STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. AND-25-351

ZACHARY WILSON,

Plaintiff/Appellant

v.

ELIZABETH GURNEY & HOLLY GURNEY

Defendants/Appellees

ON APPEAL FROM THE SUPERIOR COURT
ANDROSCOGGIN COUNTY

BRIEF OF DEFENDANTS / APPELLEES

Thomas S. Marjerison ~ Bar No. 7836
Norman, Hanson & DeTroy, LLC
220 Middle Street
P.O. Box 4600
Portland, Maine 04112
(207) 774-7000
Attorneys for Defendants /Appellees

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Introduction

On the evening of January 1-2, 2023, Plaintiff Zach Wilson ("Wilson") was shot by an unknown assailant outside the home of Defendants Holly Gurney and Elizabeth Gurney in Lewiston. Holly Gurney is the owner of the home and the mother of Elizabeth Gurney, but Holly was not present at the time of the shooting. Contrary to her mother's instructions, Elizabeth Gurney, who was 18-years-old, held a party that had many uninvited attendees show up.

As the party grew in size, Elizabeth ordered 4-5 uninvited attendees to leave, Wilson, who had never met Elizabeth before that night, voluntarily began trying to bounce the troublemaking uninvited attendees from the party, telling Elizabeth that he would get the uninvited attendees out. Wilson told the uninvited attendees that they needed to leave and grabbed one of the uninvited attendees by the shirt, dragged him to the door, and walked him outside.

Outside, the altercation continued. One of the uninvited attendees pushed Wilson before running to an area near the mailbox outside the residence. At the mailbox, one of the uninvited attendees drew a firearm and fired multiple shots at Wilson, injuring him. Wilson was shocked when the uninvited attendee pulled out the firearm and had not foreseen that the uninvited attendee would brandish a firearm or shoot him.

On appeal, Wilson does not contend that the Superior Court erred in applying the Law Court's jurisprudence with respect to his claim in Count V of premises liability. Rather, Wilson argues that this Court should overrule its decisions in *Davis v. Dionne*, 2011 ME 90, ¶ 14, 26 A.3d 801, *Gniadek v. Camp Sunshine at Sebago Lake, Inc.*, 2011 ME 11, ¶ 19, 11 A.3d 308, and prior cases to hold that the "party-guest and party-host relationship" constitutes a "special relationship" imposing a heightened duty of care. With respect to his claim of negligent entrustment against Holly Gurney in Count VI, Wilson again does not contend that the Superior Court misapplied the relevant law, but argues that this Court's should expand the tort of negligent entrustment to real property.

Statement of the Case

A. Procedural History

Wilson filed his original Complaint on February 24, 2023. A. at 4-5. On August 7, 2023, Wilson filed an Amended Complaint, which was served on and timely answered by the Gurneys on August 22, 2023. A. at 6-7. In his Amended Complaint, Wilson alleged the following causes of action:

Count I: Negligent Discharge of Firearm against Michael Flanders and Benjamin Stanicki;

Count II: Joint Enterprise against Michael Flanders, Benjamin Stanicki, and David Marshall;

Count III: Negligent Supervision of Minor against Eric Stanicki and Melissa Carey (parents of Benjamin Stanicki);

Count IV: Negligence against Jennifer Desjardins;

Count V: Premises Liability against Holly Gurney and Elizabeth Gurney;

Count VI: Negligent Entrustment against Holly Gurney;

Count VII: Negligent or Reckless Service of Liquor against Holly Gurney, Elizabeth Gurney, Jennifer Desjardins and Brianna Desjardins; and

Count VIII: Negligent or Reckless Service of Liquor against NS, LLC.

A. at 28-39.

On January 31, 2025, the Gurneys filed their Partial Motion for Summary Judgment on Counts V-VII. A. at 40-53. Wilson filed a timely Opposition followed by the Gurneys' timely Reply. A. at 54-76; 77-91. In Wilson's Opposition to Gurneys' Partial Motion for Summary Judgment, Wilson conceded that summary judgment should be granted in favor of the Gurneys on Count VII, which alleged violations of the Maine Liquor Liability Act, 28-A M.R.S. § 2501 *et seq*. A. at 68. On March 20, 2025, Wilson partially dismissed with prejudice Counts IV, VII & VIII against Defendants Jennifer Desjardins, Brianna Desjardins, and NS, LLC respectively. A. at 11. On May 23, 2025, the Superior Court (Androscoggin County, *Archer, J.*) granted the Gurneys' Partial Motion for Summary Judgment on Counts V-VII. A. at 16-26.

On June 25, 2025, Wilson moved to dismiss with prejudice Counts I-III against Defendants Michael Flanders, Benjamin Stanicki, David Marshall, Eric

Stanicki, and Melissa Carry, which was granted by the Superior Court on July 17, 2025. A. at 14, 27. On July 23, 2025, a timely appeal followed. A. at 14.

B. Factual Background

On appeal, Wilson does not contend that the Superior Court misapplied M.R. Civ. P. 56 or erred in its M.R. Civ. P. 56(h) finding of the undisputed material facts set forth in its Order granting the Gurneys' Motion for Partial Summary Judgment. A. at 16-26. Accordingly, there is no dispute that the Superior Court properly found that the parties did not genuinely dispute or controvert the following material facts:[1]

> Defendant Holly Gurney (Holly), the mother of Defendant Elizabeth Gurney (Elizabeth), is the fee owner of 266 Pond Road in Lewiston, Maine (the Gurney Home). (Supp.'g S.M.F. ¶ 1.) On the night of January 1, 2023, Elizabeth was eighteen years old and a resident of the Gurney Home. (*Id.* ¶¶ 1-2.) That night, when Holly was not home and despite her mother's instructions, Elizabeth hosted a party (the Party) at which she expected 35-40 people to attend. *(Id.* ¶¶ 2-4; Opp. S.M.F. ¶¶ 1-3.) Plaintiff Zachary Wilson (Zach) attended the Party at the invitation of one of Elizabeth's friends, arriving at around 8:45 p.m. (Opp. S.M.F. ¶ 4.) By around 11:00 p.m., the Party had around 100 attendees. *(Id.* ¶ 9.) Many of the party attendees were not invited. *(Id.* ¶ 10.) During the Party, some party attendees began throwing up and became ill. *(Id.* ¶ 12.)
>
> As the Party continued, Elizabeth noticed four to five uninvited party attendees, whom she did not know, in her bedroom. *(Id.* ¶¶ 14-16.) The uninvited party attendees (the uninvited attendees) were snorting a substance that Elizabeth assumed was a drug. *(Id.* ¶ 14.) Frightened,

[1] "Supp.'g S.M.F." refers to Defendants' Incorporated Statement of Material Facts not in Dispute. A. at 41-42. "Opp. S.M.F." refers to Plaintiff's Opposing Statement of Material Facts with Additional Facts. A. at 70-76.

Elizabeth attempted to kick out the uninvited attendees for doing drugs. (Supp.'g S.M.F. ¶ 15; Opp. S.M.F. ¶¶ 14, 18.) However, despite temporarily leaving the Party, the uninvited attendees later returned to the Party. (Opp. S.M.F..¶ 20; Supp.'g S.M.F. ¶ 17.) Enraged, Elizabeth again informed the uninvited attendees that they needed to leave but they refused. (Opp. S.M.F. ¶¶ 21-22.) Zach, who had never met Elizabeth before that night, (Supp.'g S.M.F. ¶ 5), voluntarily began trying to bounce the troublemaking uninvited attendees from the Party, telling Elizabeth that he (Zach) would get the uninvited attendees out. (Supp.'g S.M.F. ¶ 16; Opp. S.M.F. ¶¶ 23-25.) Zach told the uninvited attendees that they needed to leave (Opp. S.M.F. ¶ 24), and grabbed one of the uninvited attendees by the shirt, dragged him to the door, and walked him outside. (Supp.'g S.M.F. ¶ 16.)

Outside, the altercation continued; one of the uninvited attendees pushed Zach before running to an area near the mailbox outside the residence. (Opp. S.M.F. ¶ 25.) At the mailbox, one of the uninvited attendees drew a firearm and fired multiple shots at Zach, injuring him. (Supp.'g S.M.F. ¶¶ 25-26.) Zach was shocked when the uninvited attendee pulled out the firearm and had not foreseen that the uninvited attendee would brandish a firearm. *(Id.* ¶¶ 23-24.)

A. at 17-18.

Statement of Issues Presented for Review

I. Whether the Superior Court committed legal error in concluding that the Gurneys did not owe a heightened duty of care to protect Wilson from the intentional acts of an unknown third party as alleged in Count V of his Amended Complaint. (*Appellant's Issues ##1 & 2*).

II. Whether the Superior Court committed legal error in concluding that Wilson did not set forth a *prima facie* case for Negligent Entrustment against Holly Gurney as alleged in Count VI of his Amended Complaint. (*Appellant's Issue #3*).

Summary of the Argument

On appeal, Wilson does not contend that the Superior Court erred in applying the Law Court's case law , but rather asks this Court to overrule its prior precedent and change Maine law on the imposition of a heightened duty of care based on a "special relationship." Simply, Wilson contends "the Law Court should recognize the party-host and party-guest relationship as a 'special relationship.'" *Appellant's Brief at* 6. Maine law is well established and this Court should decline Wilson's invitation to overrule decades of Maine precedent and adopt a rule that has not been recognized by any other court.

With respect to the claim for Negligent Entrustment against Holly Gurney, Wilson does not contend that the Superior Court erred in applying Maine law, but argues this Court should expand the tort to include real property, which has never recognized a cause of action for negligent entrustment of real property. However, this Court does not need to reach Wilson's argument since Wilson also failed to establish a *prima facie* case of negligent entrustment of the house. Specifically, Wilson did not produce any evidence that would allow a properly-instructed jury to find that Holly Gurney knew or should have known that Elizabeth Gurney posed a risk of harm to others when she entrusted the house to her daughter or that a condition of the house was a cause of Wilson's injury.

Argument

Standard of Review

The parties agree that this Court reviews a grant of a motion for summary judgment *de novo*. *Lever v. Acadia Hosp. Corp.*, 2004 ME 35, ¶ 2, 845 A.2d 1178. A party is entitled to summary judgment "if the summary judgment record, taken in the light most favorable to the nonmoving party, demonstrates that there is no genuine issue of material fact in dispute and the moving party would be entitled to a judgment as a matter of law at trial." *Chartier v. Farm Fam. Life Ins. Co.*, 2015 ME 29, ¶ 6, 113 A.3d 234; *see* M.R. Civ. P. 56(c). To survive a defendant's motion for summary judgment, the plaintiff must present a *prima facie* case for each challenged element of his claim. *See Boivin v. Somatex, Inc.*, 2022 ME 44, ¶ 10, 279 A.3d 393.

In the present case, Wilson does not argue there was a disputed issue of fact, but rather contends that this Court should change Maine law and "should recognize the party-host and party-guest relationship as a 'special relationship'" with respect to his claim of premises liability alleged in Count V. *Appellant's Brief at* 6. With respect to Count VI, Wilson argues that this Court should recognize a tort of negligent entrustment of real property separate and distinct from the tort of negligent entrustment of chattel. *Appellant's Brief at* 24.

I. The Superior Court did not commit legal error in concluding that the Gurneys did not owe a heightened duty of care to protect Wilson from the intentional acts of an unknown third party as alleged in Count V of his Amended Complaint.

The standard for determining whether a "special relationship" exists is well established and, by his own admission, has not been met by Wilson. *Appellant's Brief at* 6; A. at 63; *see Davis*, 2011 ME 90, ¶ 14, 26 A.3d 801*; Gniadek*, 2011 ME 11, ¶ 19, 11 A.3d 308. Hence, Wilson argues that this Court should disregard the doctrine of *stare decisis* and change this well-established standard. *See* Argument III regarding *stare decisis.*

Even if this Court disregards the lack of a "special relationship," the shooting of Wilson by an unknown third party was unexpected and unforeseen by Wilson and also was not reasonably foreseeable to the Gurneys. A. at 42-43, 90, ¶ 23-24; *see Boudreau v. Shaw's Supermarkets, Inc.*, 955 F.3d 225, 234 (1st Cir. 2020) (applying Maine law). Finally, public policy considerations weigh against the adoption of a rule that every homeowner owes a heightened duty of care to its invitees. *See Trusiani v. Cumberland and York Distribs., Inc.,* 538 A.2d 258, 261 (Me. 1988) (citing Prosser, *Palsgraf Revisited,* 52 MICH. L. REV. 1, 15 (1953)). In the present case, the Superior Court properly applied this Court's prior case law, and the Superior Court's Order granting summary judgment in favor of the Gurneys should be affirmed.

Wilson's Allegations

In Count V of his Amended Complaint, with respect to the Gurneys' duty of care, Wilson alleged that:

> As the owner, occupier, and/or possessor of the Premises, Holly Gurney owed a duty to all persons lawfully on the Premises to use reasonable care in furtherance of providing reasonably safe premises and to protect invitees from reasonably foreseeable harm occurring on the Premises, which was under the Gurney Control.
>
> A. at 36, ¶ 53.

With regard to the Gurneys' alleged breach of their duty of care, Wilson asserted in Count V that:

> Holly Gurney and/or Elizabeth Gurney breached their respective duties, having negligently permitted a hazardous condition to develop on the Premises which was under their control, and which increased the foreseeable likelihood of injury to those lawfully on the premises.
>
> A. at 36, ¶ 54.

In his Amended Complaint, Wilson did not allege that a "special relationship" existed with Holly Gurney or Elizabeth Gurney. *See Belyea v. Shiretown Motor Inn*, 2010 ME 75, ¶ 11, 2 A.3d 276 (noting distinction between general duty to provide reasonably safe premises and heightened duty based on special relationship).

Elements of Negligence

It is well established that a cause of action for negligence has four elements: (1) a duty of care owed to the plaintiff; (2) a breach of that duty; (3) an injury; and

(4) causation, that is, a finding that the breach of the duty of care was a cause of the injury. *Belyea*, 2010 ME 75, ¶ 6, 2 A.3d 276 (quoting *Stanton v. Univ. of Me. Sys.*, 2001 ME 96, ¶ 7, 773 A.2d 1045, 1049 and *Addy v. Jenkins, Inc.*, 2009 ME 46, ¶ 8, 969 A.2d 935, 938). This Court has rejected attempts to impose absolute liability on landowners. *See Hanson v. Madison Paper Co.*, 564 A.2d 1178, 1179 (Me. 1989) Whether a defendant owes a duty of care to a particular plaintiff is a question of law. *Denman v. Peoples Heritage Bank, Inc*, 1998 ME 12, ¶ 4, 704 A.2d 411; *Trusiani v. Cumberland and York Distribs., Inc.*, 538 A.2d 258, 261 (Me. 1988).

A. The Law Court has never recognized "the party-host and party-guest relationship" as a "special relationship" so as to impose a duty of care to protect a plaintiff from the intentional acts of a third party.

Wilson bases his claim of a heightened duty of care on an alleged "special relationship" between the Gurneys and Wilson. However, before the Superior Court and on appeal, Wilson conceded that this Court has never recognized the "party-host and party-guest relationship" as a "special relationship" imposing a heightened duty of care. *Appellant's Brief at* 6; A. at 63. In fact, Wilson has not cited a single case in which any court has held that a host-guest relationship alone constitutes a "special relationship." On Brief, Wilson merely contends that this Court should ignore its prior case law and announce a new rule dramatically expanding the definition of a "special relationship" so as to impose a heightened duty of care to protect a plaintiff from the intentional acts of a third-party.

Law Court Jurisprudence on a "Special Relationship"

In *Gniadek*, 2011 ME 11, ¶ 19, 11 A.3d 308, this Court, affirming its prior decisions, noted the standard for a "special relationships" is based on the disparate positions of the parties:

> A fiduciary relationship exists where "the law will recognize both the disparate positions of the parties and a reasonable basis for the placement of trust and confidence in the superior party in the context of specific events at issue." *DeCambra v. Carson*, 2008 ME 127, ¶ 13, 953 A.2d 1163, 1166 (quotation marks omitted). But not all fiduciary relationships are special relationships; only those where there is a "great disparity of position and influence between the parties" will suffice. *Dragomir v. Spring Harbor Hosp.*, 2009 ME 51, ¶ 19, 970 A.2d at 316 (quotation marks omitted). We make this determination on a case-by-case basis, "unless the nature of a given relationship is such that there is always certain to be a great disparity of position and influence." *Id.*

Gniadek, ¶ 19, 11 A3d 308.

This Court should decline Wilson's invitation to overrule *Davis*, 2011 ME 90, 26 A.3d 801; *Gniadek*, 2011 ME 11, ¶ 19, 11 A.3d 308; *Dragomir v. Spring Harbor Hosp.*, 2009 ME 51, ¶ 19, 970 A.2d 310; *DeCambra v. Carson*, 2008 ME 127, ¶ 13, 953 A.2d 1163, 1166; *Fortin v. Roman Catholic Bishop of Portland*, 2005 ME 57, ¶ 34, 871 A.2d 1208, and related cases.

First, if a "party-host and party-guest relationship" constitutes a "special relationship," then a "special relationship" would exist in every invitee or premises liability context. Simply, every homeowner would owe a heightened duty of care to

protect invitees from the intentional acts of third parties based on a "special relationship."

Second, this Court has already addressed this exact issue in prior cases and has specifically held that a "special relationship" and heightened duty of care did not exist in a host-invitee relationship,[2] trip organizer-guest relationship,[3] or in a bar-patron relationship.[4] This Court has never held that a "party-host and party-guest relationship" constituted a "special relationship," nor does Wilson cite any cases holding so. In fact, the high standard for a finding of a "special relationship" has only resulted in two appellate decisions in which a plaintiff's relationship to a defendant was marked by a "great disparity of position and influence between the parties" so as to constitute a "special relationship." *Gniadek*, 2011 ME 11, ¶ 20, 11 A.3d 308 (citing *Dragomir*, 2009 ME 51, ¶ 21, 970 A.2d 310 and *Fortin*, 2005 ME 57, ¶ 34, 871 A.2d 1208). The first instance involved a plaintiff who was vulnerable due to his parents' illnesses and was subjected to religious training and education, which resulted in him being sexually assaulted by his childhood priest.[5] The second instance involved a patient with a serious medical condition who was sexually abused by a treatment provider.[6]

[2] *DeCambra*, 2008 ME 127, ¶ 11, 953 A.2d 1163 (killing of invitee by ex-boyfriend not actionable).
[3] *Davis*, 2011 ME 90, ¶ 14, 26 A.3d 801 (trip organizer did not have a "special relationship" with guests to protect them from actions of third party).
[4] *Belyea*, 2010 ME 75, ¶ 6, 2 A.3d 276.
[5] *Fortin*, 2005 ME 57, ¶ 34, 871 A.2d at 1220.
[6] *Dragomir*, 2009 ME 51, ¶ 21, 970 A.2d 310.

Finally, this Court's decision in *Davis*, 2011 ME 90, 26 A.3d 801, decided shortly after *Gniadek, supra,* is on point. In *Davis,* the defendant organized a fishing charter and dinner trip to Bar Harbor to promote his employer's business relationships. *Id. at* ¶ 2. During the trip, significant amounts of liquor were consumed. *Id. at* ¶¶ 3-4. At the end of the trip, there was a confrontation and the tortfeasor, who was under the influence, struck the plaintiff with his car causing serious injuries. *Id. at* ¶ 5.

In *Davis*, the plaintiff argued that a "special relationship" existed because defendant had organized and led the excursion. *Id.*, ¶ 14. This Court rejected that argument and held that:

> We decline to recognize a generalized fiduciary duty on the part of one who organizes and leads a trip to protect trip participants from one another.
>
> *Id*.

Similarly, in *Belyea*, 2010 ME 75, ¶ 6, 2 A.3d 276, this Court addressed the legal issue of duty under analogous facts. In *Belyea*, the plaintiff went to the defendant's lounge where the plaintiff was involved in an altercation with two individuals during which one of the individuals assaulted plaintiff by punching him once in the face. *Id.*, ¶ 3.

Bouncers ejected the two individuals, but not before they threatened to kill the plaintiff in the bouncers' presence. *Id*. The bouncers later told the plaintiff and

his friend that they would have to leave. *Id*. As the plaintiff was leaving the lounge, one of the individuals approached a bouncer at the door and asked if "that [s.o.b.] was still in there," and the bouncer told him that the plaintiff had left. *Id*. While in the parking lot and walking to his friend's car, the plaintiff was assaulted by the two individuals and sustained serious injuries. *Id.*, ¶ 4

In *Belyea*, the Superior Court granted summary judgment on the grounds that there was no duty of care to protect the patron of a lounge from assault by a known third party in the adjacent parking lot. *Id.*, ¶ 8. This Court noted that "absent a special relationship, the law imposes no duty to act affirmatively to protect someone from danger unless the dangerous situation was created by the defendant." *Id.*, ¶ 9 (quoting *Watchtower Bible,* 1999 ME 144, ¶ 14, 738 A.2d 839). As this Court held in *Belyea*, *supra*, and *Watchtower Bible, supra*:

> Only when there is a "special relationship," may the actor be found to have a common law duty to prevent harm to another, caused by a third party. There is simply no duty to control the conduct of a third person as to prevent him from causing physical harm to another unless . . . a special relation exists. . . .

Belyea, ¶ 9, 2 A.3d 276 (quoting *Watchtower Bible*, ¶ 14, 738 A.2d 839).

This Court reached a similar conclusion in *DeCambra v. Carson*, 2008 ME 127, ¶ 11, 953 A.2d 1163. In *DeCambra*, the defendant resided with her boyfriend, Lionel St. Hilaire, in her home. The third-party assailant also lived at the home for

approximately six years because he was having family problems and was also romantically involved with the defendant. *Id.*, ¶ 3.

The assailant had struggled with depression over the years and had attempted suicide. After that suicide attempt, the defendant's family gave the assailant's gun collection to his father so that he would not have access to firearms. The assailant moved out of the house, but retained access. *Id.*, ¶ 4.

Approximately 3-4 months after he moved out, defendant and the assailant apparently ended their romantic relationship, and the defendant began dating St. Hilaire—the deceased victim. St. Hilaire was with the defendant at her residence when the assailant arrived. The defendant believed that the assailant was a little drunk, but otherwise fine. The assailant later returned, at which time he shot and killed St. Hilaire and then then killed himself. *Id.*, ¶ 5.

This Court affirmed the Superior Court's grant of summary judgment and held that:

> To be actionable, a claim of negligence requires the existence of a duty of care. We have previously held that there is no general obligation to protect others from the actions of third parties, even where one knows the third party is or could be dangerous.
>
> * * * * *
>
> The only exception to this rule we have recognized is where there is a "special relationship" between plaintiff and defendant.

Id., ¶¶ 11-12, 953 A.2d 1163 (internal citations omitted).

Cases Cited by Wilson

On Brief, Wilson ignores this Court's jurisprudence and relies on cases form other jurisdictions to argue that this Court should overrule its prior decisions. However, this reliance is misplaced. For instance, Wilson cites *Downs ex rel. Downs v. Bush*, 263 S.W.3d 812 (Tenn. 2006) for the proposition that Tennessee recognizes the social host and social guest relationship as a "special relationship," but that is not a correct reading of the decision. *See Appellant's Brief* at 15

In *Downs*, 263 S.W.3d 812, an 18-year-old man (decedent) was killed in an accident after he spent the night drinking alcohol with the defendants. *Id.* at 815. While riding in a four-door pickup truck, the decedent became ill due to his over-consumption of alcohol. *Id*. at 816. The defendants stopped the truck for the decedent to vomit. *Id*. After resuming the trip, the decedent rode in the bed of the pickup truck, and for unknown reasons, exited the bed of the truck and was struck and killed by two vehicles. *Id*. at 816-18. In *Downs*, the court noted that the "the record is unclear whether the defendants assisted [the decedent] into the bed of the truck, physically put him there, or whether he voluntarily agreed to ride there." *Id.* at 817.

The Tennessee Supreme Court found there were disputed issues of fact as to whether the allowed the decedent to ride in the back of the pickup truck, which may

have created an unreasonable risk of injury,[7] and whether the defendants took charge of decedent, as a helpless individual due to intoxication,[8] by placing him in the back of the pickup truck. *Id.* at 817, 819. However, the Tennessee court specifically held that no "special relationship" existed between the designated driver, the owner of the pick-up truck or decedent's best friend and roommate, and the decedent by virtue of those relationships. *Id.* at 823, 826.

The facts and holding in *Downs* stand in stark contrast to the facts of the present case. First, the Gurneys did not provide any alcohol to Wilson or the alleged shooter. A. at 25. Second, there was no evidence that Wilson or the alleged shooter were intoxicated. A. at 25.[9] Third, there was no evidence that Wilson was helpless or that Elizabeth Gurney took charge of him. Finally, Elizabeth Gurney, as the daughter of the owner of the house, was in a similar position as the owner and driver of the pick-up truck in *Downs*. *Id.* at 823, 826. For the same reasons as in *Downs*, Elizabeth Gurney did not have a "special relationship" with Wilson under either Maine or Tennessee law so as to owe a heightened duty of care. *Id.* at 826 ("We also conclude that the best friend and roommate, designated driver, and owner of the

[7] The Tennessee Supreme Court reasoned that: "A jury could easily conclude that the dangers of riding unrestrained in the bed of a pick-up truck on an interstate highway are foreseeable and obvious." *Id.* at 821.

[8] The Tennessee court also noted that "being intoxicated does not necessarily mean that he was 'helpless.'" *Id.* at 823.

[9] The Superior Court noted that Wilson admitted there was no evidence within the summary judgment record affirmatively showing that any of the third parties were intoxicated. A. at 25.

truck did not assume an affirmative duty because they did not stand in any special relationship to [the decedent]."); *see also Riggs v. Wright*, 510 S.W.3d 421, 428-29 (Tenn. Ct. App. 2016) (no special relationship existed between parents of attacker as homeowners and houseguest, and victim) (collecting cases).

Wilson also misrelies on the Tennessee Court of Appeals decision in *Biscan v. Brown*, 160 S.W.3d 462 (Tenn. Ct. App. 2005). In *Biscan*, the Tennessee Court of Appeals held that an adult homeowner voluntarily assumed a duty to protect minor guests and third persons from risks associated with drinking and driving when the homeowner provided a place for minors to consume alcohol and monitored the minors' consumption of alcohol before a minor driver[10] left and was involved in a serious drunk driving accident. *Biscan*, 160 S.W.3d at 482-83. However, in the present case, Wilson was not a minor or impaired by the consumption of alcohol, there is no evidence that the unidentified shooter consumed alcohol, and Wilson conceded to summary judgment related to claims based on the service of alcohol. A. at 25. Accordingly, Wilson has waived his claims based on his concession to summary judgment on Count VII. *See Jackson v. Tedd-Lait Post No. 75*, 1999 ME 26, ¶ 11, 723 A.2d 1220 (bar did not owe duty of care to arrange cab for an intoxicated patron); *Peters v. Saft*, 597 A.2d 50, 54 (Me. 1991); *Trusiani*, 538 A.2d

[10] In *Biscan*, the 16-year-old minor driver's blood alcohol content was .17% after the accident. *Biscan v. Brown*, 160 S.W.3d at 466.

at 262 (employer did not owe a duty to injured motorists to exercise reasonable care by preventing an employee who had consumed self-supplied liquor at a company Christmas party, but who was not visibly intoxicated, from operating his motor vehicle); *Currier v. McKee*, 99 Me 364, 59 A. 442, 443 (1904) (no common law cause of action for person injured by the consumer of alcohol could recover against provider of alcohol); 28-A M.R.S. § 2511 (exclusivity provisions); *see also Juliano v. Simpson,* 962 N.E.2d 175, 184-85 (Mass. 2012) (no common law cause of action for providing a place for minors to consume alcohol).

Similarly, the holding in *Kelly v. Gwinnell*, 476 A.2d 1219 (N.J. 1984), relied upon by Wilson, would also be precluded by the exclusivity provisions of the Maine Liquor Liability Act and his concession to summary judgment on Count VII. *Compare id.* at 1224-25 (recognizing a common law action for negligent service of alcohol) *with* 28-A M.R.S. § 2511 (exclusivity provisions). Contrary to Wilson's argument, none of the cases cited recognize a general "party-host and party-guest relationship" as a "special relationship" imposing a heightened duty of care.

On Brief, Wilson further claims that Elizabeth Gurney "created Zack Wilson's harm," but does not cite any cases supporting this claim. *Appellant's Brief* at 18. In fact, the Superior Court properly noted that:

> In addition, the Gurneys did not create the harm Zach faced. An uninvited attendee of the Party created the harm by suddenly producing a firearm and shooting Zach.

A. at 21.

Instead, Wilson merely asserts general allegations, without legal support, that it was "a dangerous Party that caused him to be shot and injured." *Appellant's Brief* at p.19. *See York Hosp. v. Dept. of Health & Hum. Serv.*, 2008 ME 165, ¶ 29, 959 A.2d 67 ("issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.") (quoting *Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290). In fact, the sole case cited by Wilson on this issue held that a "special relationship" did not exist and reaffirmed this Court's prior holdings that "absent a special relationship, the law imposes no duty to act affirmatively to protect someone from danger unless the dangerous situation was created by the defendant." *Reid v. Town of Mount Vernon*, 2007 ME 134, ¶ 17, 932 A.2d 539 (quoting *Mastriano v. Blyer*, 2001 ME 134, ¶ 17, 779 A.2d 951); *see Appellant's Brief at* 17-18.

Due to the lack of a "special relationship" in the present case, the Gurneys did not owe Wilson a duty to protect him from an intentional assault by an unknown third-party. *See Davis*, 2011 ME 90, ¶ 14, 26 A.3d 801*; Gniadek*, 2011 ME 11, ¶ 19, 11 A.3d 308; *Dragomir*, 2009 ME 51, ¶ 19, 970 A.2d 310; *Fortin*, 2005 ME 57, ¶ 34, 871 A.2d 1208. Furthermore, there are no facts or legal support for Wilson's claim that the Gurneys created the harm to Wilson. Contrary to Wilson's argument of legal error, the Superior Court properly applied Maine law and found that a

"special relationship" did not exist between the Gurneys and Wilson so as to impose a heightened duty of care.

B. Assuming, *arguendo*, that "the party-host and party-guest relationship" constituted a "special relationship," the shooting of Wilson by an unknown third party was not reasonably foreseeable to the Gurneys so as to impose a duty of care as a matter of law.

Even if this Court disregards the lack of a "special relationship," the shooting of Wilson by an unknown third party was not sufficiently foreseeable to the Gurneys so as to impose a duty of care as a matter of law. On Brief, Wilson appears to concede that the Gurneys would not owe a duty of care to Wilson if the shooting of him by an unknown third-party was not reasonably foreseeable to or anticipated by the Gurneys. *Appellant's Brief at* 17; *see Trusiani*, 538 A.2d at 261; *Brewer v. Roosevelt Motor Lodge*, 295 A.2d 647, 651 (Me. 1972). In the present case, and as found by the Superior Court, Wilson himself agreed that the shooting was not foreseeable and was a total surprise to him. A. at 42 at ¶¶ 23-24; A. at 18. For the same reasons and as a matter of law, there were no facts or information that would lead a reasonable person in the position of Holly Gurney or Elizabeth Gurney to believe that an unknown third-party would shoot Wilson.

Law Court Jurisprudence on Foreseeability

In *Brewer*, 295 A.2d at 651, this Court set forth the standard for foreseeability in the context of determining whether a duty of care exists:

> The common-law test of duty is the probability or foreseeability of injury to the plaintiff. The risk reasonably to be perceived within the range of apprehension delineates the duty to be performed and the scope thereof.

Id. (citing *Connolly v. Nicollet Hotel*, 95 N.W.2d 657 (Minn. 1959); *Palsgraf v. Long Island R. Co.*, 162 N.E. 99, 100 (N.Y. 1928).

In applying this standard, this Court held that motel owner did not owe a duty of care to install security measures beyond a chain lock and lock on the door handle of a motel room. *Id.* at 651-52. Even applying the innkeeper-guest special relationship, this Court held that an assailant breaking in through a window was not sufficiently foreseeable to impose a duty of care. *Id.* at 652.

Similarly, in *Boudreau v. Shaw's Supermarkets, Inc.*, 955 F.3d 225, 235 (1st Cir. 2020), the First Circuit, applying Maine law, determined that the on-premises murder of a store patron by a known third-party was not sufficiently foreseeable to impose a duty of care. *Id.* at 234 ("Because we conclude that the attack was not foreseeable, we need not address the policy element of Maine's duty analysis"). In *Boudreau*, an elderly woman shopping at Shaw's supermarket was murdered by a regular customer of the store. *Id.* at 227. Shaw's had banned the assailant from the store four years prior to the attack because customers complained that she had scared them. *Id.* The assailant was ultimately permitted to return to the store and the manager asked the Loss Prevention Department to watch her, but the Loss Prevention Department never observed her behaving unusually. *Id.* at 229. On the day of the attack, the assailant visited the store twice, first to purchase several items

and then for a second time, during which two individuals observed her walking back and forth in an aisle. *Id.* at 232.

The First Circuit affirmed the district court's grant of summary judgment for Shaw's after concluding that the store did not owe the woman a duty to protect her from the attack. *Id.* at 228. In contrast to the present case, the First Circuit, applying *Kaechle v. Kenyon Oil Co.*, 747 A.2d 167, 170 (Me. 2000), found as a preliminary matter that a "special relationship" existed between Shaw's and its patron. *Id*. at 234. However, the Court concluded that the attack was not foreseeable, and thus Shaw's did not owe the victim a duty of care. *Id.* at 235. Although Shaw's had previously banned the assailant and had observed her behaving bizarrely, "no Shaw's employee ever saw [the assailant] act violently, raise her voice, or threaten someone in . . . Shaw's." *Id*. Additionally, the assailant's behavior within the store prior to the assault did not make it foreseeable that she posed a danger to other customers. *Id.*

Cases Cited by Wilson

In his Brief, Wilson cites *Perron v. Peterson*, 593 A.2d 1057, 1058 (Me. 1991), for the proposition that "issues of foreseeability are generally questions of fact resolved by the jury." *Appellant's Brief at* 18. However, Wilson mistakes foreseeability in the context of proximate cause with foreseeability relating to whether a party owes a duty of care. *Perron* did not involve whether a duty of care

existed, but rather foreseeability in the context of proximate causation. *Perron*, 593 A.2d at 1058 ("In most civil actions based on the alleged negligence of a defendant, *the element of proximate causation* is a factual determination to be resolved at trial by the finder of fact." (emphasis added)). Whether a duty of care exists is far different than whether there is sufficient evidence of proximate causation.

In *Perron*, the decedent, who was a minor, went hunting alone and was later found with a gunshot wound to the head. *Perron*, 593 A.2d at 1508. The defendant was hunting at the same time and in the same area, and the defendant gave inconsistent stories about his actions and observations at the time of the decedent's death. *Id.* This Court held that any conclusion the defendant caused the death of the decedent was beyond the bounds of permissible inference and affirmed the entry of summary judgment for the defendant. *Id.* at 1058-59. Simply, *Perron* does not stand for the proposition argued by Wilson.

Similarly, Wilson's reliance on *Ames v. Dipietro-Kay Corp.*, 617 A.2d 559, 561 (Me. 1992) is misplaced. *See Appellant's Brief at* 18. As in *Perron*, *Ames* involved a question of proximate causation and that case merely stands for the proposition that "the mere occurrence of an intervening cause does not automatically break the chain of causation stemming from the original actor's conduct" as a matter of law. Simply, proximate cause is "that cause which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces the injury and

without which the result would not have occurred" and whether proximate cause existed was a question for the jury. *Ames v. Dipietro-Kay Corp.*, 617 A.2d at 561 (*quoting Wing v. Morse*, 300 A.2d 491, 496 (Me. 1973)). Neither *Perron*, nor *Ames* stands for the proposition argued by Wilson.

The lack of case law support for Wilson's argument is revealed by his reliance on *Quinn v. Moore*, 292 A.2d 846, 850 (Me. 1972) and *Reid v. Town of Mount Vernon*, 2007 ME 125, ¶ 17, 932 A.2d 539. *Quinn* merely stands for the proposition that a subcontractor who installed metal lath flooring should have foreseen that persons pouring concrete over the flooring would step on the flooring as part of their work. *Quinn v. Moore*, 292 A.2d at 850. Accordingly, if the flooring was negligently installed and another person was injured, the subcontractor could be held liable. *Id.* at 850-51. Similarly, *Reid* does not appear to be on point apart from its citation to the holding in *Mastriano v. Blyer*, 2001 ME 134, ¶ 17, 779 A.2d 951 that "absent a special relationship, the law imposes no duty to act affirmatively to protect someone from danger unless the dangerous situation was created by the defendant." *Reid v. Town of Mount Vernon*, 2007 ME 125, ¶ 17, 932 A.2d 539 (quoting *Mastriano v. Blyer*, 2001 ME 134, ¶ 17, 779 A.2d 951). Contrary to Wilson's claim of legal error, even if this Court disregards the lack of a "special relationship," the Superior Court properly concluded based on the Law Court's well-

established law, that the shooting of Wilson by an unknown third party was not sufficiently foreseeable to the Gurneys so as to impose a heightened duty of care.

C. Assuming, *arguendo*, that both a "special relationship" existed and the shooting of Wilson by an unknown third party was reasonably foreseeable to the Gurneys, relevant policy considerations do not support imposing a duty of care.

This Court has previously held that determining whether a duty exists "necessarily involves considerations beyond the factual determination that a particular injury was a foreseeable consequence of some particular conduct." *Cameron v. Pepin*, 610 A.2d 279, 282 (Me. 1992). This determination is not "entirely a question of the foreseeable risk of harm but is in turn dependent on recognizing and weighing relevant policy implications." *Id*. As this Court reaffirmed in *Cameron*:

> In the decision of whether or not there is a duty, many factors interplay: the hand of history, our ideals of morals and justice, the convenience of administration of the rule, and our social ideas as to where the loss should fall. In the end the court will decide whether there is a duty on the basis of the mores of the community "always keeping in mind the fact that we endeavor to make a rule in each case that will be practical and in keeping with the general understanding of mankind."

Id. at 282 (quoting *Trusiani*, 538 A.2d at 261; Prosser, *Palsgraf Revisited*, 52 MICH. L. REV. 1, 15 (1953)).

In the present case, this Court does not need to reach these policy issues since there is an absence of authority supporting Wilson's argument that a "party-host and party-guest relationship" should be considered a "special relationship" imposing a

heightened duty of care, and there is no evidence that the shooting was foreseeable to anyone, including Wilson and the Gurneys. However, even if this Court were to ignore these legal deficiencies, a contrary holding would make anyone potentially liable for shootings or acts of violence occurring on their premises. Every homeowner would owe a duty of care to protect invitees from the intentional acts of third parties. Such a dramatic expansion of liability would invalidate decades of this Court's jurisprudence and would not comport with "our ideals of morals and justice, the convenience of administration of the rule, and our social ideas as to where the loss should fall." *Cameron v. Pepin*, 610 A.2d at 281.

For the foregoing reasons, the Superior Court's grant of summary judgment to the Gurneys on Count V of the Amended Complaint should be affirmed.

II. The Superior Court did not commit legal error in finding that Wilson failed to set forth a *prima facie* case for Negligent Entrustment against Holly Gurney as alleged in Count VI of his Amended Complaint.

In the present case, Wilson's theory of negligent entrustment is that Holly Gurney negligently entrusted her home to Elizabeth Gurney, her 18-year-old daughter, to host a small party, which caused the shooting of Wilson by an unknown third party. As a preliminary matter, this Court has never held that a landowner may be held liable for negligent entrustment of a house where the instrumentality of the injury was not entrusted by the owner to another person.

The Superior Court properly relied on RESTATEMENT (SECOND) OF TORTS § 390, which provides:

> One who supplies directly or through a third person a *chattel* for the use of another whom the supplies 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 shar in or be endangered by its use, is subject to liability for physical harm resulting to them.

RESTATEMENT (SECOND) OF TORTS §390 (Am. L. Inst. 1965) (emphasis added); *see also Sweet v. Austin*, 179 A.2d 302, 305 (Me. 1962) (applying RESTATEMENT (SECOND) OF TORTS § 390).

On appeal, Wilson does not argue that the Superior Court misapplied Maine law, but argues instead, without citing any legal support, that this Court should reconfigure Maine law to recognize negligent entrustment of real property.

Even if this Court were to ignore the lack of legal support for Wilson's argument, such a change in Maine law would be unavailing in the present case. Wilson was shot with a handgun possessed by an unknown third party. He was not injured by a condition of the premises. Essentially, Wilson is claiming that Holly Gurney is absolutely liable for any injuries that occurred on her property regardless of her involvement or the instrumentality causing the injury. This is in direct conflict with this Court's decision in *Hanson v. Madison Paper Co.*, 564 A.2d at 1179 that a landowner does not have an obligation to guarantee the absolute safety of the persons on their premises.

As noted in the *Argument I*, Wilson failed to set forth any evidence that Holly Gurney, who was not present at the time of the shooting, was negligent. In order to prevail on a negligent entrustment claim, a plaintiff must show that the defendant had the right to control the property in question, which was entrusted to a third party, on the occasion when the accident occurred and was negligent. *Reid v. Town of Mount Vernon*, 2007 ME 125, ¶ 32, 932 A.2d 539 (citing ***Pelletier v. Mellon Bank, N.A.***, 485 A.2d 1002, 1004 (Me. 1984)). In *Reid*, this Court held that:

> Unlike vicarious liability where the actions of the third person are imputed to the defendant, "negligent entrustment is based on the owner's *own* negligence, or his '*direct* negligence in entrusting the vehicle to an incompetent user.'"

Id. (quoting *Steffey v. Beechmont Invs., Inc.*, No. 3:16-CV-223, 2017 WL 3754443, at *5 (E.D. Tenn. Aug. 29, 2017); *West v. E. Tenn. Pioneer Oil Co.*, 172 S.W.3d 545, 555 (Tenn. 2005)).

As a matter of law, there is no legal or factual basis to conclude that Holly Gurney owed a duty of care to protect Wilson from the intentional acts of a third party, nor is there any legal or factual basis on which to conclude that the shooting was foreseeable when Holly Gurney entrusted the home to her 18-year-old daughter. Finally, the instrumentality that caused Wilson's injury, the handgun, was not entrusted by Holly Gurney. Contrary to Wilson's claim of legal error, the Superior Court followed the this Court's precedent and properly granted summary judgment to the Gurneys on Wilson's claim of negligent entrustment set forth in Count VI.

III. This Court should follow the doctrine of s*tare decisis*.

In both arguments on appeal, Wilson does not contend that the Superior Court misapplied this Court's jurisprudence, but rather he seeks the wholesale rewriting of the standards for imposing a heightened standard of care based on a "special relationship" and the law of negligent entrustment. With these arguments, Wilson runs headlong into the doctrine of *stare decisis.*

Similar to the law on "special relationships" and negligent entrustment, the doctrine of *stare decisis* is well established by this Court's prior decisions. "*Stare decisis* embodies the important social policy of continuity in the law by providing for consistency and uniformity of decisions." *Bourgeois v. Great N. Nekoosa Corp.*, 1999 ME 10, ¶ 5, 722 A.2d 369. In *McGarvey v. Whittredge*, 2011 ME 97, ¶ 63, 28 A.3d 620, this Court articulated this doctrine as follows:

> The doctrine of *stare decisis* "is the historic policy of our courts to stand by precedent and not to disturb a settled point of law." *Myrick v. James,* 444 A.2d 987, 997 (Me. 1982). It exists because respect for legal precedent lends stability to the law and enables the public to place reasonable reliance on judicial decisions affecting important matters. Even when we have a certain "unease" with the analysis of a prior decision, we do not overrule the decision without a compelling and sound justification. *See Shaw v. Jendzejec*, 1998 ME 208, ¶¶ 8, 12, 717 A.2d 367, 370–71, 371–72; *Alexandre v. State*, 2007 ME 106, ¶ 35, 927 A.2d 1155, 1164.

Id. at ¶63.

On Brief, Wilson does not address the doctrine of *stare decisis* and does not advance any bases for ignoring the doctrine. In the present case, there are no compelling or sound justifications for this Court to overrule decisions that are well established. *See Bourgeois*, 1999 ME 10, ¶ 5 (The Law Court "does not disturb a settled point of law 'unless the prevailing precedent lacks vitality and the capacity to serve the interests of justice.'") (quoting *Myrick v. James*, 444 A.2d 987, 1000 (Me. 1982)). Accordingly, the Superior Court properly followed this Court's jurisprudence in granting summary judgment to the Gurneys on Counts V & VI and the Superior Court's Order should be affirmed.

Conclusion

In conclusion, the Superior Court properly applied this Court's prior jurisprudence to the undisputed facts in granting summary judgment in favor of the Gurneys on Counts V & VI of Wilson's Amended Complaint. Contrary to Wilson's argument, there no compelling or sound justifications for this Court to overrule its well-established jurisprudence on "special relationships" and negligent entrustment. Accordingly, this Court should affirm the Superior Court's Order dated May 23, 2025.

Dated at Portland, Maine this 10th day of November 2025

Thomas S. Marjerison, Bar No. 7836
Attorney for Appellees/Defendants Holly Gurney and Elizabeth Gurney

Norman, Hanson & DeTroy, LLC
220 Middle Street
P.O. Box 4600
Portland, ME 04112-4600
(207) 774-7000
tmarjerison@nhdlaw.com

CERTIFICATE OF SERVICE

I, Thomas S. Marjerison, hereby certify that on November ___, 2025, two copies of the Appellee Brief were served via email and U.S. mail, postage prepaid, upon counsel/parties of record as follows:

Carly R. Cosgrove, Esq.
Sheldon J. Tepler, Esq.
Hardy Wolf & Downing, P.A.
P.O. Box 3065
Lewiston, Maine 04243
ccosgrove@hardywolf.com
stepler@hardywolf.com

Dated at Portland, Maine this 10th day of November 2025

Thomas S. Marjerison, Bar No. 7836
Attorney for Appellees/Defendants
Norman, Hanson & DeTroy, LLC
220 Middle Street
P.O. Box 4600
Portland, ME 04112-4600
(207) 774-7000
tmarjerison@nhdlaw.com