STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0691

Lana Schulz, et al.,
Appellants,

vs.

Power Movers of Minnesota, Inc.,
Respondent.

Filed April 16, 2018
Affirmed in part, reversed in part, and remanded
Ross, Judge

Olmsted County District Court
File No. 55-CV-15-7855

William L. French, French Law Office, Rochester, Minnesota (for appellants)

James T. Martin, Gislason, Martin, Varpness & Janes, P.A., Edina, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

This case involves the treatment of a couple evicted from their house. A bank foreclosed its mortgage on Lana and Richard Schulz's home loan and hired Power Movers of Minnesota to remove their belongings and place them in storage after their eviction. The Schulzes were going through their belongings at the storage facility when Lana Schulz was

struck by an object that was allegedly stacked unsafely. The Schulzes sued Power Movers and others, alleging a violation of Minnesota Statutes, section 504B.365 (2016), which requires an evictor to exercise reasonable care when removing an evictee's property, as well as negligence and conversion. The district court granted summary judgment to Power Movers, concluding that chapter 504B applies exclusively to landlord-tenant disputes and that no genuine issue of material fact prevented judgment as a matter of law on the tort claims. Although we affirm summary judgment as to the conversion claim, section 504B.365 is not limited to landlord-tenant disputes and the Schulzes' negligence claim includes genuine issues of material fact. We therefore reverse in part.

FACTS

These facts are either undisputed or framed in the light most favorable to the Schulzes in this summary-judgment appeal. Wells Fargo Bank foreclosed a mortgage that secured a loan on 65-year-old Lana and 68-year-old Richard Schulz's house, where the couple lived and operated a fertilizer business. Wells Fargo purchased the home in a sheriff's sale and commenced an eviction action after the Schulzes failed to redeem. The district court issued a writ of recovery and ordered the Schulzes to vacate. Wells Fargo hired Power Movers of Minnesota to remove and store the Schulzes' personal property.

The Schulzes' things were not in move-out condition. Wells Fargo's agent, Eric Brownlow, described cluttered business records "stacked helter skelter on tables, chairs, desks, and floors." He complained of odors akin to animal feces and said that "there was a frozen cat in a freezer." Garbage bags, deteriorated boxes, and scattered refuse met the movers. Jeremy Augeson of Power Movers described "massive disarray of furnishings,

records and narrow pathways that would have to be negotiated." Photographs support the description. Movers had to rebox many things. One mover suffered a puncture wound from a hypodermic needle in a pile of the Schulzes' papers on the floor. It took the movers 687 boxes and six days to complete the move into 14 storage bays.

The Schulzes wanted to access their business records after the move. Brownlow accompanied them on one of their visits to the storage facility, which housed the Schulzes' belongings in multiple units. According to him, Richard Schulz angrily kicked and threw boxes around. The Schulzes returned to the storage facility unaccompanied and continued rummaging through many boxes. They noticed that some items, Victorian lamp shades for example, had been crushed by heavier objects stacked on top of them. After many hours hunting through boxes, Lana Schulz says a wardrobe box beside her buckled under the weight of items stacked on top of it, knocking her to the floor and seriously injuring her shoulder.

The Schulzes sued Wells Fargo, Eric Brownlow, and Power Movers, alleging violations of multiple statutes, including Minnesota Statutes, section 504B.365 (2016), which governs elements of an eviction process, and tort claims, including negligence and conversion, among many other things. The Schulzes settled with Wells Fargo and Brownlow. Power Movers moved for summary judgment. The Schulzes announced they were proceeding only on the statutory, negligence, and conversion claims. The district court dismissed those claims by summary judgment. The Schulzes appeal.

D E C I S I O N

The Schulzes challenge the district court's summary-judgment decision. They argue first that the district court erred when it concluded that Minnesota Statutes, section 504B.365 (2016), applies only to rental-property disputes, unlike this dispute arising out of a mortgage foreclosure. We assume for the purpose of this appeal that the statute creates a private cause of action and that a person may bring the action against a mover. When a district court grants summary judgment based on its application of a statute to undisputed facts, its conclusion is one of law, and our review is de novo. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998). For the following reasons, we disagree with the district court's holding that "[c]hapter 504B applies [only] to Landlord and Tenant issues."

We look to the language of chapter 504B, which we believe is unambiguous regarding its application, to determine whether it applies only to landlord-tenant disputes. If statutory language is unambiguous, we look no further for our interpretation. *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010). The district court accurately recognized that the title of the chapter is "Landlord and Tenant," but this carries little weight. The legislature explains that "[t]he headnotes printed in boldface type before sections and subdivisions in editions of Minnesota Statutes are mere catchwords to indicate the contents . . . and are not part of the statute." Minn. Stat. § 645.49 (2016). We have presumed that this caveat applies likewise to chapter headings. *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 905–06 (Minn. App. 2018). And we are satisfied that chapter 504B's "Landlord and Tenant" heading was not a part of the law enacted by the legislature. The published version of the Minnesota Session Laws explains that, while it contains

headnotes in boldface type to provide information about the chapter, section, or subdivision in which the laws appear, these headnotes "are not part of the law." 1999 Minn. Laws, Preface, at V. The session law where chapter 504B originates includes in boldfaced type the headnote, "Landlord and Tenant." 1999 Minn. Laws, ch. 199, art. 1, at 1078. That headnote was not a part of the law enacted by the legislature and now is not a part of the statute. Although the chapter focuses largely on landlord-tenant disputes, it nowhere states that it applies to them exclusively.

Chapter 504B defines eviction not only as a landlord's process for removing tenants, but more broadly as a "summary court proceeding to remove a tenant *or occupant* from or otherwise recover possession of real property." Minn. Stat. § 504B.001, subd. 4 (2016) (emphasis added). Indeed, it provides for eviction in exactly the setting here, where "any person holds over real property . . . after the expiration of the time for redemption on foreclosure of a mortgage." Minn. Stat. § 504B.285, subd. 1(a)(1)(ii) (2016). Consistent with this, the section governing property recovery, section 504B.365, which is the section on which the Schulzes expressly base one of their claims, dispenses with the terms "landlord" and "tenant" used elsewhere in the chapter and refers to parties instead as "plaintiff" and "defendant." Distinctions in language are presumably intentional. *In re Stadsvold*, 754 N.W.2d 323, 328–29 (Minn. 2008). Our reading of the statute informs us that the district court erred by holding that section 504B.365 does not apply to an execution of a writ of recovery outside the landlord-tenant arena. We therefore reverse the district court's grant of summary judgment on the Schulzes' section-504B.365 claim.

We next consider the Schulzes' second argument, which is that the district court improperly granted summary judgment on their negligence claim. This presents a closer question. We consider the entire record to see if any genuine and material fact issue exists. *Dahlin v. Kroening*, 796 N.W.2d 503, 504 (Minn. 2011). We resolve all factual inferences in favor of the nonmoving party. *Nord v. Herreid*, 305 N.W.2d 337, 339 (Minn. 1981). To avoid summary judgment, the Schulzes had to present evidence of each element of their negligence claim: existence of a duty of care, breach of that duty, proximate causation, and damages. *See Foss v. Kincade*, 766 N.W.2d 317, 320 (Minn. 2009). The district court held that Power Movers owed the Schulzes a duty "to perform as a reasonable moving company would under like circumstances." But it concluded that the Schulzes failed to present evidence of a breach or evidence of causation. We reach a different conclusion.

The Schulzes maintain that Power Movers breached its duty of reasonable care by stacking heavy objects atop lighter objects at the storage facility. They cite Augeson's admission that it would be unreasonable for a mover to stack objects this way. And they cite Lana Schulz's deposition testimony as evidence that Power Movers stacked their things in this fashion. She testified, for example, that the movers stacked a heavy chair on top of delicate lamp shades, damaging the shades. She also said that a wardrobe box was crushed by a heavy box above it. And the core of her personal-injury claim is that this box buckled, knocking her to the floor and injuring her arm. This is not overwhelming evidence, and Power Movers points to evidence that would make the Schulzes' success at trial doubtful. But a court at summary judgment does not weigh the evidence.

We next decide whether the Schulzes presented evidence from which a jury could find that the alleged improper stacking proximately caused Lana Schulz's shoulder injury. To avoid summary judgment on causation grounds, "[a] plaintiff need only demonstrate a plausible causal link[] between a breach of duty and . . . her injuries." *Jonathan v. Kvall*, 403 N.W.2d 256, 260 (Minn. App. 1987) (quotations omitted). Proximate cause is ordinarily "a question of fact for the jury to decide." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 373 (Minn. 2008). The district court held that the Schulzes' causation theory—that Lana Schulz was injured from the improper stacking of boxes—"could have occurred." It denied summary judgment, however, reasoning that the Schulzes merely speculate about the cause without any evidence. We believe that Lana Schulz's testimony slips the causation issue past summary judgment:

> I believe that one of the wardrobes hit me, because it hit me kind of at my hip level and I was pushed to the right. And I had two boxes stacked there and I went over them and crashed into the hallway with my arm hyperextended. And that's how I woke up, so I – all I know is I was going through paperwork, something pushed me, the – and I assume it was the big box that was next to me, because it was buckled out in the middle because something behind it fell or there was a box on top of it that was too heavy, because we had multiple crumpled up wardrobes, because they put heavy boxes on top. You know. Like book boxes, and they're full of office work and papers. They're quite heavy and they're small.

When asked if a heavy box containing a television knocked her down, she stated,

> No. It was the wardrobe box. The TV, I believe, hit the wardrobe box because the box is what was next to me and was crumbled and when it bowed out in the middle it could have been the TV or it could have been the heavy boxes on top of the wardrobe and then the wardrobe crumpled, but it pushed me out of the storage unit to the right.

It is true that the Schulzes did not identify every link in the alleged chain of events that pushed Lana Schulz to the concrete floor. But she unwaveringly insisted that the wardrobe box beside her buckled under the load of something heavier stacked above it, causing that box to crumble and leading either it or some other object to strike her down. Jurors at trial might, as we must in our summary-judgment review, draw reasonable inferences from the evidence in favor of the Schulzes' claims. And one reasonable series of inferences is that Power Movers stacked heavy objects atop lighter boxes, heavy objects on top of the wardrobe box crushed that box, and the box and other objects then suddenly shifted, striking Lana Schulz and pushing her to the floor. We recognize that these inferences that favor the Schulzes will face competing evidence and argument available to Power Movers. But interpreting the competing evidence is a factual matter for trial.

The Schulzes argue third that the district court erred by granting summary judgment against their conversion claim. To recover for conversion, the Schulzes must prove that Power Movers willfully interfered with personal property without lawful justification, which deprived the Schulzes of their entitlement to use and possess the property. *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). The Schulzes listed damaged and missing items and offered Lana Schulz's testimony that her neighbors witnessed the movers drinking beer, throwing items, and mishandling boxes. But a party opposing summary judgment must introduce specific *admissible* evidence presenting a material fact issue. *Cont'l Sales & Equip. v. Town of Stuntz*, 257 N.W.2d 546, 550 (1977). The district court properly concluded that the deposition testimony was inadmissible hearsay and therefore

insufficient to prevent summary judgment. *See* Minn. R. Evid. 602, 801(c) (2015) (requiring personal knowledge and prohibiting hearsay). The Schulzes' list of damaged items, particularly given the indisputably less-than-careful condition in which they maintained their belongings and the absence of admissible evidence that the movers mishandled or willfully stole anything, cannot avoid summary judgment on the conversion claim.

Affirmed in part, reversed in part, and remanded.