STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0964

John Mullaney,
Appellant,

vs.

University of St. Thomas,
Respondent.

Filed April 13, 2020
Affirmed
Cochran, Judge

Hennepin County District Court
File No. 27-CV-18-16185

John Mullaney, Minneapolis, Minnesota (pro se appellant)

Jessica L. Klander, Jonathan P. Norrie, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Bryan, Judge; and Segal, Judge.

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

COCHRAN, Judge

In this appeal from summary judgment, appellant John Mullaney argues that the district court erred in determining that there were no genuine issues of material fact regarding his claim for conversion and that the district court failed to address his "claim" for "dismissal of retaliatory sanctions," a remedy sought in his complaint. Because we

conclude that no genuine issues of material fact exist regarding Mullaney's conversion claim, and because we discern no basis to reverse based on a failure to address the remedy sought for that claim, we affirm.

FACTS

In 2017, Mullaney was a graduate student at the University of St. Thomas (the university). Mullaney was enrolled at the university's business school. The university also has a law school. Mullaney was not (and has never been) a law student. But it is undisputed that in 2017, Mullaney was storing some of his personal property—specifically, personal papers and textbooks—in a law school locker.

The law school cleans out the lockers every year before assigning them to new students in the fall. In May 2017, the law school posted signs near the law school lockers that notified students that they must remove their property before August 4, 2017, or the property would be discarded. The law school also sent an email to students who were assigned lockers to notify them of the locker cleanout. Mullaney did not remove his property from the locker he was using before August 4, 2017. On August 8, 2017, the university removed Mullaney's property from the locker.

In September 2018, Mullaney initiated a lawsuit against the university claiming that the university was liable for approximately $7,500 for "remov[ing] and discard[ing]" the property that Mullaney had stored in the locker. As a remedy for his unspecified cause of action—which the district court interpreted as a claim of conversion—Mullaney sought both monetary damages and "dismissal of any retaliatory sanctions for the [p]laintiff's claims."

In its answer to the complaint, the university alleged that Mullaney was not given permission or authorized to use a law school locker—only law students were permitted to use them. The university also noted that it had posted signs near the lockers indicating that the lockers would be cleaned out.

The university moved for summary judgment. It submitted affidavits from university employees that established that (1) the law school registrar who had the authority to assign law school lockers (the registrar) did not give Mullaney permission to use a locker; (2) the university posted signs near the law school lockers indicating that students must remove their property before August 4 or their property would be discarded; (3) the signs remained posted until the lockers were cleaned out; and (4) the university discovered some of Mullaney's property in an unemptied recycling bin and returned the property to Mullaney in the course of the litigation. The university argued that there was no genuine issue of material fact that Mullaney was not authorized to use a locker and no genuine issue of material fact that Mullaney had abandoned his property when he did not remove his property in compliance with the signs that the university posted. At a hearing on the university's motion for summary judgment, Mullaney asserted that the registrar gave him permission to use a law school locker and that he had no intention of abandoning his property.[1] But Mullaney did not submit any evidence to support his assertions.

[1] Mullaney only identified the registrar as the person who gave him permission to use a locker after the university identified the registrar as the person with the authority to assign lockers.

The district court granted summary judgment to the university. It reasoned that it was undisputed that Mullaney was not a law student, that Mullaney was using a law school locker without authorization, that the law school posted signs and sent an email to law students with an assigned locker informing students that the lockers had to be cleaned out by August 4, 2017, and that the lockers were in fact cleaned out on August 8, 2017. Based on these undisputed facts, the district court concluded that the university was justified in discarding the property that Mullaney had left in the locker and that Mullaney's conversion claim failed. Alternatively, the district court concluded that Mullaney's conversion claim failed because Mullaney had abandoned his property and therefore he lacked an enforceable interest in the property.

Mullaney appeals.

D E C I S I O N

Mullaney argues that the district court erred in granting summary judgment to the university. He maintains that he had permission to use a locker and that the university should have returned his property to him, rather than discarding it (and later finding some of it). He also asserts that the university wrongfully refused to return his property. The university argues that the district court properly granted summary judgment because there were no genuine issues of material fact in dispute and the university was legally justified in discarding the property under the circumstances.

A district court must grant summary judgment if the "movant 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. Appellate courts review the 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). A "party resisting summary judgment must do more than rest on mere averments." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). A reviewing court views 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). "All doubts and factual inferences must be resolved against the moving party." *Montemayor*, 898 N.W.2d at 628 (quotation omitted). Summary judgment is "inappropriate when reasonable persons might draw different conclusions from the evidence presented." *Id.* (quotation omitted).

Mullaney's complaint alleged a claim of conversion. Minnesota courts have defined conversion as

> an act of willful interference with the personal property of another, done, without lawful justification, by which any person entitled thereto is deprived of use and possession, and the exercise of dominion and control over goods inconsistent with, and in repudiation of, the owner's rights in those goods.

Williamson v. Prasciunas, 661 N.W.2d 645, 649 (Minn. App. 2003) (quoting *Christensen v. Milbank Ins. Co.*, 658 N.W.2d 580, 585 (Minn. 2003)) (other quotations omitted). Put another way, "[c]onversion is the wrongful exercise of dominion or control over the property of another." *Bates v. Armstrong*, 603 N.W.2d 679, 682 (Minn. App. 2000), *review denied* (Minn. Mar. 14, 2000).

Mullaney argues that the district court erred by granting summary judgment because there was a genuine issue of material fact regarding whether a university employee gave

him permission to use a law school locker. He maintains that the registrar gave him verbal permission to use a law school locker. But, as the district court correctly determined, Mullaney offered no evidence to support his claim that he had permission to use a law school locker. Instead, he merely asserted in pleadings and at the summary judgment hearing that the registrar granted him permission to use the locker. In other words, Mullaney relied on mere averments. A "party resisting summary judgment must do more than rest on mere averments." *DLH, Inc.*, 566 N.W.2d at 71.

Because Mullaney did not provide more than mere averments to support his claim that he was given permission to use a law school locker, there did not exist a genuine issue of material fact that he had permission. And Mullaney cites no authority to suggest that the university acted without lawful justification when it disposed of items stored in the university's locker without permission. Consequently, we conclude that the district court did not err in granting summary judgment on the grounds that the university was justified in discarding the property under the circumstances. And, because the district court did not err in granting summary judgment on the grounds that Mullaney's affirmative claim for conversion failed, we need not determine whether the district court erred in concluding that summary judgment was appropriate on the alternative grounds that Mullaney lacked an enforceable interest in the property.

We also do not reach the issue of whether the district court erred by not addressing Mullaney's "claim" for the dismissal of "retaliatory sanctions." The primary issue that Mullaney appears to raise in his appellate brief is that the district court failed to analyze whether sanctions that the university imposed against Mullaney were justified. It is not

clear from the record whether the sanctions that Mullaney takes issue with are related to the locker incident. But in his complaint, Mullaney requested that the district court "dismiss" these sanctions as a *remedy* to his claim for conversion. He did not raise a separate legal claim based on the sanctions. Because the district court properly granted summary judgment against Mullaney's conversion claim, there was no need for the district court to address the remedies that Mullaney sought for that claim.

Affirmed.