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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0878**

Neal Neff,
Appellant,

vs.

Americana Community Bank,
defendant and third party plaintiff,
Respondent,

vs.

Nathan Neff,
Third Party Defendant.

**Filed April 8, 2008
Reversed and remanded
Toussaint, Chief Judge**

Hennepin County District Court
File No. 27-CV-05-004937

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55402 (for appellant)

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Considered and decided by Shumaker, Presiding Judge; Toussaint, Chief Judge;
and Crippen, Judge.*

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

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Neal Neff challenges the district court's grant of summary judgment to respondent Americana Community Bank on appellant's claim for conversion. We reverse and remand.

DECISION

Summary judgment may be entered when “there is no genuine issue as to any material fact” and “either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. On appeal, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). A fact is material if its resolution would affect the result or outcome of the case. *Zappa v. Fahey*, 310 Minn. 555, 556, 245 N.W.2d 258, 259-60 (1976). If the nonmoving party bears the burden of proof on an element essential to its case, the nonmoving party must make a showing sufficient to establish that element. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

Conversion is a willful interference with the personal property of another without lawful justification. *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. App. 2003). The elements of conversion are: “(1) plaintiff holds a property interest; and (2) defendant deprives plaintiff of that interest.” *Id.* The “intent, knowledge, or motive of the converter is immaterial except as affecting damages.” *Larson v. Archer-Daniels-Midland Co.*, 226 Minn. 315, 317, 32 N.W.2d 649, 650 (1948). Thus, the “innocent misapplication or deprivation of [property] owned by others is in the law no less a

conversion because such was done innocently or in ignorance.” *Herrmann v. Fossum*, 364 N.W.2d 501, 503 (Minn. App. 1985), *review denied* (Minn. May 24, 1985); *see also Hoyt v. Duluth & Iron Range R.R.*, 103 Minn. 396, 398, 115 N.W. 263, 264 (1908) (stating “[g]ood faith . . . is not a defense” to conversion action).

The district court concluded that respondent “did willfully interfere with personal property,” but, because the money had been deposited into appellant’s father’s account, the district court concluded that respondent interfered with appellant’s father’s property, not appellant’s property. Appellant contends that there are issues of material fact regarding the deposit of the money into his father’s checking account. We agree.

The money was deposited by wire transfer. The wire transfer sheet bears the notation “UNDER MN UNIF TRSF TO MIN ACT” and “NATHAN W NEFF CUST FOR NEAL M NEFF.” This notation and the other circumstances surrounding the transfer, which were not considered by the district court, may affect the outcome of the case because, under the Minnesota Uniform Transfers to Minors Act¹, a transfer of property to a minor is “irrevocable,” and the property “is indefeasibly vested in the minor.” Minn. Stat. § 527.31(b) (2000).

Reversed and remanded.

¹ Respondent contends that the applicability of Minnesota Uniform Transfers to Minors Act was not raised before the district court, and thus is waived on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding appellant cannot raise new issues on appeal). But the memorandum of law appellant submitted to the district court in opposition to summary judgment contained multiple references to the Minnesota Uniform Transfers to Minors Act and asserted that “the gift under the Act becomes the property of the minor beneficiary.”