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STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL DUBY,

Plaintiff-Appellant,

v

MANN FARMS LLC, ANDREW BRILL, and JOHN BRILL,

Defendants-Appellees.

UNPUBLISHED
October 20, 2026
10:44 AM

No. 371966
Lapeer Circuit Court
LC No. 20-053762-NO

Before: PATEL, P.J., and M. J. KELLY and GARRETT, JJ.

PER CURIAM.

Plaintiff appeals as of right the amended judgment that was entered after the conclusion of a four-day jury trial. The judgment awarded him more than $7 million against defendant Andrew Brill. Plaintiff's appeal, however, involves the trial court's previous decisions, which affected his ability to hold defendants Mann Farms LLC and John Brill liable. Plaintiff challenges three of the trial court's decisions on appeal: (1) the trial court's ruling that the recreational land use act (RLUA), MCL 324.73301, applies (which effectively required plaintiff to prove gross negligence to prevail), (2) the trial court's preclusion of evidence of Andrew's prior felony conviction, and (3) the trial court's grant of a directed verdict in favor of John and Mann Farms. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

This case arises out of the November 8, 2019 accidental shooting of plaintiff by Andrew. Plaintiff and Andrew were close friends. Plaintiff even considered John, who was Andrews's father, to be a father figure. The land on which this incident happened was purchased by Dan Mann in 2013.[1] Dan had known John since high school and talked with John about him helping with the land. The initial arrangement was that John would bale hay. When Dan purchased more

[1] Dan created the business entity, defendant Mann Farms LLC. Presumably that LLC operated the farm while it was in business.

property, John became the farm manager. After that, Dan, John, Andrew, and plaintiff all helped construct the buildings on the farm.

With John's permission, plaintiff and Andrew hunted on the farm property every year since 2013, with no incident. In early November 2019, plaintiff and another friend, Andrew Szymanski, were discussing hunting. Plaintiff suggested that he might be able to get permission for Szymanski to hunt on the farm property. According to plaintiff, he called John, who gave them permission to hunt.[2] On November 8, 2019, plaintiff and Szymanski drove separately and arrived at the farm at approximately 5:30 p.m. Szymanski and plaintiff had different recollections of what happened after arriving at the farm.

Szymanski testified that after they parked, both he and plaintiff walked into the barn where he saw John and Andrew sitting at a table. Szymanski noted that there were beer cans on the table. Szymanski said that it appeared that the beer cans and other clutter "had been there for a minute," meaning "it had been a time." According to Szymanski, after talking for about 20 to 30 minutes inside the barn, the men headed to John's house to get a gun for Andrew. Andrew, Szymanski, and plaintiff rode in Szymanski's vehicle, and John drove separately. Szymanski did not observe anyone consuming alcohol that evening. Szymanski also maintained that Andrew did not exhibit any signs of intoxication. However, this was the first time that he had met Andrew, and he conceded that he had no personal knowledge of how Andrew appeared when he had been drinking or how a person with a high tolerance for alcohol might appear.

Plaintiff testified that after arriving at the farm, they parked outside the barn and never went inside. Instead, while he and Szymanski were getting their gear out to scout the land, Andrew unexpectedly came out of the barn. Plaintiff said that Andrew indicated that he learned from his father that plaintiff and Szymanski were going to walk the land and Andrew wanted to join them. Andrew also indicated that he wanted to have a gun, so Szymanski drove them to John's house to get a gun. According to plaintiff, Andrew drank "most of the time" but Andrew "was holding himself well" that night and plaintiff was not aware that Andrew had "drank as much as he did."

Although Szymanski testified that he was 100% certain that John was in the barn with Andrew when he and plaintiff arrived at the farm, John maintained that he was not in the barn that evening and did not see plaintiff and Szymanski until they showed up at his house that evening. It was John's understanding that plaintiff, Szymanski, and Andrew were going to the farm to shoot racoons. John provided a .22 rifle to plaintiff and a 12-gauge shotgun to Andrew. Although John was aware that Andrew had a drinking problem and behaved recklessly when he consumed alcohol, John maintained that he had absolutely no concerns about giving the shotgun to Andrew because plaintiff and Andrew had hunted countless times over the years together, John had taught Andrew about gun safety, and Andrew "did not seem to be" drinking that day. When asked how

[2] Although John does not deny that he ultimately gave permission for Szymanski to use the property, he testified that there was no call beforehand; instead, plaintiff and Szymanski simply "showed up."

he knew that that Andrew had not been drinking that day, John stated he "couldn't smell it" and Andrew "didn't act like it."

After obtaining the two firearms, plaintiff, Szymanski, and Andrew drove back to the farm and scouted around for approximately 45 minutes. The three men then returned to Szymanski's truck and proceeded to unload their firearms. Szymanski stood on the driver's side of the truck, while plaintiff and Andrew stood on the passenger's side. Andrew, who did not have a light, asked plaintiff, who had a headlamp, to check his firearm. Plaintiff responded that the chamber was clear but that there was still one in the tube. Afterward, Andrew was playing around and poked his firearm between plaintiff's legs while plaintiff was facing away from him. Plaintiff turned around, swatted the gun away, and told Andrew to stop. Once again, Andrew poked the firearm between plaintiff's legs. This time, the firearm discharged and caused extensive injuries to plaintiff.

After initially leaving the area, Andrew later called 911 and surrendered to authorities. Deputy John Thurlow interviewed Andrew on the night of the incident. Andrew admitted that he started drinking at approximately 3:30 p.m. that day and consumed eight cans of Budweiser and two shots of Fireball whiskey before plaintiff and Szymanski arrived at the farm.

Plaintiff survived the incident but suffered severe injuries with long-lasting effects. He filed the instant suit. The complaint and first-amended complaint only listed Mann Farms and Andrew as defendants. The first-amended complaint alleged claims of negligence and gross negligence against both Mann Farms and Andrew, vicarious liability against Mann Farms, and negligent entrustment against Mann Farms.

Mann Farms moved for summary disposition under MCR 2.116(C)(10). Mann Farms argued, in pertinent part, that under the RLUA, it could not be held liable because none of its actions could be deemed to be grossly negligent. In response, plaintiff argued that the RLUA should not even apply because, as enunciated in a dissenting opinion of *Neal v Wilkes*, 470 Mich 661; 685 NW2d 648 (2004), the act should only apply to large tracts of undeveloped land. Plaintiff maintained that even if the RLUA did apply, it did not bar any claims because plaintiff provided valuable consideration by shooting deer and other animals on the farm to keep them from eating the farm's crops. Moreover, assuming the RLUA fully applied, plaintiff argued that there was a question of fact whether John and Andrew, as agents for Mann Farms, were grossly negligent.

The trial court concluded that

> because there was no genuine issue that plaintiff was injured while using [Mann Farm's] land for hunting when plaintiff had not paid valuable consideration specifically for the purpose of engaging in hunting in that place, [Mann Farms] is not liable unless plaintiff's injuries were caused by the owner's gross negligence or willful and wanton misconduct.

The court also concluded that there was no evidence to establish that Andrew was an employee of Mann Farms at the time of the incident. But the court determined there was a material question of fact whether John was grossly negligent by keeping firearms unsecured in his home that Andrew, whom John knew drank a lot, could have access to. Consequently, the court denied Mann Farms' motion for summary disposition.

Plaintiff filed a second-amended complaint adding John as a defendant. Plaintiff alleged claims of negligence and gross negligence against all defendants, vicarious liability against Mann Farms, and negligent entrustment against Mann Farms and John.

John moved for summary disposition, and Mann Farms renewed its motion for summary disposition. Mann Farms argued that because plaintiff sought to hold Mann Farms liable on a vicarious liability theory because of Andrew's conduct and because Andrew was not its employee, those claims should be dismissed. Mann Farms also argued that the RLUA barred all claims for simple negligence. John argued that plaintiff could not establish any negligence, negligent entrustment, proximate cause, or duty related to John. The trial court apparently agreed[3] and dismissed all the counts against Mann Farms and John, except for the negligent-entrustment count.

The parties filed several motions in limine. Relevantly, defendants moved to preclude the admission of Andrew's criminal history. Defendants argued that Andrew's criminal history, which included a 2009 conviction of attempted third-degree criminal sexual conduct (CSC) when he was 18 years old, was irrelevant and inadmissible. Further to the extent it was relevant, its probative value was substantially outweighed by the risk of unfair prejudice. Plaintiff argued that because John was aware of Andrew's prior CSC conviction, it was admissible to demonstrate that John "knew of his son's drinking problems, his recklessness, *his criminal past*, his history of assault, and his carelessness with guns and still gave him a shotgun on the evening of November 8, 2019." (Emphasis altered.) Plaintiff averred that evidence of the conviction shows Andrew's "reckless propensities." At the motion hearing, plaintiff's counsel expounded, saying that the reason that felons are not allowed to possess firearms is that they are not deemed responsible enough to handle them, which tends to show that John was irresponsible by providing the firearm to his son, whom he knew was a convicted felon. The trial court granted the motions. The court noted that the past crime has "nothing to do with this case" and that it was much more prejudicial than probative. The court commented that had the past crime been somewhat related to the discharge or reckless discharge of a firearm, then that would pose a different question, but that was not the situation here.

A four-day jury trial commenced. During trial, evidence was presented that Andrew had a drinking problem and exhibited reckless behavior when drinking. In particular, Andrew had damaged two different pieces of farm equipment after drinking, which resulted in John firing Andrew from Mann Farms. Although no witnesses testified that they saw any signs that Andrew was intoxicated or impaired the night of the shooting, Deputy Thurlow testified that Andrew admitted to him that he started to drink at approximately 3:30 p.m. and consumed eight cans of Budweiser and two shots of Fireball whiskey before plaintiff and Szymanski arrived at the farm. After the close of plaintiff's proofs, John and Mann Farms moved for a directed verdict. John argued that there was no evidence to show that he knew it was dangerous to give a firearm to Andrew. He asserted that there was no evidence that anyone that night, including John, saw Andrew exhibiting any signs of intoxication. And without knowing that Andrew was impaired,

[3] The orders do not specify any particular reasoning, and plaintiff has not provided a copy of the transcript of the pertinent February 28, 2022 hearing.

John's handing over of the firearm to Andrew could not constitute gross negligence. Mann Farms argued that if the court agreed, then it could not be held vicariously liable.

The trial court granted directed verdict to John and Mann Farms. The court agreed that there was no evidence to show that John acted in a grossly negligent manner, and it dismissed the remaining negligent-entrustment claim against John and Mann Farms. The jury returned a verdict in favor of plaintiff in excess of $7 million for the claims against Andrew.

This appeal followed.

II. THE RLUA

Plaintiff argues that the trial court erred by holding that the RLUA applies in this case. We disagree.

We review both a trial court's decision on a motion for summary disposition and questions of statutory interpretation de novo. *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009).

These issues primarily involve the proper interpretation of a statute. "The principal goal of statutory interpretation is to give effect to the Legislature's intent, and the most reliable evidence of that intent is the plain language of the statute." *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). "We accord to every word or phrase of a statute its plain and ordinary meaning, unless a term has a special, technical meaning or is defined in the statute." *Guardian Environmental Servs, Inc v Bureau of Const Codes and Fire Safety*, 279 Mich App 1, 6; 755 NW2d 556 (2008). "Where the statutory language is unambiguous, the plain meaning reflects the Legislature's intent and the statute must be applied as written." *Honigman Miller Schwartz & Cohn LLP v City of Detroit,* 505 Mich 284, 294; 952 NW2d 358 (2020) (cleaned up). We must assign each word and phrase "such meanings as are in harmony with the whole of the statute, construed in light of history and common sense." *Id*. at 295.

The trial court dismissed the RLUA claims by granting summary disposition to Mann Farms under MCR 2.116(C)(10). "Our review is limited to the evidence that had been presented to the circuit court at the time the motion was decided." *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475-476; 776 NW2d 398 (2009). Summary disposition under MCR 2.116(C)(10) is warranted when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *El-Khalil*, 504 Mich at 160 (cleaned up). When reviewing a motion for summary disposition under MCR 2.116(C)(10), a court must consider the evidence submitted by the parties in the light most favorable to the nonmoving party. *Id*.

Subsection 1 of the RLUA provides as follows:

> Except as otherwise provided in this section, a cause of action does not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee. [MCL 324.73301(1).]

Plaintiff contends that the act does not apply because he was not engaging in any of the activities described. The language of the RLUA limits "its application to specified activities." *Neal*, 470 Mich at 668. Plaintiff claims that he was engaging in "pest" or "varmint" control, which is not contemplated in the statute. Plaintiff is incorrect. Viewing the facts in a light most favorable to plaintiff, it is evident that his conduct squarely falls within the scope of the statute. Plaintiff admitted in his deposition that their purpose at the farm that night was to scout around for Szymanski's benefit and to shoot any small game they came across. Szymanski similarly testified that his intent for being on the farm that night was to scout around to prepare for deer hunting on a subsequent day. He stated that he brought his gun on that walk in case he saw a pheasant, which he was licensed to hunt. John testified that his understanding was that the group was going to hunt racoons or other small game. From the evidence, there is no question of fact that plaintiff, Andrew, and Szymanski were engaging in activity within the scope of the RLUA by scouting for future hunting purposes and by hunting for small game. The fact that no small game was actually killed is not dispositive. Additionally, the activity clearly falls under the "other outdoor recreational use" catchall provision. The act of scouting for future hunting purposes, while looking for small game, is sufficiently similar to the enumerated activity of "hunting" to qualify as an "other outdoor recreational use." See *Id*. at 669 (stating that for an activity to qualify as "any other outdoor recreational use," it has to be "of the same kind, class, character, or nature" as the enumerated activities).

Plaintiff also argues that, even if the activity could be construed as recreational, the RLUA would not apply because, relying on contract law, he provided valuable consideration for his use of the land. Plaintiff maintains that because John "hated" the deer and other animals eating the crops, by taking steps to eliminate those animals, plaintiff was providing consideration that exempts application of the RLUA. We disagree. John's directive to plaintiff to kill deer occurred 10 years earlier while the barn was under construction. John said that he hated deer because they kill his crops. Notably, John only mentioned deer and no other game. Even assuming that the conduct of plaintiff, Andrew, and Szymanski qualified as hunting "deer," the evidence showed that the farm had been put up for sale in 2018 and that there were no crops in 2019, let alone in November 2019 to protect. Consequently, there was no "benefit" of quelling deer to protect crops at the time of the shooting incident.

Moreover under the RLUA, "a cause of action does not arise for injuries to a person who is on the land of another without *paying* to the owner, tenant, or lessee of the land *a valuable consideration*." MCL 324.73301(1) (emphasis added). In *Syrowik v Detroit*, 119 Mich App 343, 347; 326 NW2d 507 (1982), this Court held that under the RLUA's predecessor, a plaintiff's property taxes did not constitute valuable consideration to use a city park under that act because the statute requires that "the valuable consideration must be in the form of a specific fee for the

use of a particular recreational area in question."[4] The language of the act in *Syrowik* is substantially similar to the present version of the RLUA. The prior act provided:

> "No cause of action shall arise for injuries to any person who is on the lands of another without paying to such other person a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing or other similar outdoor recreational use, with or without permission, against the owner, tenant or lessee of said premises unless the injuries were caused by the gross negligence or wilful and wanton misconduct of the owner, tenant or lessee." [*Id*. at 346, quoting MCL 300.201.]

Both versions of the statute ban causes of action when a person is on another person's land "without paying . . . valuable consideration for the purpose of" engaging in the enumerated outdoor activities. The RLUA does not define the terms "pay" or "valuable consideration." When the Legislature has not defined a statutory term, it "must be accorded its plain and ordinary meaning." *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008), citing MCL 8.3a. "A lay dictionary may be consulted to define a common word or phrase that lacks a unique legal meaning." *Id*. However, a legal term of art "must be construed in accordance with its peculiar and appropriate legal meaning." *Id*.

The verb "pay" has a particular connotation related to the giving of *money* for a particular purpose. See, e.g., *Black's Law Dictionary* (12th ed) (defining "pay" in pertinent part as "[t]o give *money* for a good or service that one buys"; "[t]o transfer *money* that one owes to a person, company, etc."; "[t]o give (someone) *money* for the job that he or she does") (emphasis added). The term "valuable consideration" is defined as "[c]onsideration that is valid under the law; consideration that either confers a pecuniarily measurable benefit on one party or imposes a pecuniarily measurable detriment on the other." *Black's Law Dictionary* (12th ed). Because there is no dispute that plaintiff never paid any money or gave a pecuniary measurable benefit for the privilege of hunting on the farm, he cannot escape the application of the RLUA.

Lastly, plaintiff argues that the RLUA should not apply because it should only apply to "large tracts of undeveloped land." In *Nea*l, the Supreme Court expressly addressed what types of land the act applied to and held that, because the act applies when an injury occurs on "the land of another," the RLUA

> makes no distinction between large tracts of land and small tracts of land, undeveloped land and developed land, vacant land and occupied land, land suitable for outdoor recreational uses and land not suitable for outdoor recreational uses, urban or suburban land and rural land, or subdivided land and unsubdivided land. [*Neal*, 470 Mich at 667.]

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[4] As a pre-1990 case, *Syrowik* is not strictly binding, but it still is precedent under stare decisis. MCR 7.215(C)(2); MCR 7.215(J)(1). We see no reason to question the result of *Syrowik*. Moreover, although plaintiff's argument is contrary to *Syrowik*'s holding, he does not argue that *Syrowik* was wrongly decided. Indeed, plaintiff in his brief on appeal approvingly cites *Syrowik*.

The Court continued that "[t]o introduce such distinctions into the act is to engage in what is essentially legislative decision-making." *Id*. "The statute contains no limitation on the type of land involved, but rather applies to specified activities that occur 'on the land of another . . . .' " *Id*. at 668, quoting MCL 324.73301(1).

Despite this clear and unambiguous holding, plaintiff urges this Cout to ignore it and follow the dissenting opinion of *Neal*. Plaintiff provides no authority for this Court to take such action because there is none. See *Maier v Maier*, 311 Mich App 218, 222-223; 874 NW2d 725 (2015) ("This Court is bound to follow the precedent of the Supreme Court."). Plaintiff's argument therefore has no merit.

In sum, the trial court did not err by ruling that the RLUA applies.

III. ADMISSIBILITY OF PRIOR CONVICTION

Plaintiff argues that the trial court abused its discretion when it precluded the admission of evidence of Andrew's prior felony conviction. We disagree.

This Court reviews a trial court's decision on the admissibility of evidence for an abuse of discretion. *Elezovic v Ford Motor Co*, 472 Mich 408, 419; 697 NW2d 851 (2005). A court abuses its discretion when it selects an outcome falling outside the range of reasonable and principled outcomes. *Wolfenbarger v Wright*, 336 Mich App 1, 14; 969 NW2d 518 (2021).

Plaintiff asserts that evidence of Andrew's conviction was relevant and admissible to prove that John negligently entrusted Andrew with a firearm. Plaintiff maintains that because it was illegal for Andrew to possess a firearm (on account of being a convicted felon) and because John knew about the felony and firearm prohibition, the evidence tends to support plaintiff's negligent-entrustment claim.

"The common-law tort of negligent entrustment imposes liability on one who supplies a chattel for the use of another whom the supplier knows or has reason to know is, because of youth, inexperience, or otherwise, likely to use it in a manner involving unreasonable risk of physical harm." *Bennett v Russell*, 322 Mich App 638, 643; 913 NW2d 364 (2018) (cleaned up); see also *Fredericks v Gen Motors Corp*, 411 Mich 712, 719; 311 NW2d 725 (1981). "To prove an entrustor should have known an entrustee was likely to use the entrusted chattel in an unsafe manner, peculiarities of the entrustee sufficient to put the entrustor on notice of that likelihood must be demonstrated." *Fredericks*, 411 Mich at 719.

The trial court determined that the prior conviction has "nothing to do with this case." The court added that "[i]f there had been past crimes with respect to discharge of firearms, . . . with reckless discharge of firearms, with drinking and discharging a firearm, [or] anything like that," that would be different. The court therefore concluded that a CSC conviction from 2008 or 2009 is not relevant and also is inadmissible under MRE 403, as being clearly more prejudicial than probative.

Plaintiff's reliance on *Grand Trunk Western R Co v Pre-Fab Transit Co*, 14 Mich App 26; 165 NW2d 281 (1968), is misplaced. In *Grand Trunk Western*, there was a collision between a

train and a truck. In his deposition, the engineer of the train stated that he had been involved in "prior accidents." *Id*. at 29. This Court held that, as the record stood, that evidence was inadmissible for negligent-entrustment purposes. This Court noted that "[o]utside of the deposition testimony[,] there is no evidence of what those accidents were and whether [the train company] had knowledge of them." *Id*. at 29-30. Consequently, *Grand Trunk Western* first stands for the unremarkable proposition that evidence of an entrustee's prior history is admissible only if the entrustor was aware of it. Second, by focusing on the fact that the character of what the engineer's other accidents were, this Court implicitly held that the prior history *must be related to the present claim of negligence*. This Court warned, "the bare assertion of negligent entrustment cannot be used to open the door to otherwise inadmissible evidence of prior negligent acts or accidents." *Id*. at 30. This is precisely what plaintiff is attempting to do in this case.

Andrew's conviction from 12 years earlier related to a much different category of "recklessness" and had no bearing on whether John knew or had reason to know that Andrew would be reckless with the shotgun John let him use. Because Andrew's prior CSC conviction had no tendency to show that giving a shotgun to him constitutes an unreasonable risk of harm, the evidence is not admissible for that purpose. See *Bennett*, 322 Mich App at 643; MRE 402. Accordingly, the trial court did not abuse its discretion by precluding the admission of evidence of that conviction.

IV. DIRECTED VERDICT

Plaintiff argues that the trial court erred when it granted John's (and subsequently, Mann Farms') motion for directed verdict. We agree.

A trial court's decision on a motion for a directed verdict is reviewed de novo. *Roberts v Saffell*, 280 Mich App 397, 401; 760 NW2d 715 (2008), aff'd 483 Mich 1089 (2009). When analyzing such a motion, the evidence is viewed a light most favorable to the nonmoving party. *Moore v Detroit Entertainment, LLC*, 279 Mich App 195, 201-202; 755 NW2d 686 (2008). "A directed verdict is appropriate only when no factual question exists upon which reasonable minds could differ." *Roberts*, 280 Mich App at 401.

As previously noted, "The common-law tort of negligent entrustment imposes liability on one who supplies a chattel for the use of another whom the supplier knows or has reason to know is, because of youth, inexperience, or otherwise, likely to use it in a manner involving unreasonable risk of physical harm." *Bennett*, 322 Mich App at 643 (cleaned up). "To prove an entrustor should have known an entrustee was likely to use the entrusted chattel in an unsafe manner, peculiarities of the entrustee sufficient to put the entrustor on notice of that likelihood must be demonstrated." *Fredericks*, 411 Mich at 719.

At the close of plaintiff's proofs, John moved for a directed verdict on the grounds that there was no evidence to allow the jury to conclude that he acted with gross negligence. In particular, John argued plaintiff had to establish that John knew or should have known that Andrew

was intoxicated when he gave Andrew the shotgun and there was no evidence to allow the jury to make that conclusion.[5]

Because the RLUA applies, plaintiff had to establish that John acted with gross negligence or willful and wanton misconduct. MCL 324.73301(1). On appeal, plaintiff focuses on the gross negligence aspect. Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." *Maiden v Rozwood*, 461 Mich 109, 122; 597 NW2d 817 (1999) (cleaned up).[6] "It is as though, if an objective observer watched the actor, he could conclude, reasonably, that the actor simply did not care about the safety or welfare of those in his charge." *Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004). While whether conduct constitutes gross negligence generally is a question of fact reserved for the jury, *id*. at 88, cases are properly withheld from the jury when the evidence is insufficient, such as when the evidence only establishes ordinary negligence, *Maiden*, 461 Mich at 122-123; *Tarlea*, 263 Mich App at 88.

In this case, although no one testified that they observed Andrew consuming alcohol on the day of the incident, there was testimony that Andrew admitted he consumed eight beers and two shots of whiskey between 3:30 p.m. and the time that plaintiff and Szymanski arrived at the farm at approximately 5:30 p.m. John acknowledged that he knew that Andrew had a drinking problem and behaved recklessly after consuming alcohol. John claimed that Andrew "did not seem to be" drinking that day simply because John "couldn't smell it" and Andrew "didn't act like it. While Szymanski testified that Andrew did not exhibit any signs of intoxication, Szymanski had not previously met Andrew and conceded that he had no personal knowledge of how Andrew appeared when he had been drinking or how a person with a high tolerance for alcohol might appear. And plaintiff testified that he knew Andrew "pretty well" and he did not seem "completely" normal to him. Credibility was an issue at trial. For example, Szymanski testified that he was 100% certain that John was in the barn with Andrew when he and plaintiff arrived at the farm, but John maintained that he was not in the barn that evening and did not see plaintiff and Szymanski until they showed up at his house that evening. It is the fact-finder's responsibility to determine the weight and credibility of the trial testimony, and a court may not substitute its judgment for that of the jury when the evidence could lead reasonable jurors to disagree. *Moore*, 279 Mich App at 202. Viewing the evidence in the light most favorable to plaintiff, reasonable minds could differ whether Andrew was intoxicated and whether John was so reckless as to demonstrate a substantial lack of concern for whether an injury results by giving Andrew the shotgun. Accordingly, the trial court erred by granting John's motion for directed verdict and dismissing the claims against Mann Farms, which were based on a theory of respondeat superior and derivative of the claims against John.

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[5] After the trial court granted John's motion, it granted Mann Farms a directed verdict as well because it could only be liable on a respondeat superior theory. Consequently, John's motion is the dispositive motion.

[6] This definition is from the statutory definition of "gross negligence" in the governmental tort liability act (GTLA), MCL 691.1401 *et seq*. MCL 691.1407(8)(a). Although the relevant statute in this case is the RLUA, the parties do not dispute that this same definition applies.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Sima G. Patel
/s/ Michael J. Kelly
/s/ Kristina Robinson Garrett