This opinion is nonprecedential except as provided by Minn.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
A25-0168

Cheryl M. Shega,
Appellant,

vs.

American Bank of the North, et al.,
Respondents,

Laura Craig, et al.,
Defendants.

Filed August 4, 2025
Affirmed
Harris, Judge

St. Louis County District Court
File No. 69DU-CV-20-1245

Amy R. Mason, Cummins & Bonestroo, Stillwater, Minnesota (for appellant)

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Considered and decided by Harris, Presiding Judge; Bratvold, Judge; and Jesson, Judge.[*]

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

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant challenges the summary-judgment dismissal of her claim against respondents, arguing that the district court erred when it determined that there existed no genuine issues of material fact that respondents aided and abetted the financial exploitation of a vulnerable adult. We affirm.

FACTS

This case involves an appeal from an order granting summary judgment to respondent American Bank of the North (the bank) for disbursing appellant Cheryl M. Shega's certificate of deposit (CD) funds to the named payee-on-death (POD), Laura Craig. The following facts are based on the record at summary judgment and presented in the light most favorable to the estate of Cheryl Shega.[1]

Background Information

Cheryl Shega[2] was the oldest of three children and lived with her parents, Edward and Charlene Shega (the Shegas), throughout most of her life. Cheryl's siblings are Nancy Weiser and Gregory Shega. Although Cheryl was not formally diagnosed with a disability until later in life, most people in her life were aware that she suffered from a mental illness. Cheryl maintained a "childlike approach to life," adopting a daily routine of sleeping in,

[1] *See Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015) (indicating that, on appeal from summary judgment, we "view the evidence in the light most favorable to the party against whom summary judgment was granted").

[2] Because several family members share a last name, we refer to them by their first names for clarity.

watching TV, and spending time on the internet. Cheryl did not work outside of the home, other than a few jobs in her late twenties. The Shegas financially supported her most of her life, even claiming her as a dependent on their taxes until 2016.

One of Cheryl's hobbies was searching for long lost relatives. In 2012, she reached out to defendant Laura Craig, a woman she believed was her cousin. Laura responded, and the two began communicating primarily via email. In a February 2012 email, Cheryl promised Laura that she would "never tell anyone where you are or that I am in contact with you."

When Cheryl's mother, Charlene, died in March 2015, Cheryl began taking care of her father, Edward, and the household chores. During this time, siblings Nancy and Gregory did not live with or near Cheryl. Also during this time, Edward had a "significant number of ambulance runs to the ER" and hospitalizations. Nancy and Gregory grew concerned about their father's health and flew back to speak with Cheryl in November 2016. There, Gregory asked Cheryl to see Edward's trust, and Cheryl "became completely out of control, in a way that [Gregory] had rarely witnessed." Edward passed away in May 2017, and Cheryl remained living in his home.

In May 2019, law enforcement responded to a welfare check at the Shega's home. Law enforcement found the house was a mess and discovered Cheryl "on the ground, unable to sit up . . . somewhat paranoid . . . [and] confused in appearance." A neighbor told police that Cheryl had not left the home in five months and crashed her car in a ditch because she was "nearly blind." And according to Gregory, the home was in complete disarray, with piles of newspapers, waste, dozens of mice and rats, soiled clothing, and hair and cat feces everywhere. Cheryl passed away on May 27, 2019.

The Shegas' Revocable Living Trust

In November 2009, the Shegas executed The Shega Family Revocable Living Trust (the trust). The Shegas named Cheryl as the sole beneficiary of the trust, identified her as the personal representative of their wills, and named her as the financial power of attorney. And if Cheryl predeceased the Shegas, then Gregory and Nancy would be the recipients of the trust's assets. The Shegas also signed a joint request for retitlement, which was addressed to the bank and referenced three, unnumbered CDs.

After Cheryl's death in May 2019, Nancy and Gregory found records of Cheryl's CDs that she inherited while going through paperwork in the home. There were four CDs in particular. Between 2016 and 2017, Cheryl redeemed the CDs she inherited, had new CDs issued in her name, and named Laura as the POD on the new CDs. The value of the four CDs was approximately $250,000.

The Bank's Involvement

Two days after Cheryl's death, Nancy met with the bank's retail manager vice president, respondent Becky Radika (regional retail manager VP). During this meeting, Nancy shared her concerns about Cheryl designating Laura as the beneficiary of the CDs. The siblings' attorney, David Crosby, sent two letters to the bank in June 2019. The first letter, dated June 6, 2019, informed the bank that Nancy and Gregory were "preparing filings with the [district court] regarding [Cheryl's] estate." The letter also explained:

> Each of these certificates designated a cousin of Ms. Shega's as the POD owner of the certificate. My clients are concerned because the cousin was not believed to have had any contact with Ms. Shega for some 35 years; it was only after Ms. Shega's longtime caretaker died (her mother in 2015) that the cousin apparently reconnected with Ms. Shega. Due to long-standing medical, physical and emotional infirmities and dysfunctions, Ms. Shega was a "vulnerable adult" under Minnesota Statutes section 626.5572, subd. 21(4). My clients have no information as to how or why the cousin was named on the certificates, [or] whether such actions were in accordance with Minnesota law as to financial transactions involving vulnerable adults.
>
> This letter advises American Bank of the North of the above facts and requests that no funds be distributed from any of Ms. Shega's certificates or any other accounts with your institution absent compliance with all relevant laws, procedures and policies or other court orders. Ms. [Nancy] Weiser and Mr. [Gregory] Shega intend to continue their investigations and prepare court papers in a timely and expedited manner.

On June 10, 2019, the district court appointed Nancy as a special administrator of Cheryl's estate because the "Assets of the Decedent may potentially be disbursed and said allocation may have been the result of fraud and/or undue influence." On June 25, 2019, the siblings' counsel sent a second letter to the bank and informed it that Nancy was appointed as the special administrator for Cheryl. Crosby reminded the bank that Cheryl was a "vulnerable adult" under Minnesota law, and explained that Nancy and Gregory were "gathering information as to the circumstances that led to [Cheryl's] execution of the [CDs]."

Also on June 25, 2019, the bank's executive vice president of retail banking Marci Knight (executive vice president) emailed the regional retail manager VP and asked how Nancy and Gregory discovered the CDs and the respective POD on each one. The executive vice president also informed the regional retail manager VP that Crosby "contacted [respondent bank employee Gerri Chapman] last week to ask her questions regarding Cheryl's mental stability. I instructed Gerri to not say anything and to have something requested in writing. I then talked to [another bank employee] regarding this as the attorney was going to send a subpoena." The regional retail manager VP answered the executive vice president's question and informed her that she received documentation that Nancy was appointed as the special administrator of Cheryl's estate. The regional retail manager VP also stated:

> There is still nothing they can do on the CD's with the cousin being named the POD on the accounts. If she does come in to claim them, I am sure we will have to pay them out to her according to our documentation and then they would have to fight it out in the courts. So far[,] the cousin has not reached out to us at all.

The executive vice president replied that, "According to [the Minnesota Bankers Association] legal counsel[,] we need to seek an attorney on this . . . if we want to enter an interplea and turn the money over to the courts."

Chapman was unaware that Nancy and Gregory's attorney had reached out. She was also unaware that Nancy had been appointed the special administrator. After Cheryl's death, in June 2019, Chapman attempted to locate Laura online. On July 7, 2019, she found Laura's husband Stephen Craig on Facebook and sent him a friend request "hoping to get a connection to see if [she] could find out anything about Laura."[3] When Stephen did not

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[3] Chapman's first Facebook message reads, in full, "Hi, I know this may be very odd getting a message from me but I am trying to get a hold of Laura Craig. My name is Gerri Chapman

respond, Chapman messaged him again two days later, stating it was "[v]ery important and time sensitive." In her deposition, Chapman explained that the bank likes to "get in touch with the beneficiaries so we can get their name – the deceased['s] name[] off the accounts for reporting reasons."

On July 8, 2019, the executive vice president emailed Chapman and the regional retail manager VP and explained that Chapman "does not have to talk to [Nancy and Gregory's attorney] and if he so chooses to send a subpoena[,] then so be it." She also explained, "As Gerri has stated, Cheryl was of sound mind and knew who she intended to leave her money to and at this time we will abide by how the accounts are set up."

On July 25, 2019, Laura's counsel sent a letter to the bank requesting that it release the funds to Laura because she was the named beneficiary. The bank released the funds from Cheryl's CDs to Laura on July 26, 2019. The regional retail manager VP informed Nancy that Laura's counsel requested that the bank release the CD funds to Laura's account. She explained that the bank was "obligated by [its] legal documents to honor this request to payout the funds to [Laura] which we did on July 26th."

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and I am [a] personal banker at [the bank]. I just need to ask Laura a question. Can you help?" The second message reads, "Hi [Stephen] I am really hoping you can contact Laura and have her get in touch with me. Very important and time sensitive. Nothing bad – just have a question."

Procedural Posture

In July 2020, appellant Estate of Cheryl M. Shega (the estate)[4] sued Laura and Stephen Craig, claiming that they exploited Cheryl, a vulnerable adult, and unduly influenced her to make Laura the POD of her CDs. Some of the claims raised against the Craigs were dismissed at summary judgment; the remaining claims were tried to a jury. The estate prevailed on all remaining claims against the Craigs. The jury specifically found that Cheryl was a vulnerable adult, that Cheryl's designation of Laura as the beneficiary of the CDs was the product of undue influence, and awarded the estate damages of approximately $250,000. The claims against the Craigs are not the subject of this appeal.

Also named in the lawsuit was the bank, along with Chapman and Radika (together, the bank). The estate claimed financial exploitation of a vulnerable adult, tortious interference, negligence, and aiding and abetting the financial exploitation of a vulnerable adult. The bank moved for summary judgment.

In December 2022, the district court granted summary judgment for the bank on all of the estate's claims against it except the negligence claim, on which the bank later prevailed at trial. For the claim of aiding and abetting the financial exploitation of a vulnerable adult, the district court determined that the estate failed to provide sufficient evidence to create a genuine issue of material fact.

The estate appeals.

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[4] The title of this matter identifies the plaintiff as Cheryl herself, and that title is not changed in consequence of the appeal. *See* Minn. R. Civ. App. P. 143.01. But it is clear that the claims were asserted by Cheryl's estate, and we thus refer to the estate as the appellant herein. Gregory Shega is the personal representative for the estate.

DECISION

The estate challenges the district court's grant of summary judgment on its claim for aiding and abetting the financial exploitation of a vulnerable adult, arguing that its claim was not a statutory claim for aiding and abetting the financial exploitation of a vulnerable adult pursuant to Minnesota Statutes section 626.557, subdivision 20 (2020), but rather a common-law claim for aiding and abetting the tort of undue influence. The estate further argues that the Minnesota Supreme Court has recognized the tort of undue influence. Finally, the estate argues that the district court erred in its application of the elements of aiding and abetting tortious conduct to the undisputed facts . We address each argument in turn.[5]

I. The Minnesota Legislature did not create a statutory cause of action for aiding and abetting the tort of undue influence.

As an initial matter, the bank argues that count 8 was a claim based on aiding and abetting the financial exploitation of a vulnerable adult as defined by Minnesota Statutes section 626.557, subdivision 20, which does not create a cause of action for aiding and abetting the financial exploitation of a vulnerable adult. The estate does not concede that

[5] The bank argues that the estate failed to adequately cite to the record, in violation of Minnesota Rule of Civil Appellate Procedure 128.03 and requests that we decline to address the issues raised on appeal. However, the estate adequately cited to the record and any evidence to which it referred without citing the record was not relevant to our analysis of the issues on appeal. Therefore, we deny the bank's request. We note, however, that briefs to this court are required to cite to the record for each material fact. Minn. R. Civ. App. P. 128.03; *see also Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996) (stating citations to the record "are particularly important where . . . the record is extensive") *aff'd*, 568 N.W.2d 705 (Minn. 1997); *see also Cole v. Star Trib.*, 581 N.W.2d 364, 371-72 (Minn. App. 1998) (noting that failure to cite to the record can result in non-consideration of an issue).

aiding and abetting the financial exploitation of a vulnerable adult pursuant to Minnesota Statutes section 626.557, subdivision 20, is not a valid cause of action. However, the estate contends that aiding and abetting the financial exploitation of a vulnerable adult under section 626.557, subdivision 20, was not the claim raised at summary judgment. Because the district court analyzed the underlying claim as aiding and abetting the financial exploitation of a vulnerable adult, we start our analysis with whether there is a statutory cause of action for aiding and abetting the financial exploitation of a vulnerable adult. This presents a question of statutory interpretation that we review de novo. *Graphic Commc'ns Loc. 1B Health & Welfare Fund "A" v. CVS Caremark Corp.*, 850 N.W.2d 682, 689 (Minn. 2014).

"The goal of all statutory interpretation is to 'ascertain and effectuate the intention of the legislature.'" *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012) (quoting Minn. Stat. § 645.16 (2010)). Our first step is to determine whether the words of the law are clear or ambiguous. *Id.* The statutory language is ambiguous if words "are susceptible to more than one reasonable interpretation." *Id.* at 77. "[W]e give words and phrases their plain and ordinary meaning" and "read the statute as a whole and give effect to all of its provisions." *Graphic Commc'ns*, 850 N.W.2d at 689.

We begin with the text of the statute. Minnesota Statutes section 626.557, subdivision 20(a), states, "A vulnerable adult who is a victim of financial exploitation as defined in section 626.5572, subdivision 9, has a cause of action *against a person who committed the financial exploitation*." (Emphasis added.) The plain language unambiguously provides a cause of action only against the person who committed the financial exploitation—in this case, Laura Craig. The relevant statutory language does not indicate that a victim may sue for aiding and abetting the financial exploitation of a vulnerable adult. And reading the statute as a whole, it appears this was intentional by the Minnesota Legislature. To be sure, the legislature created aiding-and-abetting liability in another part of the same statute. *See* Minn. Stat. § 626.5572, subd. 2(a)(1)-(4) (2024) (defining "abuse" to include "aiding and abetting" varying degrees of assault and criminal sexual conduct, using drugs to "injure or facilitate crime," and soliciting, inducing, or promoting prostitution). Further, the legislature has created statutory causes of action for aiding and abetting in other contexts, such as the Minnesota Human Rights Act (MHRA), Minnesota Statutes section 363A.14 (2024) ("It is an unfair discriminatory practice for any person . . . intentionally to aid, abet, incite, compel, or coerce a person to engage in any of the [19] practices forbidden by this chapter.").

The statutory scheme of the exploitation of the vulnerable-adult law and the example of the MHRA demonstrate that the legislature knew how to include aiding and abetting claims, and if it wished to attach aiding-and-abetting liability for the financial exploitation of a vulnerable adult, it would have done so here. "When the Legislature uses limiting or modifying language in one part of a statute, but omits it in another, we regard that omission as intentional and will not add those same words of limitation or modification to parts of the statute where they were not used." *State v. Schwartz*, 957 N.W.2d 414, 419 (Minn. 2021) (quotation omitted).

Accordingly, reading the statute as a whole, we conclude that section 626.557 does not provide a cause of action for aiding and abetting the financial exploitation of a vulnerable adult.

II. The Minnesota Supreme Court has not recognized the common-law tort of undue influence.

Having determined that section 626.557 does not provide a cause of action for aiding and abetting the financial exploitation of a vulnerable adult we turn to the issue of whether a common-law claim for the same exists. But a common-law claim for aiding and abetting presupposes an underlying tort. At summary judgment, the estate asserted that the primary claim underlying the aiding and abetting the financial exploitation of a vulnerable adult was that of undue influence. The bank argues that undue influence is not a "tort" under Minnesota law.[6] On appeal, the parties contest whether "undue influence" is a recognized tort in Minnesota.[7]

The estate concedes that there is no Minnesota caselaw identifying undue influence as a tort. However, relying on *Neibuhr v. Gage*, 108 N.W. 884, 887 (Minn. 1906), the estate argues that undue influence is a "subtle species of fraud" and that fraud, in turn, "is an intentional tort." *Florenzano v. Olson*, 387 N.W.2d 168, 173 (Minn. 1986). To further

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[6] Undue influence is a recognized basis to challenge the validity of a legal document. *See In re Est. of Torgerson*, 711 N.W.2d 545, 550 (Minn. App. 2006), *rev. denied* (Minn. June 20, 2006) (stating that a person contesting a will bears the burden of proving lack of testamentary capacity or undue influence). Here, the estate is asserting that undue influence is an independent tort.

[7] The estate raised this argument only in the reply brief. And, generally, issues not raised or argued in a principal brief cannot be raised in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010).

its claim, the estate relies on *Witzman v. Lehrman, Lehrman & Flom*, where the supreme court held that, "at least in some circumstances, Minnesota law does recognize a claim based on aiding and abetting the tortious conduct of another." 601 N.W.2d 179, 186 (Minn. 1999).

The estate's reliance on *Neibuhr* is misplaced. *Neibuhr* involved an action for fraud in the purchase of corporate stocks and contract remedies for injuries that are "induced by fraud." 108 N.W. at 887. The court briefly considered potential sources of contractual deceit and duress. *Id*. The court discussed the plaintiff signing a contract due to "fear[ing] . . . accusation and false charge" and the trial court's determination of the appropriate remedy. *Id.* at 885, 887-88. The *Neibuhr* court held that injuries by duress and injuries by deception have the same remedy because they are both "species of fraud." *Id.* at 887. The court noted that the Wisconsin Supreme Court in *City Nat. Bank v. Kusworm*, 64 N.W. 843, 845 (Wis. 1895), stated:

> [t]he only difference between fraud, undue influence, and duress is as to the method employed in overcoming the volition of the victim. In case of fraud the volition is usually overcome by deceit, false representations, or false pretenses. In case of undue influence the volition of the victim is usually overcome by importunities, flatteries, insinuations, and artifice, and yet all the authorities class undue influence as a subtle species of fraud.

Id.

Here, the Minnesota Supreme Court was not adopting undue influence as a tort. Rather, this mention was in the context of how fraud could be achieved, with a brief reference to undue influence within a quotation as "a subtle species of fraud" to illustrate how deceit may achieve fraud. *Id.*

While acknowledging that there is not a case that "squarely states that [undue influence] is a tort," the estate identifies other state courts that have expressly stated undue influence is a tort, which supports the holding in *Neibuhr* that undue influence is a "subtle species of fraud." *See Solon v. Slater*, 287 A.3d 574, 588 n.8 (Conn. 2023) (stating that "[u]ndue influence 'is a species of fraud' . . . or a type of duress . . . or coercion that 'sound[s] in tort'" (citations omitted)); *In re Niles*, 823 A.2d 1, 9 (N.J. 2003) (holding that "[u]ndue influence is a pernicious tort that has been referred to as a 'species of fraud'"); *Howe v. Palmer*, 956 N.E.2d 249, 255 (Mass. App. 2011) (discussing the applicable statute of limitations in the Massachusetts Court of Appeals and stating that "[a] claim for undue influence sounds in tort"); *Legum v. Brown*, 909 A.2d 672, 680-81 (Md. 2006) (discussing the jurisdiction of the Court of Appeals of Maryland and determining that a claim of undue influence was a tort-based action); *Patey v. Peaslee*, 131 A.2d 433, 436 (N.H. 1957) (describing fraud, duress and undue influence as torts in New Hampshire); *Barnes v. Channel*, 810 S.E.2d 549, 550-51 (Ga. 2018) (describing the plaintiff's tort action as "alleging . . . undue influence involving the quitclaim deed"); *Ressis v. Mactye*, 485 N.Y.S.2d 132, 134 (N.Y. App. Div. 1985) (holding that a cause of action for undue influence requires a "tort-feasor" to have coerced a plaintiff in order to obtain some advantage).[8]

The estate identifies caselaw from other jurisdictions, which have referred to undue influence as a tort. It claims that we should view *Neibuhr* in light of these cases and

[8] We note that authority from other jurisdictions is merely persuasive and not binding on this court. *See Randall v. Paul*, 897 N.W.2d 842, 847 (Minn. App. 2017).

likewise hold that undue influence is a tort in Minnesota. This argument is unavailing. First, as discussed above, *Neibuhr* does not hold that undue influence is a tort. Additionally, assuming without deciding that *Neibuhr* did recognize undue influence as a "subtle species of fraud," the estate here does not argue that the bank aided and abetted fraud and did not advance that argument in district court.

The bank contends that undue influence is not a "freestanding tort," and that the estate does not identify any underlying tortious conduct. Specifically, the bank argues that the supreme court has not yet addressed whether undue influence is a recognized tort. We agree.

Only the Minnesota Supreme Court has "the power to recognize and abolish common law doctrines and to define common law torts and their defenses." *Alonzo v. Menholt*, 9 N.W.3d 148, 154 (Minn. 2024) (quoting *Larson v. Wasemiller*, 738 N.W.2d 300, 303 (Minn. 2007)); *see also Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 439 (Minn. 1990) ("Creating a new tort is a function properly reserved for the supreme court based upon appropriate facts and record."); *In re Est. of Stanley*, No. A09-941, 2009 WL 4910852, at *7 (Minn. App. Dec. 22, 2009) (same). As this court has recognized, only the Minnesota Supreme Court has authority to recognize new common-law doctrines for Minnesota. *See, e.g.*, *Wise v. Stonebridge Cmtys., LLC*, 927 N.W.2d 772, 776 (Minn. App. 2019) ("[I]t is not the function of this court to create new causes of action."); *Stubbs v. North Mem'l Med. Ctr.*, 448 N.W.2d 78, 81 (Minn. App. 1989) (explaining that, in declining to recognize a cause of action for the tort of invasion of privacy, "it is not . . . the function of this court to establish new causes of action"), *rev.*

denied (Minn. Jan. 12, 1990); *Dukowitz v. Hannon Sec. Servs.*, 815 N.W.2d 848, 851 (Minn. App. 2012) (declining to recognize new wrongful-discharge claim), *aff'd*, 841 N.W.2d 147 (Minn. 2014); *Jane Doe 43C v. Diocese of New Ulm*, 787 N.W.2d 680, 690 (Minn. App. 2010) (declining to recognize "broadly stated fraud theory"). The Minnesota Supreme Court has not recognized undue influence as a freestanding tort.

Considering the above caselaw and this court's longstanding practice, and because the supreme court has not recognized undue influence as a tort, we refrain from adopting the tort of undue influence.[9]

III. Alternatively, even if undue influence is a tort, the district court did not err by granting summary judgment because the estate failed to present evidence sufficient to create a genuine issue of material fact as to the elements of the claim.

Assuming that Minnesota has recognized aiding and abetting the tort of undue influence, the estate argues that it is entitled to a new trial because a jury could have found that the bank substantially assisted the Craigs when it disbursed the CD funds to Laura. The bank argues that there were no genuine issues of material fact for the three elements of the aiding-and-abetting claim.

Summary judgment is proper if "there is no genuine issue as to any material fact" and the moving party "is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A party opposing summary judgment must produce competent, admissible evidence that creates a genuine issue for trial. *Twin Cities Metro-Certified Dev. Co. v. Stewart Title*

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[9] Because we conclude that supreme court precedent does not recognize undue influence as a tort, we need not address the bank's argument that the estate's common-law claim for aiding and abetting tortious conduct is preempted by the Uniform Commercial Code.

Guar. Co., 868 N.W.2d 713, 720 (Minn. App. 2015). There is no genuine issue of material fact if the record as a whole could not lead a rational decision-maker to decide for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). If a party fails to establish an essential element of its claim, the moving party is entitled to summary judgment. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001), *rev. denied* (Minn. Oct. 16, 2001). This court reviews de novo whether there are genuine issues of material fact and whether the district court correctly applied the law. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). We also 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).

With this in mind, we turn to the elements of aiding and abetting. "[A]ll who actively participate in any manner in the commission of a tort, or who procure, command, direct, advise, encourage, aid, or abet its commission, or who ratify it after it is done are jointly and severally liable for the resulting injury." *Witzman*, 601 N.W.2d at 185-86 (quotation omitted). There are three elements to prove aiding and abetting: "(1) the primary tort-feasor must commit a tort that causes an injury to the plaintiff; (2) the defendant must know that the primary tort-feasor's conduct constitutes a breach of duty; and (3) the defendant must substantially assist or encourage the primary tort-feasor in the achievement of the breach." *Id.* at 187.

The estate does not contest the district court's determination on the first element of aiding and abetting that the primary tort-feasor, the Craigs, committed a tort that caused an injury to the Shegas. We therefore consider only the latter two elements.

A. The estate did not offer evidence sufficient to create a genuine issue of material fact that the bank had actual knowledge of Laura unduly influencing Cheryl.

The estate claims that the bank "knew that the Craig's conduct constituted a breach of duty" and highlights three supporting facts in the record. First, Nancy informed Radika of her concerns about how Laura became the beneficiary of Cheryl's CDs. According to Nancy's affidavit, Radika then "contacted legal counsel for American Bank and based on this phone call, she put a post-it note on the Affidavit that stated: 'Court order to freeze – open Probate case.'" Second, Crosby sent two letters to the bank: the first letter, sent on June 6, 2019, explained that Cheryl may have been exploited as a vulnerable adult and, therefore, requested that no funds be released to Laura pending the investigation. The second letter, sent on June 25, 2019, notified the bank that Nancy had been appointed as a special administrator and reminded the bank that Nancy and Gregory were investigating the circumstances that led to Cheryl designating Laura as the CDs beneficiary. And third, the order naming Nancy as the special administrator informed the bank that the "allocation of [Cheryl's] assets may have been the result of fraud and/or undue influence."

The bank claims that the "record contains not so much as a *hint* that [the bank and its employees] knew of any alleged influence on Cheryl's decision to name Laura" as the POD on the relevant CDs. The bank is mistaken. An internal email between the bank and counsel for the Minnesota Bankers Association demonstrates that the bank was advised about the pending litigation. On June 24, 2019, the Minnesota Bankers Association's counsel wrote:

> This is likely a scenario that will require the bank getting legal counsel involved. I don't know if the bank has any reason to suspect the cousin/POD did anything wrong, but if the siblings are serious about fighting this, then they will get the bank involved with the court action at some point. Until that happens, the bank, along with legal counsel, has a choice to make. Now that it has notice of a possible controversy, it could petition the court and start an interpleader action which is basically telling the court that there is/will be a dispute over this money and the bank doesn't want to hold it anymore so we are going to deposit [it] with the court while the two parties fight over it.

This shows that the bank was at least aware of the alleged undue influence and the potential for litigation. The question that remains, however, is whether the bank had "actual knowledge" of the Craigs' undue influence.

"[A]iding and abetting liability is based on proof of a scienter—the defendants must *know* that the conduct they are aiding and abetting is a tort." *Witzman*, 601 N.W.2d at 186. A "bare inference that the defendant must have had knowledge of the primary violation is insufficient." *Camp v. Dema*, 948 F.2d 455, 459 (8th Cir. 1991) (quotation omitted). However, "[i]n cases where the primary tortfeasor's conduct is clearly tortious or illegal . . . a defendant with a long-term or in-depth relationship with that tortfeasor may be deemed to have constructive knowledge that the conduct was indeed tortious." *Witzman*, 601 N.W.2d at 188. But when the allegedly tortious conduct is not obvious, we are "reluctant to impose liability on an alleged aider and abettor for anything less than actual knowledge that the primary tortfeasor's conduct was wrongful." *Id.*

Here, the bank lacked a "long-term or in-depth relationship" with the Craigs and, therefore, the bank cannot be said to have constructive knowledge. For aiding and abetting liability to attach in this case, there must be evidence sufficient for a jury to find that the bank had actual knowledge. And although there is some record evidence suggesting the bank was aware of the Craigs' undue influence, nothing in the record supports a finding that the bank had actual knowledge.

B. The estate did not offer evidence sufficient to create a genuine issue of material fact that the bank substantially assisted the Craigs in unduly influencing Cheryl to designate Laura as the beneficiary of her CDs.

For the third element, the estate had to show that the bank "substantially assist[ed] or encourage[d] the primary tort-feasor in the achievement of the breach." *Id.* at 187. In the context of professionals, "substantial assistance means something more than the provision of routine professional services." *Id.* at 189; *see also Spinner v. Nutt*, 631 N.E.2d 542, 556 (Mass. 1994) ("[T]he plaintiff must show that the defendant knew of the breach and actively participated in it such that he or she could not reasonably be held to have acted in good faith.").

According to the estate, the bank "substantially assisted or encouraged" the Craigs when it released the CD funds to Laura the day after Crosby requested that it not release the funds. But this action occurred two years *after* the Craigs committed the underlying tort of undue influence by convincing Cheryl to make Laura the POD. And the record is devoid of any evidence proving that the bank substantially assisted or encouraged Laura and Stephen Craig at the time Cheryl named Laura as the POD on her CDs.

To convince us otherwise, the estate analogizes its case to that of a bank robbery. In its example, the primary tort-feasor—the Craigs—stood up the bank and demanded money; the aider and abetter—the bank—was waiting in the getaway car, ready to drive off. The estate seems to suggest that although the bank did not substantially assist the Craigs in unduly influencing Cheryl to name Laura as the POD, the bank ultimately facilitated the achievement of the crime by releasing the funds. This analogy is unpersuasive.

As the bank's brief points out, the bank in this hypothetical is more akin to a taxi driver providing routine, professional services. To this end, the supreme court has affirmed that in cases alleging aiding and abetting by professionals, "substantial assistance" requires something more than carrying out routine, professional services. *Witzman*, 601 N.W.2d at 188-89 (quotation omitted). In *Witzman*, the "substantial assistance" alleged by the appellants was the mere performance of "routine accounting duties," such as "preparing financial statements, setting up draw accounts, recording conveyances, and providing tax advice." *Id.* at 189. The supreme court explained, "If we were to recognize that such routine services constitute substantial assistance, then it would be the rare accountant indeed who would not be subject to automatic liability merely because his client happened to be a tortfeasor." *Id.* In our case, the bank was discharging a typical duty of disbursing funds that Laura was legally entitled to according to the POD on Cheryl's CDs.

If all that were not enough, Minnesota Statutes section 45A.06(a) (2018) provides that a broker-dealer or investment adviser may delay a disbursement if it reasonably believes that the "requested disbursement or transaction may result in financial exploitation of an eligible adult." But, the only instance when a bank must delay disbursement is when the "commissioner of commerce, law enforcement agency, or prosecuting attorney's office" informs the bank that financial exploitation "may have occurred, may have been attempted, or is being attempted." *Id.*, subd. 2. Here, the bank received no such notice from either agency or office.

In sum, the district court's grant of summary judgment was appropriate as a matter of law because the estate has not presented evidence sufficient to create a genuine issue of material fact that the bank had actual knowledge and substantially assisted or encouraged the Craigs in unduly influencing Cheryl. We therefore affirm the district court's grant of summary judgment to the bank.

Affirmed.