

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1647**

Mai Nhia Moua,  
Appellant,

vs.

Peter Pao Moua,  
Respondent.

**Filed June 4, 2012  
Affirmed in part and reversed in part  
Hudson, Judge**

Ramsey County District Court  
File No. 62-CV-10-3074

Pao P. Yang, St. Paul, Minnesota (for appellant)

Larry John Laver, Woodbury, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Hudson, Judge; and Collins, Judge.\*

**UNPUBLISHED OPINION**

**HUDSON, Judge**

On appeal from the grant of summary judgment on appellant's claim of conversion, appellant argues that the district court erred because a genuine issue of material fact existed and that respondent did not dispute that he stole funds from the

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

liquor store previously owned by appellant and respondent. Appellant also argues that the district court abused its discretion in awarding respondent attorney fees pursuant to Minn. Stat. § 549.02. Because appellant lacked proof on an essential element of her claim, the district court's grant of summary judgment was not in error, and we affirm the grant of summary judgment. However, the district court abused its discretion by awarding respondent attorney fees because the statute cited by the district court governs only costs. We therefore reverse the attorney-fee award.

### **FACTS**

Appellant and respondent were divorced on January 22, 2007. While married, the couple purchased a liquor store, which respondent managed. After divorcing, appellant filed a claim against respondent for conversion, alleging that respondent unlawfully converted \$61,405.36 from the proceeds of the liquor store and deposited it into his personal checking accounts.

The liquor store was destroyed in a fire on February 26, 2008, more than a year after the couple divorced. The liquor store had not been included as an asset in the stipulated divorce decree. The parties settled a dispute over the insurance proceeds related to the fire, with respondent receiving \$30,000 and appellant receiving \$50,014. Soon after the settlement, appellant discovered two bank statements belonging to respondent. The first was dated July 31, 2007 from Village Bank with a balance of \$26,442.80, and the second was dated June 30, 2008 from TCF Bank with a balance of \$34,978.85. These accounts were not disclosed during the dissolution proceedings, nor were they disclosed during the insurance litigation. Discovery of these statements led

appellant to believe that respondent had, from July 22, 2005 to February 26, 2008, taken funds from the liquor store and deposited them into his personal accounts.

Respondent moved for summary judgment, which the district court denied. Respondent filed a motion to limit discovery, which the district court granted, restricting discovery to respondent's bank statements during the time that conversion was alleged. Appellant conducted no discovery.

Respondent again moved for summary judgment on June 28, 2011, which the district court granted. The district court found that appellant produced no evidence to support her claim of conversion and, therefore, no material facts were at issue. The district court concluded that appellant's claim was "without merit and frivolous." Respondent also requested \$14,758 in attorney fees. The district court "awarded reasonable costs and disbursements paid or incurred in the amount of \$10,927.59 for attorney's fees" pursuant to Minn. Stat. § 549.02 (2010). The district court made no findings regarding the award of costs and disbursements. This appeal follows.

## **D E C I S I O N**

### **I**

Summary judgment requires a court to dispose of a claim on the merits "if there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such facts." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). "[T]he reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Whether a genuine issue of material fact exists and whether the district court

erred in applying the law is reviewed de novo. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). Additionally, “[a] defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff’s claim.” *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

The district court concluded that appellant failed to establish facts or present evidence to support her claim that respondent converted funds from the liquor store into his personal checking account while managing the store. Appellant argues that the district court erred in granting summary judgment because (1) a genuine issue of material fact existed as to whether the balances on respondent’s bank statements reflected funds from the liquor store and (2) respondent had the opportunity to steal the funds and did not dispute that he stole the funds.

Conversion is an act of willful interference with the personal property of another that is (1) without justification or (2) inconsistent with the rights of the person entitled to the use, possession, or ownership of the property. *Dain Bosworth, Inc. v. Goetze*, 374 N.W.2d 467, 471 (Minn. App. 1985). Appellant failed to provide facts or evidence to prove conversion. Nothing in the record supports her bald claim that respondent interfered with her personal property or did so willfully. Furthermore, appellant conducted no discovery that would have produced the requisite facts or evidence to support her claim. Because appellant lacked proof on this essential element of conversion, the district court therefore did not err in granting summary judgment. *See* Minn. R. Civ. P. 56.03 (stating that summary judgment “shall” be granted if conditions in

rule are satisfied); *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001) (stating that summary judgment “is mandatory against a party who fails to establish an essential element of [the] claim, if that party has the burden of proof, because this failure renders all other facts immaterial”) (quotation omitted), *review denied* (Minn. Oct. 16, 2001). Because appellant failed to prove an essential element of her claim, we need not reach her alternate argument that the district court erred because respondent had the opportunity to steal the funds and did not dispute that he did so.

## II

Minn. Stat. §§ 549.02 and 549.04 (2010) govern the award of costs and disbursements. We review a district court’s award of costs and fees for an abuse of discretion. *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 482 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006). A district court has abused such discretion when it exercises its discretion in an arbitrary manner or committed an error of law. *Montgomery Ward & Co. v. Cnty. of Hennepin*, 450 N.W.2d 299, 306 (Minn. 1990). In awarding costs to the prevailing party, the district court judge should “take a hard look at costs claimed.” *Stinson v. Clark Equip. Co.*, 473 N.W.2d 333, 338 (Minn. App. 1991) (quotation omitted), *review denied* (Minn. Sept. 13, 1991).

Appellant argues that the district court abused its discretion (1) by awarding attorney fees under Minn. Stat. § 549.02 because the statute applies to costs, not attorney fees, and (2) by not determining whether the attorney fees awarded were reasonable. Under Minn. Stat. § 549.02, the district court “shall” award costs of \$200 to the prevailing party in addition to \$5.50 for the cost of filing a satisfaction of the judgment.

Minn. Stat. § 549.02. The statute does not provide for the award of attorney fees. However, attorney fees may be awarded if a contract authorizes the fees or a party has acted in bad faith. *Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983). Here, respondent submitted no evidence of a contract authorizing attorney fees, and the district court did not find that appellant acted in bad faith. The district court, therefore, abused its discretion as a matter of law by awarding respondent \$10,927.59 in attorney fees under Minn. Stat. § 549.02, and we reverse the award of attorney fees. *Montgomery Ward & Co.*, 450 N.W.2d at 306. To the extent the record supports costs and disbursements, respondent is entitled to those costs and disbursements pursuant to Minn. Stat. § 549.02.

Attorney fees may be awarded as a sanction under Minn. Stat. § 549.211 (2010). A motion for sanctions, citing Minn. Stat. § 549.211, was filed by respondent in June 2010, but this motion pertained to an attempt by appellant to reopen the divorce judgment, which is not at issue here. Furthermore, Minn. Stat. § 549.211, subd. 4, requires that a party seeking sanctions serve a motion on the nonmoving party and, after a 21-day safe-harbor period, file the motion with the district court. *Johnson ex rel. Johnson v. Johnson*, 726 N.W.2d 516, 518–19 (Minn. App. 2007). The district court did not cite to Minn. Stat. § 549.211 when awarding attorney fees, and the statute's procedures were not followed.

**Affirmed in part and reversed in part.**