MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CINDY SEHORN,	)	
AS REPRESENTATIVE OF	)	
THE WRONGFUL DEATH CLASS	)	**WD88462**
OF SARA BETH MALONEY	)	
PURSUANT TO SEC. 537.080 R.S.MO.,	)	**Opinion Filed:**
	)	
Appellant,	)	**May 26, 2026**
	)	
v.	)	
	)	
RICHARD L. MITCHELL,	)	
	)	
Respondent.	)	

Appeal from the Circuit Court of Cass County, Missouri
Honorable Derek Spencer, Judge

Before Division Three: Thomas N. Chapman, Presiding Judge,
Karen King Mitchell, Judge, and Janet Sutton, Judge

Cindy Sehorn (Sehorn) sued Levi Mitchell and Richard Mitchell[1] in the Circuit Court of Cass County (trial court) claiming that they wrongfully caused the death of her daughter, Sara Beth Maloney (Maloney). The petition alleged that Levi wrongfully caused Maloney's death under a battery theory, and that Richard wrongfully caused Maloney's death under a negligent entrustment of firearms and ammunition theory. The trial court granted summary judgment in

[1] Because Levi Mitchell and Richard Mitchell share a surname, we refer to them by their first names for purposes of clarity. No familiarity or disrespect is intended.

Richard's favor on the negligent entrustment claim. After a bench trial, the trial court entered an amended judgment against Levi finding him liable for Maloney's wrongful death and awarding damages, court costs, and interest. Sehorn appeals the trial court's grant of summary judgment in Richard's favor. We affirm.

Factual and Procedural Background

At the time of Maloney's death, Richard owned and lived in a house in Pleasant Hill, Missouri, while his son Levi lived in a different house that Richard owned approximately 150 to 200 yards away. Richard knew that Levi had been convicted of a felony and that Levi had served five years in prison between 2007 and 2012. In January 2021, Richard received an order from Moriarti Arms of two "80/20" rifle kits, including a .308-caliber rifle and a 6.5-millimeter Creedmoor rifle. The rifle kits were delivered to Richard's house in Pleasant Hill. Richard directed Levi to pick up the kits and bring them to Levi's previous rental house in Greenwood, Missouri, where Richard was also staying at the time. The rifles were nonfunctioning firearms when they arrived as they were unassembled and the kits were missing several parts. If assembled, the rifles would have been "larger caliber." A few weeks after Levi delivered the kits to Richard in Greenwood, Missouri, Richard encountered health issues, was admitted to the hospital, and the kits got "lost in the shuffle." To his knowledge, Richard did not believe the kits were ever completed into functioning firearms. All functioning firearms owned by Richard on January 7, 2022, were stored in a locked gun safe inside Richard's home in Pleasant Hill, and Richard was the only person that knew the combination to the gun safe. Levi did not have access to Richard's gun safe.

On or about January 7, 2022, Maloney was killed by a gunshot wound to the head in the Pleasant Hill house where Levi lived. On February 23, 2024, Levi pleaded guilty to the class B

felony of voluntary manslaughter, admitting that he "knowingly caused the death of [Maloney], by shooting her." The firearm Levi used to kill Maloney was never identified or located. A single spent bullet fragment was recovered at the scene near Maloney's body and it was determined to be unsuitable for comparison. Investigating officers noted Maloney's entry wound appeared to be from a "smaller caliber" firearm.

In March 2022, Maloney's son, K.M., as representative of Maloney's wrongful death class, filed a wrongful death suit against Levi and Richard. In count one, the petition alleged that Levi wrongfully caused Maloney's death under a battery theory, specifically, that Levi intentionally shot her. In count two, the petition alleged a wrongful death claim against Richard under a negligent entrustment theory. The petition alleged that Richard "entrusted firearms and ammunition" to Levi, knowing or having reason to know, that Levi was incompetent to be entrusted with or possess a firearm, and that the negligent entrustment concurred with Levi's conduct to cause Maloney's death. In May 2022, Sehorn filed a motion to substitute herself as plaintiff and representative of Maloney's wrongful death class, which the trial court granted.

Richard moved for summary judgment on the negligent entrustment claim with his statement of uncontroverted material facts and accompanying suggestions in support. Richard argued that Sehorn could not establish the necessary elements of her negligent entrustment claim and that he was entitled to summary judgment because there was no genuine issue of fact that any of Richard's acts or omissions caused or contributed to cause Maloney's death. Specifically, Richard argued Sehorn could not establish what specific weapon Levi used in connection with Maloney's shooting, nor could Sehorn establish that the weapon used in connection with her death was ever owned, possessed, provided or entrusted by Richard to Levi.

Sehorn filed suggestions in opposition to Richard's summary judgment motion, a response to Richard's statement of uncontroverted material facts, and she also filed her own statement of additional uncontroverted material facts. She argued that the record established that Richard supplied guns to Levi because she put forth facts showing: (1) that Richard ordered gun kits, he directed Levi to pick up the kits, and Richard left the kits in Levi's custody when Richard fell ill and was hospitalized; (2) that the record established Richard and Levi were investigated for manufacturing firearms; and (3) that Levi kept guns in the house he lived in and others saw him in possession of firearms. Sehorn claimed that Richard's act of providing "any and all" firearms to Levi was sufficient to meet the transfer element of the negligent entrustment claim, and that she was not required to prove that Richard provided the exact firearm to Levi that Levi used to kill Maloney. Richard then filed a reply in support of his summary judgment motion and responded to Sehorn's statement of additional uncontroverted material facts.

On July 31, 2025, the trial court entered a partial judgment granting Richard's motion for summary judgment, but did not state the reason for its decision. The case proceeded to a bench trial against the remaining defendant, Levi, and, on November 10, 2025, the trial court entered an amended judgment finding Levi liable for Maloney's wrongful death and awarding damages, court costs, and interest.

Sehorn appeals the trial court's grant of summary judgment in favor of Richard on her negligent entrustment claim.

Standard of Review and Summary Judgment Standard

Our review of the trial court's decision to grant summary judgment is *de novo*. *Amoroso v. Truman State Univ.*, 683 S.W.3d 298, 302 (Mo. App. W.D. 2024). "When the trial court's order does not state the reasons for its grant of summary judgment, we presume that the trial

court based its decision on the grounds raised in the movant's motion for summary judgment." *Id.* (quoting *Seymour v. Switzer Tenant LLC*, 667 S.W.3d 619, 625 (Mo. App. W.D. 2023)). We can affirm the grant of summary judgment on any theory that is supported by the record. *Id.* at 303.

Summary judgment is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . ." Rule 74.04(c)(6).[2] When we review the entry of summary judgment, we view the record in the light most favorable to the party against whom the judgment was entered and we give the non-movant all reasonable inferences from the record. *Green v. Fotoohighiam*, 606 S.W.3d 113, 116 (Mo. banc 2020); *Amoroso*, 683 S.W.3d at 301 n.2.

Defending parties, like Richard, are entitled to summary judgment if they demonstrate one of the following:

> (1) facts negating any one of the claimant's elements; (2) that the party opposing the motion has presented insufficient evidence to allow the finding of the existence of any one of the claimant's elements; or (3) that there is no genuine dispute as to the existence of each of the facts necessary to support a properly pleaded affirmative defense.

Amoroso, 683 S.W.3d at 303 (quoting *Malin v. Mo. Ass'n of Cmty. Task Forces*, 669 S.W.3d 315, 320 (Mo. App. W.D. 2023)). "Once the movant has established [a prima facie] showing, the burden shifts to the non-movant, who must demonstrate 'that one or more of the material facts relied upon by the [moving] party is genuinely disputed.'" *Id.* (quoting *Vescovo v. Kingsland*, 628 S.W.3d 645, 653 (Mo. App. W.D. 2020)).

> Our review of summary judgment is limited to the undisputed material facts established in the process set forth in Rule 74.04(c); we do not review the entire trial court record. We look exclusively to the step-by-step procedure mandated by Rule 74.04 to determine whether there is a genuine issue of material

[2] Rule references are to the Missouri Supreme Court Rules (2025).

> fact. Even if uncontroverted, conclusory statements and legal conclusions are not "facts" for purposes of Rule 74.04.

Id. (internal citations and quotation marks omitted).

To defeat summary judgment, a non-movant "may not rest upon the mere allegations or denials of the party's pleading" and instead "must show—by affidavit, depositions, answers to interrogatories, or admissions on file—that one or more of the material facts shown by the movant to be above any genuine dispute is, in fact, genuinely disputed." *Brown v. Morgan Cnty.*, 212 S.W.3d 200, 202 (Mo. App. W.D. 2007) (citation omitted). "The non[-]movant demonstrates a genuine issue of material fact by denying the allegations and citing specific references to the discovery, exhibits, or affidavits showing a genuine issue for trial." *McIlvoy v. Sharp*, 485 S.W.3d 367, 374 (Mo. App. W.D. 2016) (citation omitted); *Brehm v. Bacon Twp.*, 426 S.W.3d 1, 6 (Mo. banc 2014); Rule 74.04(c)(2).

Analysis

In her sole point on appeal, Sehorn argues that the trial court erred in granting summary judgment on her negligent entrustment claim because there are genuine issues of material fact as to whether Richard entrusted a dangerous chattel to Levi, an incompetent person, which caused Maloney's death. Specifically, Sehorn argues that Richard negligently entrusted "firearms" to Levi, that Levi was a convicted felon prohibited from possessing firearms by statute, and that Levi subsequently used a firearm to cause Maloney's death.

In a negligence action based on a wrongful death theory, the plaintiff must adequately plead and establish the following general elements: "(1) the defendant owed [Maloney] a duty of care; (2) the defendant breached that duty; (3) the breach was the cause in fact and proximate cause of [Maloney's] death; and (4) as a result of the breach, the plaintiff suffered damages."

Ameer v. Lyft, Inc., 711 S.W.3d 534, 548 (Mo. App. E.D. 2025) (quoting *Scales v. Whitaker*, 615 S.W.3d 425, 429 (Mo. App. E.D. 2020)).

"Negligent entrustment is a variant of the common law tort of negligence." *Hays v. Royer*, 384 S.W.3d 330, 333 (Mo. App. W.D. 2012). "[N]egligent entrustment occurs when the defendant supplies a chattel to another with actual or constructive knowledge that, because of youth, inexperience or otherwise, the recipient will likely use the chattel in a manner that will result in an unreasonable risk of physical harm." *Delana v. CED Sales, Inc*., 486 S.W.3d 316, 325 (Mo. banc 2016) (internal quotation marks omitted). Under a negligent entrustment theory, a plaintiff must prove:

> (1) the entrustee was incompetent by reason of age, inexperience, habitual recklessness or otherwise; (2) the entrustor knew or had reason to know of the entrustee's incompetence; (3) there was entrustment of the chattel; and (4) the negligence of the entrustor concurred with the conduct of the entrustee to cause the plaintiff's injuries.

Lockhart v. Caryle, 585 S.W.3d 310, 313 (Mo. App. W.D. 2019) (quoting *Hays*, 384 S.W.3d at 333). *See also Delana*, 486 S.W.3d at 324-26; *Evans v. Allen Auto Rental & Truck Leasing Inc.*, 555 S.W.2d 325, 326 (Mo. banc 1977). In Missouri, the negligent entrustment doctrine is modeled after two sections of the Restatement (Second) of Torts: sections 308 and 390. *Lockhart*, 585 S.W.3d at 313. Section 308 states:

> It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

RESTATEMENT (SECOND) OF TORTS § 308 (1965). Section 390 is a "special application" of section 308. RESTATEMENT (SECOND) OF TORTS § 390 cmt. b (1965). Section 390 states:

> One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier

> should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

RESTATEMENT (SECOND) OF TORTS § 390 (1965).

To establish his right to summary judgment, Richard was required to negate at least one of the necessary elements of Sehorn's negligent entrustment claim. *See Matysyuk v. Pantyukhin*, 595 S.W.3d 543, 549 (Mo. App. W.D. 2020) (citing *Hallquist v. Smith*, 189 S.W.3d 173, 176 (Mo. App. E.D. 2006)). Richard's summary judgment motion contended that Sehorn could not prove the third and fourth elements: that Richard entrusted a specific firearm to Levi, and that Richard's purported negligence concurred with Levi's conduct to cause Maloney's death, specifically that Richard transferred the firearm to Levi that Levi used to shoot Maloney.

Sehorn claims that Richard's purported entrustment of *any and all* firearms to Levi satisfies the third element of her negligent entrustment claim. She asserts that Missouri law does not require proof of the entrustment of a *particular* chattel to the incompetent party. Sehorn's argument fails for several reasons. A negligent entrustment claim requires proof that an individual provided an item over which they have superior control, to another, with knowledge that such person was incompetent to possess such item, and that the item was then used to cause another's injuries. *See Delana*, 486 S.W.3d at 324-26; *Lockhart*, 585 S.W.3d at 313-14. Thus, it is self-evident that proof of an act of entrustment includes establishing specifically *what* the subject item is, and proof that the purported entrustor had superior control over such item. The uncontroverted material facts establish that Sehorn has no proof what type of gun Levi used to kill Maloney nor where the gun came from. She also admitted that she is unaware what caliber bullet killed Maloney. Nothing in the summary judgment record shows that Richard "supplied" *any* gun or ammunition—much less the *specific* gun or ammunition—that Levi used to kill Maloney.

Sehorn claims that there is a genuine issue of material fact as to whether Richard negligently entrusted firearms to Levi because, as evidenced by deposition testimony that she put forth in her own statement of material facts, people observed Levi with firearms on various occasions at the house he was staying at and that a law enforcement search of the house revealed shotgun shells, a small pistol, a pistol carrying case, and a gun stock for an AR style rifle. These facts, however, fail to show a genuine factual issue on the negligent entrustment claim because they do not establish that Richard had any knowledge of these facts or that he had supplied any of these items or firearms to Levi. The uncontroverted material facts establish no evidence that Richard knew or was aware that Levi possessed weapons at the house, how Levi got them, that Richard had ownership or superior control over such items, or, in fact, *any* connection between these items and Maloney's death. Whether individuals saw Levi with firearms at various points in time at the house where he shot Maloney does not present a genuine issue of material fact on Sehorn's negligent entrustment claim against Richard. Moreover, the uncontroverted facts conclusively established that the only functioning firearms Richard owned were secured in a gun safe in his home, where Levi did not live, and which Levi had no access to.

Sehorn also argued that proof of Richard's negligence, specifically, that he entrusted firearms to Levi that concurred with Maloney's death was also established by the "facts" she put forth that police detained Richard and Levi upon suspicion of manufacturing firearms together and were found to be in possession of gun parts. In support of this fact, Sehorn cited deposition testimony from two individuals purporting to establish its truth. The problem, however, is that the deponents' testimony on the issue was based on inadmissible hearsay. "Hearsay evidence is inadmissible at trial, and only limited exceptions or exclusions to this prohibition exist. Therefore, because only evidence that is admissible at trial can be used to support or defend

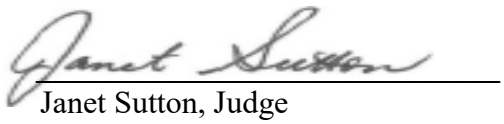
against summary judgment, hearsay evidence generally cannot be considered in ruling on summary judgment." *M.W. by & though K.W. v. Six Flags St. Louis, LLC*, 605 S.W.3d 400, 415 (Mo. App. E.D. 2020) (internal citation omitted); *Cooper v. Albacore Holdings*, *Inc*., 204 S.W.3d 238, 245-46 (Mo. App. E.D. 2006). "Only evidence that is admissible at trial can be used to sustain *or avoid* summary judgment." *Cooper*, 204 S.W.3d at 246 (emphasis added). Sehorn cannot rely on these hearsay statements to show a disputed issue of material fact precluding summary judgment. *See M.W.*, 605 S.W.3d at 416. Even if this "fact"—that police detained Richard and Levi upon suspicion of manufacturing firearms—could be viewed as in dispute, we would nonetheless not find the grant of summary judgment to be in error, because the "fact," whether true or not, does not establish that a specific chattel was entrusted to Levi that was then used by Levi to kill Maloney.

Sehorn has failed to show a genuine issue of material fact establishing (1) what weapon or ammunition killed Maloney; (2) how Levi obtained such item(s); (3) any act of entrustment or superior control over the subject item(s) by Richard; or (4) a causal connection between any item used to cause Maloney's death and any act of entrustment by Richard. Sehorn, therefore, failed to establish facts adequately supported by evidence in accordance with Rule 74.04 to present a genuine issue of material fact as to her ability to prove the necessary elements of her negligent entrustment claim. Accordingly, the trial court properly granted summary judgment in favor of Richard on Sehorn's negligent entrustment claim.

Sehorn's sole point on appeal is denied.

Conclusion

The amended judgment of the trial court is affirmed.



Janet Sutton, Judge

All Concur.