims against the hosts of a party); and Duckett v. Wilson Hotel Mgmt. Co., 669

The Webb Court reached the conclusion that a plaintiff could not assert a claim for death under the Dram Shop Act because that court mistakenly equated all claims for death with the Wrongful Death Act. Webb failed to account for the fact that the Dram Shop Act creates a different cause of action for death. The difference is apparent in at least two ways. First, a claim under the Wrongful Death Act requires proximate causation of death through the defendant's actions.

> "In a wrongful-death action predicated on theories of negligence and wantonness, a plaintiff must establish that the defendant's tortious conduct proximately caused the decedent's death. See Martin v. Arnold, 643 So. 2d 564, 567 (Ala. 1994) ('Proximate cause is an essential element of both negligence claims and wantonness claims.'); D.A.C. ex rel. D.D. v. Thrasher, 655 So. 2d 959, 961 (Ala. 1995) ('It is well settled in this state that damages claims cannot be presented to a jury in the absence of sufficient evidence of an unbroken sequence of cause and effect, i.e., evidence that the act complained of was the proximate cause of the injury.' (citing Alabama Power Co. v. Bryant, 226 Ala. 251, 146 So. 602 (1933))). This Court, moreover, has defined proximate cause as 'an act or omission that in a natural and continuous

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So. 2d 977 (Ala. Civ. App. 1995) (a case in which the administratrix of the estate of a person who was shot and killed outside a bar sought to hold the bar liable for the death under the Dram Shop Act because the bar allegedly had continued to serve alcohol to the visibly intoxicated patron who fired the shots). In all of the foregoing cases -- except Duckett, in which the Court of Civil Appeals reversed a summary judgment in favor of the defendants -- the courts concluded that the claims were not viable under the Dram Shop Act for reasons other than the fact that the plaintiffs had asserted claims for death.

> sequence, unbroken by any new independent causes, produces the injury and without which the injury would not have occurred.' Thetford v. City of Clanton, 605 So. 2d 835, 840 (Ala. 1992)."

Hughes v. Marley, 390 So. 3d 545, 549 (Ala. 2023). A plaintiff could not assert a claim under the Wrongful Death Act against a provider of alcohol because the perpetrator's intoxication is an intervening cause that prevents liability against the provider. However, to curtail "the unlawful dispensing of alcohol," Williams v. Reasoner, 668 So. 2d 541, 542 (Ala. 1995), the Dram Shop Act does not apply the ordinary standard of causation.

> "This Court held in Laymon v. Braddock, 544 So. 2d 900, 903 (Ala. 1989), the following:
>
> > "'"[T]he person injured by the illegal sale of alcoholic beverages is not held to the usual standards of proof of causal connection between the illegal sale of the beverages and the injury."'
>
> "Quoting Phillips v. Derrick, 36 Ala. App. 244, 246, 54 So. 2d 320, 321 (1951). Generally, liability will be imposed only when the wrong is the 'proximate cause' of an injury. Id. Under the Dram Shop Act, however, liability will be imposed when the wrong is 'in consequence' of the illegal sale of liquor."

Attalla Golf & Country Club, Inc. v. Harris, 601 So. 2d 965, 970 (Ala. 1992).

A second way in which the claims differ is that a claim under the Wrongful Death Act exists to protect human life, not to compensate the victim or the victim's family for the death. See, e.g., Deese v. Brown, 414 So. 3d 117, 128 (Ala. 2024) ("[T]he wrongful-death statute is punitive in nature because it is designed to prevent the loss of life, not to compensate a family for the loss of the decedent's life."). In contrast, a claim under the Dram Shop Act exists to compensate the injured party and those related to the injured party for the injury or death. That is precisely why compensatory damages can be awarded for death under the Dram Shop Act: because it is compensation for the "injury" to the victim. In short, Webb conflated a claim under the Dram Shop Act with a claim under the Wrongful Death Act, and, in doing so, it ignored the fact that the purpose of the Dram Shop Act is to "prevent[] alcohol-related injuries and deaths." Krupp Oil Co., 665 So. 2d at 924.

Based on the foregoing, we agree with the trial court's conclusion that Walmart's assertion that no viable claim for Reed's death existed under the Dram Shop Act was not a proper basis for a judgment as a matter of law.

B. Estell's Legal Capacity to Assert Her Claim

Walmart argues that, even if there was a viable claim for Reed's death under the Dram Shop Act, Estell did not possess the proper legal capacity under Alabama law to assert such a claim.

> "The **only** person who may assert a wrongful death claim is the 'personal representative' of the decedent's estate. In practice, that means the plaintiff must be the executor or administrator of the decedent's estate. ... Under settled Alabama law, one is only an executor or administrator if his role is 'the same' as how that person would function under Alabama law."

Walmart's brief, p. 43 (bold typeface in original). Walmart notes that Estell was not appointed as a general administrator of Reed's estate. Rather, the Morgan Superior Court appointed Estell "as special administrator of the Estate of James E. Reed for the sole purpose of bringing an action concerning [Reed's] alleged wrongful death" under Indiana Code Ann., § 29-1-10-17. In essence, Walmart contends that Estell's appointment was not equivalent to a personal representative of an estate under Alabama law and that, therefore, she lacked the capacity to assert a wrongful-death claim. In support of its argument, Walmart relies on two cases: Ex parte Continental Motors, Inc., 270 So. 3d 1148 (Ala. 2018), and Ex parte 2215 Northport OpCo LLC, 406 So. 3d 816 (Ala. 2024).

Continental Motors presented a complicated factual scenario in which purported personal representatives of victims who died in a plane crash in Honduras asserted "a wrongful-death action under § 6-5-410, Ala. Code 1975, against" multiple defendants whom the plaintiffs alleged were responsible for the plane crash. 270 So. 3d at 1149. In particular, the Court stated that, even though one of the plaintiffs

> "was appointed the 'administrator of the intestate will or testament' of [one of the decedents] in Guatemala, the administrator of an intestate will or testament under Guatemalan law is not the same as an administrator of an estate under Alabama law. See Waters v. Hipp, 600 So. 2d 981, 982 (Ala. 1992) ('A "personal representative," for the purposes of § 6-5-410, is an executor or administrator.')."

Id. at 1153. Walmart analogizes the situation described in Continental Motors with Estell's situation, arguing that Estell's appointment as "special administrator" under Indiana law is a "highly-curtailed role [that] does not fairly meet the test of [Continental] Motors." Walmart's brief, p. 44.

Walmart's use of Continental Motors is problematic, however, for at least two reasons. First, at the outset of the opinion in Continental Motors, the Court observed that "the facts of this case present a unique situation" that implicated the application of foreign substantive law and

that "[t]his opinion should be read in the context of this peculiar situation." 270 So. 3d at 1152. Thus, Walmart overstates the impact of Continental Motors by asserting that it establishes a "test" of who qualifies as a personal representative under § 6-5-410. Second, and more important to this case, Continental Motors clearly involved a wrongful-death cause of action commenced under § 6-5-410, not an action commenced under § 6-5-71, as was the action Estell commenced in this case. The Court in Continental Motors stated:

> "A wrongful-death cause of action was unknown at common law; it is purely statutory. The Legislature, in adopting § 6-5-410, created the wrongful-death cause of action and determined that only a 'personal representative' has the right to pursue a wrongful-death claim. ... Section 6-5-410 [is] the statute that creates the right of a 'personal representative' to pursue a wrongful-death claim on behalf of a decedent's heirs ...."

270 So. 3d at 1155. Thus, to the extent that Continental Motors established any kind of "test," it concerned what constitutes a "personal representative" for the purpose of commencing an action under § 6-5-410. As Part A of our analysis makes clear, a wrongful-death claim under § 6-5-410 is different than a claim for death under § 6-5-71. As such, the requirement for the type of personal representative necessary to assert a claim under § 6-5-410 has no relevance to the question whether Estell's

appointment as "special administrator" of Reed's estate allows her to assert a claim for Reed's death under § 6-5-71.

Walmart also attempts to draw a parallel to this Court's decision in Ex parte 2215 Northport OpCo LLC. In Northport OpCo, the Tuscaloosa Probate Court appointed attorney Eric J. Anders "as the administrator ad colligendum of [Charlie G.] Sansing's estate -- a role that would authorize Anders to collect and manage Sansing's assets while they awaited distribution to his beneficiaries." 406 So. 3d at 817. Anders then commenced a wrongful-death action in the Tuscaloosa Circuit Court under § 6-5-410 "against 2215 Northport OpCo LLC d/b/a Forest Manor Health and Rehabilitation and 2215 Northport PropCo LLC (collectively referred to as 'Northport') just one day before the two-year limitations period expired." Id. Northport filed a motion to dismiss the action on the ground that "Anders was not a proper plaintiff because the probate court had not appointed him as the personal representative of Sansing's estate and Alabama law does not permit anyone other than a personal representative to bring a wrongful-death action, see § 6-5-410, Ala. Code 1975." Id. at 818. The circuit court denied Northport's motion to dismiss. This Court concluded that "[a]n administrator ad colligendum is not a

'personal representative' within the meaning of § 6-5-410(a)." Id. at 819 (capitalization and emphasis omitted). The Court reasoned that "[a]n administrator ad colligendum is a 'special administrator' whom a probate judge may appoint for 'the specific purpose of collecting and preserving the assets of the estate when necessary[,]' Ex parte Baker, 183 So. 3d 139, 143 (Ala. 2015)," and that, "[b]ecause of their 'limited authority' as mere officers of the probate court, administrators ad colligendum are neither 'administrators' nor 'executors' of a decedent's estate. Id. Accordingly, they are not 'personal representatives' under § 6-5-410." Id. at 819-20.

Walmart argues that, like an administrator ad colligendum, Estell has limited authority in her capacity as a "special administrator" of Reed's estate and that, thus, she is not a "personal representative" of Reed's estate under Alabama law. Walmart contends that, under the logic in Northport OpCo, Estell lacks the capacity to assert a wrongful-death claim on behalf of Reed's estate. In fact, Walmart goes so far as to assert that "Estell may not assert any claim, wrongful death or otherwise, as the personal representative of Reed's estate." Walmart's brief, p. 44 (emphasis added).

As with its use of Continental Motors, Walmart overreads Northport OpCo, which clearly held that an administrator ad colligendum is not equivalent to a personal representative under § 6-5-410. It did not address a claim brought under § 6-5-71 or how a "special administrator" appointed under Indiana law should be viewed in bringing an action under Alabama law. Because the decisions in both Continental Motors and Northport OpCo implicated this Court's specific and consistent interpretation of § 6-5-410, they do not directly speak to Estell's capacity assert a claim for Reed's death under § 6-5-71.

It is true that § 6-5-71(b) provides that, "[u]pon the death of any party, the action or right of action will survive to or against his executor or administrator." (Emphasis added.) Consequently, the question could be asked whether the term "administrator" in § 6-5-71(b) refers to only the administrator of an estate or if Estell's appointment as a "special administrator" under Indiana law would suffice? Walmart offers no specific argument or authority regarding that question. Likewise, in Continental Motors, the Court declared: "It is well established that a personal representative appointed by a court in another state may maintain a wrongful-death action in Alabama." 270 So. 3d at 1156. Thus,

it could be asked whether the Morgan Superior Court's appointment of Estell "as special administrator" of Reed's estate is equivalent to a personal representative in Indiana law? But Walmart offers no specific argument or authority concerning that question.

Under Indiana law "an administrator can be appointed for the sole purpose of prosecuting a wrongful death action," and "[a] general administrator and a special administrator serve in different fiduciary capacities and are separate and distinct parties." In re Estate of Sandefur, 685 N.E.2d 719, 724 & n.2 (Ind. Ct. App. 1997). Thus, a special administrator is not the same as a general administrator under Indiana law, but a special administrator is fully empowered to pursue a tort claim for death, which is what Estell did in this case via the only avenue available to her under Alabama law -- the Dram Shop Act.

In short, Walmart fails to provide any authority indicating that Estell's appointment as special administrator of Reed's estate was insufficient to enable her to pursue a claim concerning Reed's death under the Dram Shop Act. Consequently, the trial court did not err in denying Walmart's motion for a judgment as a matter of law based on Estell's legal capacity.

C. Walmart's Assertion of Immunity

Walmart argues that the trial court erred by failing to conclude that Walmart was "immune from liability" because Walmart fulfilled its legal duty by requiring Walters to present his ID before approving his purchase of alcohol. Walmart's brief, p. 45. Walmart bases its argument on this Court's opinion in McLeod v. Cannon Oil Corp., 603 So. 2d 889 (Ala. 1992), which, Walmart argues, created a "standard" for when a vendor of alcohol may be held liable for selling to a minor. Id., p. 54.

McLeod concerned an action brought by S.M. McLeod, the father of Deon McLeod, under the Civil Damages Act, § 6-5-70. On July 15, 1989, Deon and some friends decided to attend an outdoor concert. On their way to the concert, the group stopped at a gas station owned by Cannon Oil Corporation ("Cannon Oil"). Deon, a minor, purchased beer at the gas station. The cashier asked Deon for identification, but he told the cashier that he did not have any, and the cashier proceeded with the sale anyway. During the concert, it began to rain, so the group left, and they again stopped at the Cannon Oil gas station. Once again, Deon purchased beer, this time from a different cashier who testified at trial that he believed Deon was 25 years old and so he sold him the beer without questioning

his age. Eventually, the group decided to return to the outdoor concert. On the property, the driver of the van Deon was traveling in attempted to pass a slow-moving vehicle, and, while doing so, he drove the van into a lake. "All of the young men except Deon McLeod were able to swim to shore. Deon drowned." 603 So. 2d at 891. Deon's father asserted a wrongful-death claim against the van driver and a claim under the Civil Damages Act against Cannon Oil. Relevant here is the fact that the jury returned a verdict finding that Cannon Oil did not violate the Civil Damages Act. Deon's father appealed.

The McLeod Court reversed the judgment entered on the verdict in favor of Cannon Oil. After quoting § 6-5-70, the Court stated:

> "Thus, in order to establish liability under the Civil Damages Act, a plaintiff must prove that the defendant (1) sold spirituous liquors to a person who was a minor, and (2) was chargeable with notice or knowledge of the minority. Once the plaintiff does that, the burden shifts to the defendant to show that he did everything required by the statute and the regulations to determine whether the purchaser was a minor. If the defendant cannot show that he complied with the statute and the regulations, then the plaintiff is entitled to a directed verdict on the issue of whether the Civil Damages Act was violated."

603 So. 2d at 891 (emphasis added). The Court pointed out that Cannon Oil's cashiers clearly did not comply with ABC regulations because they

"did not require that Deon produce acceptable documentation for the determination of his age. In fact, he was allowed to make both purchases without producing any identification." Id. at 892. The Court concluded that, because Deon's father "proved that Cannon Oil sold spirituous liquors to a minor, without requiring the identification specified by the regulations," he had "thereby established a prima facie violation of the Civil Damages Act. [It held] that [Deon's father] was entitled to a directed verdict on the issue of liability under the statute, and that the trial court erred in denying his motion." Id. The decision was premised on the conclusion that the Civil Damages Act is a strict-liability statute. The Court then explained what it believed were the implications of that strict liability:

> "Just as the Dram Shop Act creates strict liability in case of its violation, the Civil Damages Act creates strict liability in case of its violation. In this case, the plaintiff established a prima facie case under the Act by producing evidence that Cannon Oil sold beer to a minor. The Act provides that a seller of spirituous liquors sells them at his peril. If the seller suspects the purchaser is a minor, or is chargeable with notice of his minority, he may avoid liability by complying with the provisions of the regulations: requiring proof of age by way of a driver's license, etc. If the purchaser produces a driver's license that appears to be valid and that indicates that the holder is of legal age, the seller escapes liability even if it is later determined that the driver's license is not valid or was not in fact issued to the purchaser.

> "This legislation was designed to curtail the sale of alcoholic beverages to minors. It places the burden on sellers of such beverages to determine that the purchasers are not minors. If the seller does not carry that burden, the statute permits a jury to assess such damages against the seller as it sees fit. The legislation was passed at a time when there was great concern about the sale of alcoholic beverages, and while the statute is not a model of clarity, the courts have consistently held that the legislature is free to regulate the sale of alcoholic beverages as its wisdom dictates."

McLeod, 603 So. 2d at 893 (emphasis added).

Walmart relies on the foregoing excerpt from McLeod in contending that the trial court should have ruled that it was "immune" from Estell's claim under the Dram Shop Act. Walmart argues that its cashier required Walters to show proof of age through a driver's license, that the license appeared to be valid and indicated that Walters was not a minor, and that, therefore, Walmart should "'escape[] liability'" even though it was later determined that Walters's license was not valid. Walmart's brief, p. 52 (citations omitted). In essence, Walmart contends that McLeod removes from the jury the question whether a vendor has complied with the law under the Dram Shop Act. Walmart further asserts that "[t]he approach adopted by this Court in McLeod is the only reasonable one," that "[t]he McLeod standard simply works," and that,

"[i]f alcohol vendors in Alabama have to eliminate shelf space in order to build a FBI-grade 'crime lab' to check for fake IDs, they will simply close." Walmart's brief, pp. 53, 54.

As Estell observes, however, there are several problems with Walmart's argument. To begin with, McLeod obviously was explicating the Civil Damages Act, not the Dram Shop Act, because the former was the statute under which Deon's father had asserted a claim against Cannon Oil.[10] It is true that the McLeod Court discussed some similarities between the Civil Damages Act and the Dram Shop Act -- namely that both acts create strict liability upon demonstration of their violation. But the language of the statutes differs in critical respects. In particular, the Civil Damages Act states that a plaintiff has a right of

[10]The Civil Damages Act, § 6-5-70, Ala. Code 1975, provides:

> "Either parent of a minor, guardian, or a person standing in loco parentis to the minor having neither father nor mother shall have a right of action against any person who unlawfully sells or furnishes spirituous liquors to such minor and may recover such damages as the jury may assess, provided the person selling or furnishing liquor to the minor had knowledge of or was chargeable with notice or knowledge of such minority. Only one action may be commenced for each offense under this section."

action against one who "unlawfully sells or furnishes spirituous liquors to [a] minor and may recover such damages as the jury may assess, provided the person selling or furnishing liquor to the minor had knowledge of or was chargeable with notice or knowledge of such minority." § 6-5-70 (emphasis added). In contrast, the version of the Dram Shop Act at issue in this case does not expressly include a knowledge component with respect to the alcohol vendor.[11] It simply states that the plaintiff has a right of action "against any person who shall, by selling, giving, or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages, cause the intoxication of such person ...." Former § 6-5-71(a) (emphasis added). Thus, under the Dram Shop Act, liability is determined by whether the vendor sold alcohol "contrary to the provisions of law."

Alabama Administrative Code (ABC Board), r. 20-X-6-.09, in relevant part, provides:

"(1) It shall be unlawful:

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[11]When the Dram Shop Act was amended in 2023, the Legislature added a knowledge component, stating that a plaintiff shall have a right of action "against any person who knowingly sells, furnishes, or serves alcoholic beverages to an individual contrary to the provisions of law," and it clarifies that "'knowingly' means knew or should have known under the circumstances." § 6-5-71(a)(1) & (2), Ala. Code 1975.

> "(a) For any person to sell, furnish, give to or purchase alcoholic beverages for any minor; or to attempt to sell, furnish, give to or purchase alcoholic beverages for any minor.
>
> "....
>
> "(d) For a licensee, employee or agent thereof to accept any proof of age from a person purchasing or attempting to purchase alcoholic beverages, except for the following:
>
> "1. A valid driver's license of any state.
>
> "...."

It is undisputed that Walters did not present a valid driver's license to Walmart, and thus a question of fact was presented concerning whether Walmart's sale of alcohol to Walters was "contrary to the provisions of law." However, according to the standard Walmart proposes based on McLeod, it is immaterial whether Walters presented a valid driver's license; instead, all that matters is that Walters presented "a driver's license that appear[ed] to be valid" -- and apparently Walmart believes that there is not even a jury question as to whether the license appeared to be valid because Walmart was "immunized" from liability the moment its cashier asked for Walters's identification. 603 So. 2d at

893 (emphasis added). Walmart's proposed standard simply does not square with the pre-amended language of § 6-5-71 or with the requirements of Alabama Administrative Code (ABC Board), r. 20-X-6-.09.

A second problem is that the passage from McLeod upon which Walmart relies was unnecessary for the decision. McLeod presented a situation in which Cannon Oil's cashiers plainly violated the law because they did not ask for any identification from Deon before selling him beer. As we previously noted, before the McLeod Court expounded upon what it believed to be the implications of strict liability, it had already determined that "the plaintiff was entitled to a directed verdict on the issue of liability under the statute, and that the trial court erred in denying his motion." McLeod, 603 So. 2d at 892. The McLeod Court did not need to say anything else to reverse the judgment entered on the jury's verdict concerning the Civil Damages Act claim. Consequently, the McLeod Court's explanation as to how "the seller escapes liability" was dictum. Id. at 893. Estell noted this fact to the trial court, and Walmart's counsel admitted that "I think it's probably safe to say it wasn't the holding of McLeod, but it's also not just dicta; it's the Court explaining

how they understand that statute to operate." But because that explanation was dictum, it was not binding on the trial court, and the trial court cannot be held in error for declining to follow it. See, e.g., Ex parte Williams, 838 So. 2d 1028, 1031 (Ala. 2002) ("Because obiter dictum is, by definition, not essential to the judgment of the court which states the dictum, it is not the law of the case established by that judgment.").

A third problem is that Walmart overreads the passage in McLeod upon which it relies. Walmart contends that when the Court stated that, "[i]f the purchaser produces a driver's license that appears to be valid and that indicates that the holder is of legal age, the seller escapes liability," the Court meant that no jury question is presented concerning the vendor's liability. 603 So. 2d 893. But McLeod did not say that; the Court stated that, in its view, if the purchaser presents what appears to be a valid driver's license, the vendor should not be held liable, but it did not preclude that there may be a jury question as to whether the vendor was diligent in determining the validity of the license. Indeed, in the very next paragraph, the Court stated that the Civil Damages Act "places the burden on sellers of such beverages to determine that the purchasers are not minors. If the seller does not carry that burden, the statute permits

a jury to assess such damages against the seller as it sees fit." Id. In this case, the trial court let the jury decide whether Walmart fulfilled its responsibility to determine that Walters was not a minor. In that way, the trial court's ruling was not even contrary to the passage in McLeod upon which Walmart relies, even if that passage had provided the applicable legal standard.

For all the foregoing reasons, the trial court did not err in refusing to conclude that Walmart was "immune" from Estell's claim under the Dram Shop Act. Instead, the trial court correctly submitted the issue of Walmart's liability to the jury for determination.

IV. Conclusion

We confirm, as we have in past cases such as Wiggins, that the Dram Shop Act permits the assertion of a claim for death. In doing so, we expressly overrule the Court's decision in Webb. We also conclude that Walmart failed to demonstrate that Estell's designation as "special administrator" of Reed's estate by an Indiana Superior Court did not allow her to assert a claim for death under the Dram Shop Act. Finally, the trial court did not err in submitting to the jury the issue of Walmart's liability under the Dram Shop Act rather than finding Walmart "immune

from liability" based on dictum from McLeod. Accordingly, the trial court's judgment is affirmed.

AFFIRMED.

Stewart, C.J., and Shaw, Wise, Bryan, and McCool, JJ., concur.

Parker, J., concurs in part and concurs in the result, with opinion.

Sellers, J., dissents, with opinion.

Cook, J., recuses himself.

PARKER, Justice (concurring in part and concurring in the result).

Walmart sold alcohol to a 20-year-old who furnished a fake Georgia driver's license. That 20-year-old then drank that alcohol, got in his car, and ran over James Reed. Reed died that same day. This appeal primarily asks whether Reed's wife, Bonnie Estell, can sue Walmart for its role in this tragedy. I agree with the main opinion that Estell may do so according to controlling precedent of this Court (which Walmart has not asked us to overrule). I write separately to explain how this result is also consistent with the text of the relevant statutes as they appear to most naturally be read on their face. I also briefly address the two other issues in this case.

To be clear, the parties did not raise the textual argument advanced below. But when we can nudge our precedent to more faithfully align with statutory text, I believe we should do so. Hopefully, parties in future cases will follow suit and make statutory arguments, not just arguments based on precedent.

I.

A focus on statutory text is particularly important here because Estell's claim could not exist without it. At "common law" -- that is, under

the law as "found" by judges before legislatures enacted any statute -- two rules would have prevented Estell from suing Walmart at all. First, at common law, a person could not bring a lawsuit based on the wrongful death of someone else. See Waters v. Hipp, 600 So. 2d 981, 982 (Ala. 1992) (plurality opinion). Second, the common law of Alabama does not allow a lawsuit based on negligence in the sale of alcohol. See Jackson v. Azalea City Racing Club, Inc., 553 So. 2d 112, 113 (Ala. 1989).

The Legislature replaced both rules, at least partially, with statutes that seek to blunt the common law's harsh results. The Legislature first enacted the Wrongful Death Act in 1852. See Campbell v. Williams, 638 So. 2d 804, 808 (Ala. 1994). Today, this act allows the "personal representative" of a deceased person to sue for some "wrongful act, omission, or negligence" if the deceased person could also have sued had the wrongful conduct "not caused death." Ala. Code 1975, § 6-5-410(a). The Legislature enacted the Dram Shop Act in 1909, meanwhile, as a "prohibition enforcement measure." Webb v. French, 228 Ala. 43, 44, 152 So. 215, 216 (1934). At the relevant time, this act allowed any person "injured in person, property, or means of support" because of someone's intoxication to sue the seller of the alcohol if the sale was made "contrary

to the provisions of law." Ala. Code 1975, § 6-5-71(a). A "survival" provision allowed "the action or right of action" to survive upon the death of any party "to or against his executor or administrator." § 6-5-71(b).

These statutes thus establish different causes of action to respond to different perceived deficiencies in the common law:

	Wrongful Death Act	Dram Shop Act
Defendant's conduct	"[W]rongful act, omission, or negligence … whereby the death of the testator or intestate was caused."	"[S]elling, giving, or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages."
Who holds the cause of action	The testator's or intestate's "personal representative."	"Every wife, child, parent, or other person who shall be injured in person, property, or means of support."
Type of harm	Death.	Injury "in person, property, or means of support."
Damages available	"[S]uch damages as the jury may assess."	"[A]ll damages actually sustained, as well as exemplary damages."
Conditions	"[T]he testator or intestate could have commenced an action for the wrongful act, omission, or negligence if it had not caused death."	(1) The injury is caused "by any intoxicated person or in consequence of the intoxication of any person" and (2) the unlawful provision of alcohol "cause[s] the intoxication of such person."

Because the Legislature enacted these statutes to displace the common law, we interpret them strictly. See, e.g., Northstar Anesthesia of Alabama, LLC v. Noble, 215 So. 3d 1044, 1048 (Ala. 2016).

A.

As I (strictly) read these statutes on their face, the Dram Shop Act does not by itself allow Estell to sue Walmart for Reed's death. Recall that, on its face, the Dram Shop Act allows suits for injury only to a plaintiff's "person, property, or means of support." § 6-5-71(a). But none of these terms neatly fit Estell's claim against Walmart:

- "Person." Estell is not seeking damages based on injury to her own person. What is more, this Court has stated many times that "a wrongful death claim is separate and distinct from a personal injury claim, even when the injury results in the death of the plaintiff." King v. National Spa & Pool Inst., Inc., 607 So. 2d 1241, 1245 (Ala. 1992).

- "Property." Estell is not seeking damages based on injury to her own property.

- "Means of support." As the main opinion explains, injury in "means of support" applies when the decedent was the plaintiff's source of support. But such an action requires proof of financial support. See Perez v. Roman's Rest., L.L.C., 392 So. 3d 730, 735-736 (Ala. 2023). Estell provided no such proof and does not argue that her recovery can be based on loss of support.

I agree with the main opinion that this Court's decision in Wiggins v. Mobile Greyhound Park, LLP, 294 So. 3d 709 (Ala. 2019), allows a death-

based claim under the Dram Shop Act. But as I read it on first blush, the Dram Shop Act by itself simply does not permit such a claim.

In contrast, the Wrongful Death Act on its face does appear to allow Estell to sue Walmart for Reed's death. The entire theory of the Wrongful Death Act, plain on its face, is that the deceased person could have sued the defendant had the deceased person survived. In other words, the Wrongful Death Act does not create any new predicate for liability; it supplements other existing grounds for liability by providing a new remedy unknown to the common law (that is, recovery when the injured person dies). The Wrongful Death Act thus relies on other causes of action -- like negligence or wantonness -- to determine whether a defendant's act is "wrongful."[12] I see no reason why the Wrongful Death Act should apply any differently when a claim is based on the Dram Shop Act.

Under this straightforward reading of the Wrongful Death Act, Estell has a valid claim against Walmart: Walmart committed a wrongful act under the Dram Shop Act by dispensing alcohol in a manner contrary to law. And Reed could have sued Walmart for this wrongful act under

[12]See, e.g., Woodward Iron Co. v. Craig, 256 Ala. 37, 53 So. 2d 586 (1951) (contributory negligence); Hughes v. Marley, 390 So. 545, 549 (Ala. 2023) (negligence and wantonness).

the Dram Shop Act had he not died from his injuries. That wrongful act caused Reed's death under the causation standards applicable under the Dram Shop Act. Reed's personal representative therefore should be able to bring a claim against Walmart under the Wrongful Death Act.

B.

The main opinion faithfully applies our precedent holding that the Dram Shop Act itself allows Estell to sue Walmart for Reed's death. But this precedent does not squarely address the textual considerations set forth above, and I would be open to revisiting that precedent as necessary to better align our decisions with the statutory text.

Our precedents do suggest that a plaintiff can sue for wrongful death under the Dram Shop Act alone. But many of these precedents are essentially unexplained and unreasoned.[13] This Court's decision in Wiggins provides some reasoning, but only in two respects: It cites the Dram Shop Act's survival provision as evidence that "the plain language of the Dram Shop Act provides for the relief sought in Wiggins's complaint" (which was for wrongful death). 295 So. 2d at 729. It also

[13]See Buchanan v. Merger Enters., Inc., 463 So. 2d 121, 122 (Ala. 1984); Evans v. Sunshine-Jr. Stores, Inc., 587 So. 2d 312, 314 (Ala. 1991); Krupp Oil Co. v. Yeargan, 665 So. 2d 920, 924 (Ala. 1995).

reasoned that "a claim asserted under the Dram Shop Act is distinct from a claim asserted under the Wrongful Death Act" and that a plaintiff cannot bring claims under both acts "for the same injury." 294 So. 3d at 728-29. Walmart does not ask us to overrule Wiggins. But at first blush, neither of its justifications for interpreting the Dram Shop Act make sense to me.

For one thing, the Dram Shop Act's survival provision does not appear to create a cause of action at all. The text of that provision says: "Upon the death of any party, the action or right of action will survive to or against the party's personal representative." § 6-5-71(b). But this language would seem to mean just that an existing "action or right of action" may continue even though the party holding it dies -- similar to any ordinary "survival statute" from the early 1900s (or even today).[14] As I read the survival provision, its function is merely to preserve "actions" (existing lawsuits) and "right[s] of action" (lawsuits not yet filed) established by the Dram Shop Act itself. Therefore, to the extent that

[14]See Ala. Code 1907, § 2496 ("all personal actions, except for injuries to the reputation, survive in favor of and against the personal representatives"); Ala. Cod 1975, § 6-5-462 ("all personal claims upon which an action has been filed, except for injuries to the reputation, survive in favor of and against personal representatives").

Reed had a right of action against Walmart for personal injury, that right of action survived his death and could have been brought by Reed's executor or administrator. See King, 607 So. 2d at 1246 (Ala. 1992). But as discussed above, the Dram Shop Act on its face would not provide Reed with a right of action for his own death, so no such action could survive under the survival provision.

As to Wiggins's second rationale, it may be true that "a claim asserted under the Dram Shop Act is distinct from a claim under the Wrongful Death Act." 294 So. 3d at 728. But it does not follow from this proposition that the Dram Shop Act by itself supports a death claim. When the Wiggins Court made this point, it was relying on language from another precedent, Johnson v. Brunswick Riverview Club, Inc., indicating that "[t]he Dram Shop Act provides the exclusive remedy for the unlawful dispensing of alcohol to an adult." 39 So. 3d 132, 139 (Ala. 2009). But there, the Court was simply explaining that common-law negligence could not support a claim for the dispensing of alcohol to adults and that the only path for liability in such a context was the Dram Shop Act. Id. I agree that the Dram Shop Act provides the only available

principles of liability, but I do not agree that this forecloses application of the Wrongful Death Act.

As least one decision of our Court, Webb v. French, seems to provide a compelling reading of the Dram Shop Act. This Court in Webb carefully analyzed the language of the Dram Shop Act, concluding that it is "entirely silent" on actions for death -- just as I explain above. 228 Ala. at 44, 152 So. at 217. But Webb stopped short of explaining how the Dram Shop Act might interact with the Wrongful Death Act as suggested above, seemingly because the defendant in Webb was the estate of the wrongdoer, rather than the wrongdoer personally. See 228 Ala. at 44, 152 So. at 216. And more importantly, Webb seems to have been so disregarded by subsequent cases as to be implicitly (or "sub silentio") overruled. Ex parte Howell Eng'g & Surveying, Inc., 981 So. 2d 413, 423 (Ala. 2006).[15] For these reasons, we are left to apply Wiggins and hold that the Dram Shop Act by itself permits Estell to sue Walmart for Reed's

[15]But see Ex parte Capstone Bldg. Corp., 96 So. 3d 77, 87-89 (Ala. 2012) (discussing when to overrule caselaw that itself ignored settled precedent so that the law returns to the "intrinsically sounder doctrine established in prior cases" (citation modified)).

death -- even if, as discussed, there may be more textually faithful readings of the applicable statutes.

C.

This distinction -- between the statutes as they are read naturally and the statutes as our precedents have read them -- matters. Partly, this distinction matters from a good-government perspective: Ideally, our precedents should align with the text enacted by the Legislature and signed by the Governor. But just as important, this distinction matters in practical terms related to the available forms of damages a plaintiff might recover.

Damages available under a plain reading of the Dram Shop Act and the Wrongful Death Act would be clear and predictable. A personal-injury claim supports both compensatory and punitive damages, while a wrongful-death claim supports only punitive damages. See Deese v. Brown, 414 So. 3d 117, 128 (Ala. 2024). But neither type of claim would allow the personal representative to collect for the personal representative's emotional suffering or mental anguish. This is because the deceased person's personal-injury claim could receive compensation

based only on harm to the deceased person while the wrongful-death claim could support only punitive damages.[16]

The approach permitted by our precedents, by contrast, seems to be unclear. The main opinion describes the Dram Shop Act as "compensat[ing] the injured party and those related to the injured party for the injury or death." __ So. 3d at __ (emphasis added). This would seem to sweep more broadly than the very act the Legislature designed to provide damages for wrongful death. See Barnes v. Oswalt, 579 So. 2d 1319, 1322 (Ala. 1991). In this case, our precedent seeks to compensate Estell directly despite her lack of personal injury. Under the statute, Estell should be allowed to recover only damages based on Reed's personal injury as well as punitive damages.

II.

Regarding Estell's legal capacity to bring the claim based on Reed's death, I ultimately agree with the result reached by the main opinion that she can do so. See ___ So. 3d at ___, Part III.A. At the time of the

[16]Here, Estell recovered damages based only on mental anguish, which seems squarely foreclosed by our precedent. See Johnson v. Brunswick Riverview Club, Inc., 39 So. 3d 132, 139 (Ala. 2009). But Walmart did not raise this argument on appeal and so has waived it.

events in question, the relevant language in the Dram Shop Act was "executor or administrator," § 6-5-71(b), and the relevant language for the Wrongful Death Act was "personal representative," § 6-5-410(a). This Court has previously held that "[a] 'personal representative,' for the purposes of [the Wrongful Death Act], is an executor or administrator." Waters v. Hipp, 600 So. 2d at 982. I would thus hold that the two statutes require the exact same legal capacity -- which has the virtue of being consistent with recent amendments to the Dram Shop Act. See Ala. Acts 2023, Act No. 2023-25 (substituting "personal representative" for "executor or administrator"). For this reason, I depart from the main opinion's suggestion that precedent regarding the meaning of "personal representative" "has no relevance to" the analysis under the Dram Shop Act. __ So. 3d at __.

Despite that difference with the main opinion, I agree that Walmart has not provided sufficient authority or reasoning why a special administrator appointed by an Indiana court to pursue claims like this one would be incapable under Alabama law to do just that.

III.

The final issue concerns whether Walmart should be held liable for selling alcohol to a 20-year-old even though Walmart's employee asked for an ID and the 20-year-old provided a fake Georgia driver's license. On this issue, I am sympathetic to Justice Sellers's concerns about the workability and fairness of the outcome reached by today's decision. But I reluctantly agree with the main opinion's analysis of this issue, see ___ So. 3d at ___, Part III.C, and write separately only to note why precedent requires this result -- and why any frustrations with this decision should hopefully be short-lived.

The Dram Shop Act in force at the time of Walmart's sale attached liability based on "selling, giving, or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages." § 6-5-71(a). This language differs markedly from the language of the Civil Damages Act at issue in McLeod v. Cannon Oil Corp., in which the Court suggested that a seller could "escape[] liability" by requesting and obtaining an ID -- "even if it is later determined that the [ID] is not valid." 603 So. 2d 889, 893 (Ala. 1992). The Civil Damages Act requires that the defendant "had knowledge of or was chargeable with notice or knowledge of" the fact that

the person being provided with alcohol is a minor. Ala. Code 1975, § 6-5-70. But the language of the Dram Shop Act in force at the time of Walmart's conduct requires compliance with regulations that this Court has repeatedly described as imposing "strict liability." See McIsaac v. Monte Carlo Club, Inc., 587 So. 2d 320, 324 (Ala. 1991).[17]

The language of the Dram Shop Act has changed since Walmart sold the alcohol at issue in this case. The new language is expressly predicated on repudiating the strict-liability standard from our precedent. See Ala. Code 1975, § 6-5-71.1. The new language imposes liability on "any person who knowingly sells, furnishes, or serves alcoholic beverages to an individual contrary to the provisions of law, who was visibly intoxicated, when the sale, furnishing, or serving is the proximate cause of" the claimed injury. § 6-5-71(a)(1) (emphasis added). While this Court has not yet had occasion to apply this new language, it would appear to limit the liability of alcohol providers to the narrow set of cases where the person receiving the alcohol is already "visibly

[17]See also McLeod, 603 So. 2d at 892-93; Moreland v. Jitney Jungle, Inc., 621 So. 2d 285, 288 (Ala. 1993) (citing McIsaac); Wiggins, 294 So. 3d at 715-16 (quoting Moreland).

intoxicated" and the provision of alcohol is knowingly "contrary to the provisions of law."

Balancing the interests at issue here -- the public's interest in avoiding alcohol-related deaths and injuries and the sellers' interest in avoiding unduly burdensome requirements -- is both difficult and above our pay grade. But the Legislature has now acted, even if that action does not help Walmart in this specific case. That is how the process should work. It is up to us to faithfully apply the Legislature's acts, whether or not we like the outcome.

SELLERS, Justice (dissenting).

I respectfully dissent. In McLeod v. Cannon Oil Corp., 603 So. 2d 889 (Ala. 1992), the Court discussed the Dram Shop Act, § 6-5-71, Ala. Code 1975, and the Civil Damages Act, § 6-5-70, Ala. Code 1975. The Court acknowledged that both acts were "enacted at about the same time," were aimed at the "'evils'" of excessive alcohol consumption, and are "penal in nature" in that their purpose is to punish those who furnish alcoholic beverages in violation of the law. 603 So. 2d at 892-93. According to McLeod, these companion statutes create strict liability. The Court in McLeod also recognized that a properly licensed seller of alcohol should not be "punish[ed]" if he or she takes reasonable steps to comply with the law. Id. at 893. Specifically, at least under the Civil Damages Act, a seller of alcohol "escapes liability" if he or she relies on "a driver's license that appears to be valid and that indicates that the holder is of legal age," even if that identification later turns out to be fake. Id. Notably, the Court in McLeod first held that, notwithstanding testimony suggesting that the purchaser of the alcohol in that case "looked old enough to purchase beer," the seller of the alcohol was, as a matter of law, "chargeable with notice or knowledge of [the purchaser's]

minority and had a duty … to ascertain that the purchaser was not a minor." Id. at 891. The Court suggested that the seller would have been insulated from liability had it complied with an administrative regulation providing that sellers of alcohol may accept only "'[a] valid driver's license of any state.'" Id. at 892 (emphasis added). This suggests that the seller, charged with notice of the buyer's minority status, could nevertheless escape liability by relying on identification that "appears to be valid" regardless of whether it was in fact valid. The same reasoning should apply to the Dram Shop Act.

Without a reasonable, objective standard applicable in deciding whether the Dram Shop Act has been violated, the possibility exists of interpreting the Act so strictly that a person is punished based on a crime committed by a third party, namely, the underage purchaser of alcohol, even when that crime is entirely undetectable. Thus, an underage person with false identification could violate the law by illegally purchasing alcohol and could thereby render an unknowing seller liable when there simply was no opportunity to discover the unlawfulness at the time of the sale. Interpreting the penal nature of the Dram Shop Act too strictly results in the punishment of any seller who would have no reason to know

that the identification was inaccurate, illegally produced, or misrepresented the identification of the holder.

Here, Walmart took appropriate steps to prevent the sale of alcohol to minors. Walmart had a system in place that alerts a cashier when alcohol is being purchased, cashiers were trained in how to verify identifications, and the cashier involved in the present case checked the identification in question. Moreover, a 20-year-old purchaser, like the one involved here, could easily appear to be making a legal purchase so that nothing appears out of the ordinary to alert the cashier to make a further inquiry. Nothing about Walmart's procedure was contrary to law.

As Walmart puts it in its brief to this Court, the fake driver's license used to purchase the alcohol involved here "was so good" that the only "shortcomings" the plaintiff's expert witness could identify "were issues with the centering of a signature, whether a line was 'crisp' or not, and whether the color was 'vibrant' versus 'full.'" Walmart's brief at 54. Thus, Walmart was punished for not discovering something that even an expert might not notice at first glance. In short, Walmart acted appropriately under all the facts and circumstances of this case. The only

bad actor was the person using the fraudulent identification to make the purchase.

This Court reviews a ruling on a motion for a judgment as a matter of law ("JML") using the same standard as the trial court. Ex parte Helms, 873 So. 2d 1139, 1143 (Ala. 2003).

> "The first prerequisite for JML in favor of a movant who asserts a claim or an affirmative defense is that the claim or affirmative defense be valid in legal theory, if its validity be challenged. The second prerequisite for JML in favor of such a movant, who necessarily bears the burden of proof, is that each contested element of the claim or affirmative defense be supported by substantial evidence. The third prerequisite for JML in favor of such a movant is that the record be devoid of substantial evidence rebutting the movant's evidence on any essential element of the claim or affirmative defense. Substantial rebutting evidence would create an issue of fact to be tried by the finder of fact and therefore would preclude JML."

Id. (citations omitted). Assuming Walmart had the burden of proof on this issue, its motion for a JML should have been granted. It is true that Walmart sold alcohol to a minor who presented identification that was not strictly "valid" in the sense that it was a properly issued government driver's license. But, considering the reasoning of McLeod, supra, which I would apply here, Walmart presented substantial evidence showing that its process to prevent the sale of alcohol to minors complied with

minimum standards and that the driver's license upon which Walmart's representative relied appeared valid. I do not view the testimony of the plaintiff's expert, who identified only subtle indications that the identification was not legitimate, as substantial evidence that would create a jury question. Accordingly, I would reverse the trial court's judgment on the verdict in favor of the plaintiff and remand the case for the entry of a JML in favor of Walmart.