

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0114**

David Jaworski,
Appellant,

vs.

Christina Jaworski,
Respondent,

Jacqueline Friesen,
Respondent.

**Filed July 29, 2024
Affirmed
Bjorkman, Judge**

Washington County District Court
File No. 82-CV-23-1904

Nathan M. Hansen, Willernie, Minnesota (for appellant)

Charles R. Shafer, Chestnut Cambronne PA, Minneapolis, Minnesota (for respondent Christina Jaworski)

John A. Price, John A. Price III, P.A., Prior Lake, Minnesota (for respondent Jacqueline Friesen)

Considered and decided by Bjorkman, Presiding Judge; Reyes, Judge; and Kirk,
Judge.*

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-plaintiff challenges the summary judgment dismissing his claims of fraud, conversion, and civil theft. Because the undisputed facts entitle respondent-defendants to judgment as a matter of law on all three claims, we affirm.

FACTS

The following facts are undisputed. Appellant David Jaworski (husband) and respondent Christina Jaworski (wife) married in 2012 and jointly owned a home, subject to a mortgage. Wife traditionally managed the family's finances, making the monthly mortgage payment and paying other bills out of the couple's joint checking account. By February 2022, they were delinquent on their mortgage by more than \$45,000. That month, wife obtained a loan of approximately \$48,000, secured with a second mortgage on their home. She did so by signing the documents on behalf of herself and husband and having her coworker, respondent Jacqueline Friesen, notarize the documents. The loan funds were paid toward the first mortgage, bringing it current. In November 2022, husband and wife separated and wife initiated a marital-dissolution proceeding. They sold the family home in early 2023, at which point husband became aware of the second mortgage.

Shortly thereafter, he initiated this action against wife and Friesen, asserting claims of fraud, conversion, and civil theft with respect to the loan funds.¹ The parties filed cross-motions for summary judgment. In support of her motion, wife acknowledged forging

¹ He also asserted claims of civil conspiracy against both and a claim of negligence against Friesen but does not appear to challenge the dismissal of those claims.

husband's signature to obtain the loan, but presented her affidavit and a mortgage statement as evidence that all of the loan funds were applied to their delinquent first mortgage. In response, husband averred that wife "has never provided to [him] an accounting of what she did with the money" but did not address or present any evidence tending to refute wife's evidence of how the funds were used.

At the hearing on the parties' motions, the district court explained that it had read the parties' submissions and would be granting wife and Friesen's motion for summary judgment. With respect to the fraud claim, the court explained that the alleged misstatement underlying the fraud claim—the forged signature—was directed at the mortgage company, not husband, so "[f]raud doesn't accurately describe the arguments that would be made on behalf of [husband]." And with respect to the conversion and theft claims, the court explained that "they would require that something be taken" but the loan funds were applied to a joint debt—they were, effectively, "moved from one pocket to another."² The district court's written order simply granted respondents' motion.

Husband appeals.

DECISION

Summary judgment is appropriate when the moving party shows that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A defendant is entitled to summary judgment if "the record

² The district court also noted that its ruling was limited to a determination that husband had not presented "a proper civil action" based on wife's forging of his signature. The court recognized there could be criminal charges or ramifications to wife in the dissolution proceeding.

shows a complete lack of proof on any essential element of the plaintiff's claim." *Hous. & Redev. Auth. of City of St. Paul v. Lambrecht*, 663 N.W.2d 541, 547 (Minn. 2003). We review the district court's grant of summary judgment de novo "to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). In doing so, we view the evidence in the light most favorable to the party against whom summary judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). We will "affirm summary judgment if we can sustain it on any ground presented to the district court." *All, Inc. v. Hagen*, 970 N.W.2d 681, 684 (Minn. App. 2021).³

I. Wife and Friesen are entitled to summary judgment on husband's fraud claim.

A person seeking to recover damages for fraudulent misrepresentation must prove:

(1) there was a false representation by a party of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made as of the party's own knowledge without knowing whether it was true or false; (3) with the intention to induce another to act in reliance thereon; (4) that the representation caused the other party to act in reliance thereon; and (5) that the party suffered pecuniary damage as a result of the reliance.

Hoyt Props., Inc. v. Prod. Res. Grp., LLC, 736 N.W.2d 313, 318 (Minn. 2007) (quotation omitted).

³ Husband contends the district court erred by not stating in its order the reasons for granting summary judgment. When ruling on a summary-judgment motion, a district court "shall state" the reasons for its ruling, but it may do so "on the record *or* in a written decision." Minn. R. Civ. P. 56.01 (emphasis added). Because the district court stated its reasons on the record during the summary-judgment hearing, we discern no error.

Husband appears to argue that the district court misapplied these five elements by narrowly focusing on the mortgage company to which the forged loan application was submitted. While he does not dispute that the mortgage company is the entity intended to be and actually induced to rely on his forged signature, he contends wife should “not [be] absolved of culpability” with respect to him. But that is precisely what *Hoyt* directs—a civil fraud claim is available only to a party that is intended to and actually does rely on a false representation and suffers resulting pecuniary damages. *Id.* It is undisputed that husband is not the party to whom respondents made the false representation. Moreover, he has presented no evidence that he sustained pecuniary damage in reliance on the false representation. To the contrary, when asked during his deposition how he was harmed by wife forging his name to take out a second mortgage, husband answered, “Honestly I don’t know if I’m harmed.” Because the record is devoid of evidence that husband was induced to rely on the forged signature to his detriment, his fraud claim fails as a matter of law.

II. Wife and Friesen are entitled to summary judgment on husband’s conversion claim.

“Conversion is an act of willful interference with personal property, done without lawful justification by which any person entitled thereto is deprived of use and possession.” *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 920 (Minn. App. 2008) (quotation omitted), *rev. denied* (Minn. Jan. 20, 2009). It involves “the exercise of dominion and control over goods inconsistent with, and in repudiation of, the owner’s rights in those goods.” *TCI Bus. Cap., Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 428 (Minn. App. 2017) (quotation omitted).

Husband asserts that the district court erred by determining that wife's use of his forged signature to obtain a loan and grant a second mortgage on their home did not deprive him of anything because it deprived him of his home equity. This argument is unavailing. Even assuming that a loan based on home equity is the type of property for which a conversion claim may lie,⁴ the record does not reflect that husband was deprived of his equity in the jointly owned home. Rather, the undisputed evidence shows that wife used the entirety of the loan funds to cure the delinquency in the couple's first mortgage, essentially leaving them in the same equity position but staving off foreclosure of the first mortgage. As the district court aptly stated, wife merely moved the funds "from one pocket to another." And in doing so, she did not deprive husband of anything that she did not possess jointly with him. Because the record contains no evidence that wife and Friesen engaged in conduct amounting to conversion, they are entitled to summary judgment dismissing that claim.

III. Wife and Friesen are entitled to summary judgment on husband's civil theft claim.

"A person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either \$50 or up to 100 percent of its value when stolen, whichever is greater." Minn. Stat. § 604.14, subd. 1 (2022). To steal means to wrongfully take property with the intent to use it or keep it. *TCI Bus. Cap.*, 890 N.W.2d at 431. It does not "include the action of transferring property from

⁴ Conversion claims generally concern deprivation of "tangible personal property, *i.e.*, items that can be seen and touched." *TCI Bus. Cap.*, 890 N.W.2d at 429.

its owner to another person and then back to the owner if there is no intent to keep or use the property or to allow another person to keep or use the property.” *Id.*

Husband contends that the district court erred by granting summary judgment on his civil theft claim because any “recovery” of the loan funds upon the sale of the home does not preclude an award of punitive damages under Minn. Stat. § 604.14 (2022). But the district court’s reasoning did not turn on husband’s recovery of the loan funds. Rather, the court noted the undisputed evidence that the funds were applied directly to the delinquent first mortgage, meaning that they were not taken from him. Because the record contains no evidence that wife and Friesen stole property that belonged to husband, they are entitled to summary judgment on his civil theft claim.

Affirmed.