

DA 25-0711

IN THE SUPREME COURT OF THE STATE OF MONTANA

2026 MT 176

MARK GRAHAM, as Personal
Representative of the ESTATE OF
JANICE GRAHAM,

Plaintiff and Appellant,

v.

VICTORIA HOWELL,

Defendant and Appellee.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DV 24-400
Honorable Howard F. Recht, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Geoffrey C. Angel, Angel Law Firm, Bozeman, Montana

For Appellee:

Murry Warhank, Jackson, Murdo & Grant, P.C., Helena, Montana

Submitted on Briefs: May 13, 2026

Decided: August 4, 2026

Filed:


Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Janice Graham was killed when Michael Howell’s vehicle crossed the centerline and collided with the Grahams’ vehicle. The Estate of Janice Graham sued Michael’s wife, Victoria Howell, in Ravalli County. The Estate claimed that Victoria was negligent when she entrusted the couple’s jointly owned vehicle to Michael with the knowledge that he was under the influence of marijuana and when she texted him, aware that he was driving. The Estate appeals the Twenty-First District Court’s grant of summary judgment to Victoria, contending that it raised genuine issues of material fact that she caused or contributed to the fatal crash. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

¶2 On April 2, 2023, Mark and Janice Graham were travelling northbound and Michael Howell was travelling southbound on U.S. Highway 93, when Michael lost control of his vehicle and struck the Grahams’ vehicle, killing Janice and injuring Mark. Witnesses reported that Highway 93 was icy and slushy at the time of the crash. Earlier that morning, Michael was at his home in Stevensville, Montana, with his wife Victoria as he prepared to drive to Boise, Idaho, for a conference. Michael worked on writing an article for a local newspaper, did some chores, and ate breakfast with Victoria. Victoria checked the weather, and they discussed the road conditions.

¹ We draw the facts from the parties’ summary judgment submissions, including a certificate of title for the Howells’ vehicle, pertinent pages of testimony from a separate criminal proceeding against Michael, Michael Howell’s first discovery response in a separate civil proceeding brought by Janice’s Estate against him, a true and correct copy of Victoria’s text messages to Michael, and a true and correct copy of Verizon Wireless’s bill for the date in question.

¶3 After Michael left, Victoria texted him at 9:35 a.m. At 9:38 a.m., while just south of Hamilton, Montana, Michael answered her text, to which Victoria replied with two more texts at 9:41 a.m.² A witness to the accident called 911 at 9:43 a.m. Michael was seriously injured and transported to a nearby medical facility. Michael’s blood tested for marijuana (tetrahydrocannabinol) in an amount roughly three times the legal limit to operate a vehicle. Michael was found guilty of vehicular homicide while under the influence and negligent vehicular assault in a separate criminal proceeding.³

¶4 In November 2024, Janice’s Estate sued Victoria Howell for negligence, alleging that Victoria knew that Michael was a chronic marijuana user and knew that he had used before leaving for Boise and planned to use while driving. Victoria moved for summary judgment. The District Court concluded that under the Estate’s theories of negligence, Victoria did not owe a duty of care to Janice Graham. The District Court granted summary judgment in Victoria’s favor. The Estate appeals.

STANDARD OF REVIEW

¶5 We review a summary judgment order de novo, applying the standard set forth in M. R. Civ. P. 56(c)(3). *Kostelecky v. Peas in a Pod LLC*, 2022 MT 195, ¶ 17, 410 Mont. 239, 518 P.3d 840. A district court may grant summary judgment only when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of

² Michael claims that he pulled off the road to review and respond to Victoria’s text message, which the Estate disputes.

³ Michael appealed his conviction, and it is pending briefing before this Court. Notice of Appeal, *State v. Howell*, DA 25-0664 (Mont. filed Sept. 18, 2025).

law. M. R. Civ. P. 56(c)(3). A genuine issue of material fact exists when the summary judgment record “manifests a non-speculative record fact that is materially inconsistent with proof of an essential element of an asserted claim or defense at issue.” *Kostelecky*, ¶ 17 (citations omitted). We view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in favor of the party opposing summary judgment. *Prindel v. Ravalli Cnty.*, 2006 MT 62, ¶ 19, 331 Mont. 338, 133 P.3d 165 (citation omitted). “Summary judgment cannot be defeated by unsupported speculation.” *Knucklehead Land Co. v. Accutitle, Inc.*, 2007 MT 301, ¶ 26, 340 Mont. 62, 172 P.3d 116.

DISCUSSION

¶6 The essential elements of a negligence claim are (1) a legal duty to the claimant; (2) breach of that duty; (3) causation; and (4) damages. *Poole ex rel. Meyer v. Poole*, 2000 MT 117, ¶ 19, 299 Mont. 435, 1 P.3d 936. Whether the defendant owed the claimant a duty of care and the scope of that duty are questions of law. *Poole*, ¶ 19.

¶7 The Estate contends that Victoria owed a duty of care (1) to not entrust the vehicle to Michael, aware that he was under the influence of marijuana, and (2) to not text Michael when she knew that he was operating a vehicle. Victoria counters that she did not have superior control over the vehicle because Michael was a joint owner. She asserts that she could not “entrust” the vehicle to Michael because he had a legal right to use it, and she consequently had no right to constrain his use. On the second contention, Victoria argues that she did not have a duty to refrain from texting Michael while he was driving. Instead,

the duty fell to Michael to drive safely and she had no reason to know that he would text while driving.

Negligent Entrustment

¶8 This Court recognizes two theories of negligent entrustment. *McGinnis v. Hand*, 1999 MT 9, ¶ 10, 293 Mont. 72, 972 P.2d 1126. One theory provides that “the owner or one in control of a thing and responsible for its use who is negligent in entrusting it to another can be held liable for such negligent entrustment.” *McGinnis*, ¶ 10 (citing *Williams v. State Med. Oxygen & Supply, Inc.*, 265 Mont. 111, 114-15, 874 P.2d 1225, 1227 (1994); *Bahm v. Dormanen*, 168 Mont. 408, 411, 543 P.2d 379, 381 (1975); Restatement (Second) of Torts § 308 (1965)). To be “in control of a thing” means that a “third person is entitled to possess or use the thing or engage in the activity *only by consent of the actor . . .*” *Bahm*, 168 Mont. at 412, 543 P.2d at 382 (emphasis added) (citing Restatement (Second) of Torts § 308 cmt. a). The second theory provides that a “person who supplies a chattel to another whom the supplier knows or has reason to know is likely to use it in a manner involving unreasonable risk of physical harm is subject to liability for the resulting physical harm.” *McGinnis*, ¶ 10 (citing *Williams*, 265 Mont. at 114, 874 P.2d at 1227; Restatement (Second) of Torts § 390 (1965)). The second theory is a special application of the first. *Bahm*, 168 Mont. at 412, 543 P.2d at 382; Restatement (Second) of Torts § 390 cmt. b. Consequently, under both theories, “a basis of negligent entrustment [must be] founded on control which is greater than physical power to prevent. A superior if not exclusive legal right to the object is a precondition to the imposition of the legal duty.” *Bahm*, 168 Mont. at 412, 543 P.2d at 382.

¶9 The issue arose in *Bahm v. Dormanen*, where Dormanen and Nordahl were drinking alcohol when they borrowed a friend’s truck to go hunting. *Bahm*, 168 Mont. at 410, 543 P.2d at 380-81. Dormanen and Nordahl drove to Dormanen’s house in separate vehicles with Nordahl in the borrowed truck. *Bahm*, 168 Mont. at 410, 543 P.2d at 380-81. En route, Nordahl got into a head-on collision, killing himself and the other driver. *Bahm*, 168 Mont. at 410, 543 P.2d at 380-81. The claimant argued that Dormanen had the physical power to prevent Nordahl from driving the truck, and that power rendered his actions negligent entrustment. *Bahm*, 168 Mont. at 411, 543 P.2d at 381. We held those arguments insufficient to overcome the fact that Dormanen and Nordahl borrowed the truck together and neither was given a superior right over the vehicle. *Bahm*, 168 Mont. at 413, 543 P.2d at 382.

¶10 It is undisputed that Michael and Victoria jointly owned the vehicle that he was driving at the time of the accident. The couple’s control over the vehicle, like their ownership, was shared. Michael’s use thus was not contingent on Victoria’s consent but originated from his legal right as the vehicle’s co-owner. Consequently, Victoria could not “supply” Michael with the vehicle, and likewise, she could not prohibit his use because she lacked exclusive or superior control. Like in *Bahm*, the Estate’s negligent entrustment theory cannot succeed because Victoria did not have a superior legal right over Michael’s right to the vehicle. Because this precondition has not been met, the District Court correctly declined to impose a legal duty on Victoria under the theory of negligent entrustment.

Duty to Refrain from Text Messaging a Driver

¶11 “[W]ithout a duty, and breach of that duty, no negligence can exist.” *Fisher v. Swift Transp. Co.*, 2008 MT 105, ¶ 13, 342 Mont. 335, 181 P.3d 601 (citation omitted). Whether a duty exists depends primarily on the foreseeability of the risk, as well as policy considerations for and against the imposition of such a duty. *Henricksen v. State*, 2004 MT 20, ¶ 21, 319 Mont. 307, 84 P.3d 38; *Poole*, ¶ 19. The fundamental question is “whether the plaintiff’s interests are entitled to legal protection against the defendant’s conduct” because “the defendant could have reasonably foreseen that his or her conduct could have resulted in an injury to the plaintiff.” *Bassett v. Lamantia*, 2018 MT 119, ¶ 25, 391 Mont. 309, 417 P.3d 299 (citations omitted); *see also Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99, 100 (N.Y. 1928) (“The risk reasonably to be perceived defines the duty to be obeyed . . .”).

¶12 When the alleged negligence involves the actions of a third person, the “act is negligent if the actor intends it to affect, or realizes or should realize that it is likely to affect, the conduct of another . . . in such a manner as to create an unreasonable risk of harm to the other.” Restatement (Second) of Torts § 303. Even if the actor does not intend to cause the particular conduct, “the actor’s negligence depends upon the extent to which he is required to realize and take into account the tendency of mankind or of the particular person to act improperly . . . or upon his knowledge of any particular likelihood that the particular person will so act.” Restatement (Second) of Torts § 303 cmt. d. Here, because the Estate alleges that Victoria’s act of sending text messages independently created a risk,

we assess the evidence of her conduct under ordinary negligence principles to determine whether she owed a duty to the Grahams.

¶13 Victoria described Michael as a careful driver. She did not know him to use his phone while driving. She did not see him imbibe marijuana before he left or smell marijuana on him. At Michael's criminal proceeding, Victoria testified adamantly that she did not believe he was under the influence of drugs the morning of April 2.⁴ The day and the morning before Michael left for Boise were uneventful, involving light chores, meals together, and discussing the weather. The texts Victoria sent between 9:35 a.m. and 9:41 a.m. discussed an article Michael was writing for a local newspaper where she worked. Michael testified at his criminal trial that he pulled over to answer that first text, which was consistent with Victoria's understanding that he did not use his phone while driving. Although, as the Estate points out, the timing of the text messages and the collision may call Michael's account into question, it does not show that Victoria knew he was viewing or responding to her messages while driving.

¶14 The Estate contends that Victoria actively participated in Michael's alleged negligent driving because it was foreseeable that the text would distract him while he was driving. Though Victoria knew Michael was driving, she attested that she was unaware whether he was under the influence of marijuana and that she thought he was sober. The

⁴ The Estate filed a supplemental appendix with its reply brief on appeal that contains substantial additional excerpts from Michael's criminal proceedings to show more evidence of Michael's habitual marijuana use and the extent to which Victoria was or was not aware of it. Because those excerpts were not part of the record before the District Court at the summary judgment stage, we do not consider the additional information. *See* M. R. App. P. 8(1).

Estate speculates that Victoria should have known that Michael was under the influence of marijuana because the level of marijuana in his blood was roughly three times the legal limit to operate a vehicle. It did not, however, submit evidence that that amount would render Michael observably intoxicated. The Estate therefore failed to provide “a non-speculative record fact” to rebut Victoria’s statement that she did not believe Michael had used marijuana before he left their home and believed him to be sober. *Kostelecky*, ¶ 17. Victoria also considered Michael to be a safe driver and had not previously observed Michael using his phone while driving. The Estate provided no evidence that she encouraged him to text her back while he was driving and does not dispute that Victoria’s and Michael’s testimonies that the text communications were noninflammatory and conveyed no sense of urgency.

¶15 The Estate insists Victoria’s knowledge that Michael was driving when she sent the text was sufficient to create a duty to refrain from texting. But its theory sweeps too broadly and imposes liability for otherwise ordinary and innocent remote communication. This is analogous to holding a passenger liable for engaging in conversation with a driver, who is, to their knowledge, a competent and safe driver. There is no evidence in the summary judgment record that Victoria knew or had reason to know that sending a text to Michael, whom she had known to be a cautious driver, would distract him and cause him to drive negligently. Absent record evidence to support a claim that Victoria should have realized that her conduct was “likely to affect” Michael’s conduct “in such a manner as to create an unreasonable risk of harm” to him or others, Victoria cannot be held culpable for merely sending Michael a text message. Restatement (Second) of Torts § 303. On this summary

judgment record, it was not reasonably foreseeable that Victoria's text to Michael would cause him to drive negligently.

¶16 Beyond foreseeability, whether a duty exists also entails policy considerations for and against imposing a duty, including:

(1) the moral blame attached to the defendant's conduct; (2) the desire to prevent future harm; (3) the extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach; and (4) the availability, cost and prevalence of insurance for the involved.

Henricksen, ¶ 21 (citation omitted).

¶17 As discussed, Victoria's texts are too attenuated from Michael's alleged negligent conduct to place moral blame on her conduct. And though this Court has an interest in preventing future harm, we also must consider consequences to the broader community when imposing a duty and the resulting liability for breach of that duty. The driver bears independent responsibility to obey the laws and maintain safe control of his or her vehicle. Consistent with Restatement (Second) of Torts § 303, there may be circumstances in which a person had reason to know that their communication is likely to cause the driver to be distracted. *See Kubert v. Best*, 75 A.3d 1214, 1225-29 (N.J. Super. Ct. App. Div. 2013) (concluding only "when the sender has actual knowledge or special reason to know from prior texting experience or otherwise, that the recipient will view the text while driving" does a duty of care arise for the sender to not distract the driver and thus refrain from texting (internal quotations omitted; internal citation omitted)); *Buchanan ex rel. Buchanan v. Vowell*, 926 N.E.2d 515, 522 (Ind. Ct. App. 2010) (noting that a mother may be subject to vicarious liability when, among other things, she engaged in concerted activity by calling

and distracting her intoxicated daughter as she followed her home from the bar where the two had been drinking). But unless the sender of a text message knows or has reason to know that sending a text to the recipient is likely to distract them while driving, simply knowing a person is driving does not create a duty to refrain from remotely communicating with that person. *Hall v. Naguit*, No. 19STCV46417, 2022 Cal. Super. LEXIS 24634 (Cal. Super. Ct. 2022) (determining that even though the defendant knew the recipient was driving, the sender did not compel the driver to drive recklessly under the influence of drugs and alcohol and to respond to the sender's texts while driving); *see also Kubert*, 75 A.3d at 1225-29. The Estate offered only speculation that any such circumstance existed here and failed to raise a genuine issue of material fact.

¶18 The Estate produced no evidence that Victoria knew or had special reason to know that her messages were likely to distract Michael while he was driving. The District Court did not err when it held that Victoria may not be held negligent for Michael's independent conduct that was allegedly inconsistent with her established knowledge at the time of the collision.

CONCLUSION

¶19 The District Court correctly determined that there was no genuine dispute of material fact that Victoria did not negligently entrust Michael with their jointly owned vehicle and that the Estate had not produced evidence to sustain a claim of negligence based on Victoria's text messages to Michael. We affirm the District Court's grant of summary judgment in favor of Victoria.

/S/ BETH BAKER

We Concur:

/S/ CORY J. SWANSON
/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ KATHERINE M. BIDEGARAY

Justice James Jeremiah Shea, concurring.

¶20 I concur with the Majority’s resolution of both issues as presented by the Estate on appeal: (1) whether Victoria was negligent for entrusting the vehicle to Michael, who she was aware was under the influence of marijuana; or (2) whether Victoria was negligent by texting Michael when he was operating a vehicle. Opinion, ¶ 7.

¶21 I write separately only to note that this appeal is limited to the issues as presented to us by the appellant. I can certainly envision circumstances—not presented in this appeal and independent of a negligent entrustment theory—that might at least present a question for the jury as to whether or not Victoria’s conduct breached a duty that might impose liability upon her.

¶22 Montana law recognizes duties when the risk posed is foreseeable and public policy considerations weigh in favor of imposing a duty. Opinion, ¶ 11 (citing *Henricksen v. State*, 2004 MT 20, ¶ 21, 319 Mont. 307, 84 P.3d 38; *Poole ex rel. Meyer v. Poole*, 2000 MT 117, ¶ 19, 299 Mont. 435, 1 P.3d 936). “The fundamental question is ‘whether the plaintiff’s interests are entitled to legal protection against the defendant’s conduct’ because ‘the defendant could have reasonably foreseen that his or her conduct could have resulted in an injury to the plaintiff.’” Opinion, ¶ 11 (quoting *Bassett v. Lamantia*, 2018 MT 119, ¶ 25, 391 Mont. 309, 417 P.3d 299).

¶23 This Court and the Legislature have recognized that, in certain circumstances, individuals can be held liable for an intoxicated person’s conduct, both under the common law and pursuant to statute. *See, e.g.*, § 27-1-710(4), MCA (creating civil liability for furnishing an individual with alcoholic beverages under specific factual circumstances); *Babcock v. Casey’s Mgmt., LLC*, 2021 MT 215, 405 Mont. 237, 494 P.3d 322 (discussing the history and application of Montana’s Dram Shop Act). Although the Dram Shop Act is not directly applicable to this case, it contemplates situations that could give rise to a third party’s liability for the actions of an intoxicated individual. The Estate alleged that Victoria knew Michael was a chronic marijuana user, that he had been using before leaving their house that morning, and that he planned to use marijuana while driving. Opinion, ¶ 4. What is not known—nor even pled for that matter—is whether Victoria purchased or provided the marijuana to Michael or to what degree, if at all, she facilitated his chronic use or contributed to his level of intoxication the morning of the incident. Rather, the theories of liability as presented to us on appeal by the Estate are: (1) whether “the district court erred when it held Victoria owed no duty to avoid sending text messages to her intoxicated husband who was behind the wheel for interstate travel”; and (2) whether “the district court overextended Montana’s negligent entrustment doctrine,” specifically as it pertains to Michael’s use of the car they jointly owned. As to both of those specific theories of liability I concur with the Court that the District Court did not err in granting summary judgment in favor of Victoria.

/S/ JAMES JEREMIAH SHEA