

No. 1-13-1149

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

GLORIA HAFER,)	Appeal from the
)	Circuit Court of Cook County
Plaintiff-Appellant,)	
)	
v.)	No. 10 L 009072
)	
CHICAGO BOARD OF EDUCATION and)	
FLORENCE GONZALES,)	Honorable Sanjay Tailor,
)	Judge Presiding.
Defendant-Appellee.)	

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Pierce in the judgment.

ORDER

¶ 1 *Held:* Summary judgment was proper on plaintiff's claim of conversion where plaintiff failed to present evidence that she had a personal right in the property at issue and an absolute and unconditional right to the immediate possession of the property.

¶ 2 Plaintiff Gloria Hafer filed a single count complaint sounding in conversion against defendants Chicago Board of Education (Board) and Florence Gonzales on August 6, 2010. On June 17, 2011, plaintiff filed an amended complaint against defendants also sounding in conversion. Pursuant to section 2-1005 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1005 (West 2012)), defendants moved for summary judgment. On March 22, 2013, following

No. 1-13-1149

briefing and oral argument, the trial court granted summary judgment finding that plaintiff failed to present evidence to support a question of material fact.

¶ 3 On appeal, plaintiff asserts that the trial court erred in granting summary judgment.

Plaintiff argues that the evidence presented demonstrated that defendants did not have control, dominion or ownership over the money and equipment that she seeks and, therefore, a material issue of fact remains in this case and it should be remanded for trial. For the following reasons, we affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff was employed by the Board as an elementary school physical education teacher at Taylor Elementary School (Taylor) in Chicago, Illinois for 34 years until her retirement in 1997. Later in 1997, plaintiff began utilizing a vacant classroom at Taylor and voluntarily taught an after school culinary class to students and parents. Plaintiff sought equipment and monetary donations and purchased culinary equipment to start the program because Chicago Public Schools (CPS) did not provide any funding or equipment for the program. Plaintiff continued to seek monetary and equipment donations for her class for nine years.

¶ 6 In 2006, the former principal of George Washington High School (George Washington) in Chicago, Illinois, contacted plaintiff about creating a culinary arts curriculum and teaching the course as an elective at George Washington. Plaintiff agreed, developed the curriculum, and became a contract employee of CPS. Since there was no culinary arts program at the high school at the time, there was no equipment and plaintiff moved all the equipment she had at Taylor to George Washington to use in her classroom. An account was established and held at George Washington for funds received for the program and to reimburse plaintiff for expenses. This

account was listed as the "Home Ec Food Service" account in George Washington's balance sheets.

¶ 7 Plaintiff began to refer to the program as the "Richard J. Daley Culinary Institute" after it moved to George Washington. She created business cards for herself as well as brochures for the program with the address and phone number for George Washington listed. Plaintiff continued to raise funds for the program listing either the George Washington name or contact information on promotional materials. Fundraising events were often promoted as a means to support George Washington programs and students and George Washington students attended some of the fundraisers.

¶ 8 Funds that were brought in from the fundraisers were given to the school clerk who deposited the funds into the Home Ec Food Service account. Checks from donors were predominately made payable to "Washington H.S.," "Washington RJD Culinary," "Washington Culinary Institute," or some similar variation. Likewise, additional donations and grant monies received to support Students that could afford the fee paid \$20 or \$25 to take the culinary class. The fees were to cover the cost of food necessary to teach the class and were deposited into the Home Ec Food Service account. The funds received from student fees were completely utilized during the school year.¹

¶ 9 Plaintiff continued to require additional equipment and materials for the class. In order to be reimbursed for purchases, plaintiff was required to submit a proper receipt to the school clerk and prove that the purchase was for instruction purposes. The clerk would process the request

¹ Plaintiff also raised funds that were deposited into an account with the Board, the "Children's First Fund," that was similarly utilized to reimburse plaintiff for purchases made for her programs. The funds in this account were returned to plaintiff in full and are not a part of this lawsuit.

No. 1-13-1149

and remit a reimbursement that was deducted from the culinary account. Oftentimes, George Washington would be invoiced or billed directly for culinary classroom items.

¶ 10 In January 2008, defendant Gonzales became principal of George Washington. Based on plaintiff's fundraising efforts that utilized the George Washington name and George Washington students, Gonzales contacted the Inspector General to investigate. No wrongdoing was identified, but plaintiff was advised that any funds raised were the property of the school.

¶ 11 In winter 2008, the Board determined that it would fund a culinary program at George Washington including funding for teaching positions, workbooks, equipment, and food supplies. In May 2009, Gonzales and David Blackmon, the program coordinator for the Board's culinary arts department, discussed hiring an instructor to head the new program at George Washington. Gonzales attempted to contact plaintiff after this meeting but did not receive a response to any messages. In August 2009, plaintiff contacted Blackmon about renovations at the school and was informed that she would no longer be teaching at George Washington because she was not qualified to teach the new culinary program.

¶ 12 Plaintiff inquired when she could remove the equipment that did not belong to the Board and how she could get funds returned that she raised for the program. At the time of plaintiff's removal from the culinary program, \$11,632 remained in the Home Ec Food Services account. Plaintiff has made several demands for equipment and funds starting in September 2009 and alleges that all property that is rightfully hers or the programs has not been returned by defendants.

¶ 13 In her deposition, plaintiff admitted that on November 11, 2009, plaintiff retrieved 54 boxes of items that defendants had boxed from the culinary classroom. Plaintiff indicated that most of the contents of the boxes were paper items and serving items and not equipment.

No. 1-13-1149

Plaintiff submitted a list of 76 items that have yet to be returned to her that she claims do not belong to the Board.

¶ 14 In support, plaintiff submitted receipts for purchases that allegedly demonstrate her right to possession. In addition, numerous declarations from donors were presented indicating that funds and materials donated were for the use by plaintiff in connection with her culinary program. The Board responded that some items remained at the school that belonged to plaintiff but submitted receipts, purchase orders, or invoices billed to George Washington for many of the items that plaintiff claimed belonged to her.

¶ 15 Plaintiff filed the underlying complaint sounding in conversion against the Board and Gonzales on August 6, 2010. Following discovery, defendants moved for summary judgment asserting that plaintiff failed to provide evidentiary support for her claim of conversion. Namely, that she failed to prove that she had a right to the property, that she had an absolute and unconditional right to immediate possession of the property, and that defendants wrongfully assumed control and ownership over the property in question. Accordingly, defendants argued that no question of material issue of fact existed based on the record before the court and summary judgment was proper.

¶ 16 Defendants asserted that the majority of culinary items had been purchased by the Board and attached numerous receipts and reimbursement checks made payable to plaintiff as proof. Additionally, defendants noted that plaintiff was a contract employee of the Board and that pursuant to the Board's policy on ethics and Section 16-1 of the School Code (105 ILCS 5/16-1 (West 2012)), all donations, both monetary and property, to the school or program without specific expression shall be added to the inventory of Board property. Plaintiff also admitted that none of the donations were personally made to her. Furthermore, the Board noted that plaintiff

No. 1-13-1149

had repeatedly been asked to retrieve any personal belongings from the school. The Board attached an affidavit of Gonzales to its memorandum in support of summary judgment averring that plaintiff had been provided receipts and purchase orders "demonstrating that, with a few exceptions" the items listed by plaintiff were purchased by the Board.

¶ 17 In her response to the motion for summary judgment, plaintiff provided an affidavit averring that she used her own funds and equipment, as well as equipment and materials procured through donations from her friends and supporters before she moved her class from Taylor to teach the class at George Washington. Although plaintiff admitted that additional equipment was purchased while she worked at George Washington, she stated that no money or funding for equipment was provided by the Board, CPS, Gonzales, or any other CPS entity or agent.

¶ 18 Plaintiff argued that the 350 declarations of individuals that donated to her program showed a clear donative intent to plaintiff and plaintiff's culinary program and not to the Board. Plaintiff also argued that defendants' claim that it had provided receipts for purchases was "pure fantasy" as the receipts proffered were actually provided by plaintiff. Plaintiff also stated that all of the equipment that she had listed as not returned was purchased with the donations to the program.

¶ 19 Following argument, the trial court granted summary judgment. Without further explanation, the trial court found that plaintiff failed to present evidence to support a question of material fact. This appeal followed.

¶ 20

II. ANALYSIS

¶ 21 Summary judgment may be granted when the pleadings, depositions, admissions and affidavits on file demonstrate no genuine issue as to any material fact and the moving party is

No. 1-13-1149

entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2006). We review an order granting summary judgment *de novo*. *Chicago Hospital Risk Pooling Program v. Illinois State Medical Inter-Insurance Exchange*, 397 Ill. App. 3d 512, 523 (2010). While we also review the evidence in a light most favorable to the nonmovant, we cannot ignore evidence unfavorable to the nonmovant and may sustain the trial court on any basis called for in the record. *Ruane v. Amore*, 287 Ill. App. 3d 465, 474 (1997).

¶ 22 “The essence of conversion is the wrongful deprivation of one who has a right to the immediate possession of the object unlawfully held.” *Bender v. Consolidated Mink Ranch, Inc.*, 110 Ill. App. 3d 207, 213 (1982). As an intentional tort, to support a claim for conversion a plaintiff must show that the defendant intentionally committed the wrongful deprivation. *Loman v. Freeman*, 229 Ill. 2d 104, 129 (2008). More specifically, plaintiff must establish that: "(1) [s]he has a right to the property; (2) [s]he has an absolute and unconditional right to the immediate possession of the property; (3) [s]he made a demand for possession; and (4) the defendant[s] wrongfully and without authorization assumed control, dominion, or ownership over the property." *Kovitz Shifrin and Nesbit, P.C. v. Rossiello*, 392 Ill. App. 3d 1059, 1063-64 (2009).

¶ 23 Plaintiff contends that the court erred by granting summary judgment because a genuine issue of material fact existed regarding the ownership of the property retained by defendants in plaintiff's culinary classroom. While "facts contained in an affidavit in support of a motion for summary judgment which are not contradicted by counteraffidavit are admitted and must be taken as true for purposes of the motion" (*Purtill v. Hess*, 111 Ill. 2d 229, 241 (1986); *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 14), plaintiff's assertions that are contradicted and unsupported are not taken as true for the summary judgment motion.

No. 1-13-1149

¶ 24 There is no dispute that plaintiff made a demand for possession of the property and funds at issue in this case. However, we agree that the trial court properly granted summary judgment based on the remaining elements. Plaintiff failed to produce evidence to support a question of material fact on the remaining elements of a personal right to the property, that she had an absolute and unconditional right to immediate possession, and that defendants intentionally and wrongfully assumed ownership.

¶ 25 Plaintiff filed the instant action individually and not on behalf of any organization or program that she operated. Plaintiff admitted that she did not receive any donations individually and never claimed the receipt of any donations on her income taxes. Plaintiff was a contract employee of the Board while she taught the culinary classes at George Washington. In addition, plaintiff admitted that all equipment was purchased through donations, therefore the equipment is not personally plaintiff's.

¶ 26 While plaintiff alleged that she brought equipment to George Washington, there is no proof that any equipment remaining does not belong to George Washington or that any of the remaining equipment was purchased with her personal funds. Funds that were deposited to the Home Ec Food Service account that plaintiff alleges must be returned were all derived from checks made payable in some form to George Washington and the culinary program, no checks were made payable to plaintiff individually. Even if plaintiff had control over the funds before they were deposited, that control was relinquished to George Washington which assumed control over the money. Accordingly, plaintiff does not have a personal right to the monetary donations and she therefore does not have an unconditional right to the return of any of the funds or property purchased with those funds.

¶ 27 Furthermore, even if plaintiff had brought the action on behalf of the culinary program or

No. 1-13-1149

an established nonprofit organization, defendants provided countless purchase orders, invoices, receipts, and associated reimbursement requests and checks to plaintiff for purchases of the property listed by plaintiff. Most of these documents include some reference to George Washington as the buyer or the party invoiced, including for equipment plaintiff claims such as a popcorn popper, induction burners, fryers, and imperial gas ranges. While plaintiff is also referenced as the purchaser or party invoiced in some of the receipts, defendants produced reimbursement checks indicating that plaintiff did not personally purchase or own these items.

¶ 28 Therefore, plaintiff failed to provide supporting evidence for her allegations in order to create a genuine issue of material fact. She did provide an affidavit asserting that the property and donations were not returned; however plaintiff's conclusory allegations were sufficiently refuted by counter-affidavit and evidence of purchase orders, invoices, receipts, and checks to plaintiff for purchases presented by defendants showing that: plaintiff was a contract employee of CPS at George Washington; the culinary program was located within George Washington which provided a room and utilities; donations were directed to George Washington or the George Washington Culinary Institute or similar title; donations were then all deposited into an account at George Washington; this account was totally maintained by George Washington staff; and purchases of equipment and supplies were made either directly by George Washington or reimbursed through school staff. Accordingly, the monetary donations, if ever plaintiff's, were predominantly made out to the school, turned over to the school, controlled by the school and, by the School Code, were the property of the school. All equipment purchases were made with these funds and plaintiff failed to provide evidence to support her claim that she had an absolute and unconditional right to the disputed property and summary judgment was proper.

¶ 29 Moreover, defendants returned 54 boxes of items to plaintiff. While plaintiff asserts that

No. 1-13-1149

these boxes contained only items of small value, defendants also requested that plaintiff make an appointment to retrieve her remaining personal items from George Washington. Defendants had proof of purchase and reimbursement for equipment remaining at the school and it cannot be said defendants wrongfully or without authorization assumed dominion or control of the property in question. Therefore, the trial court did not err when it granted defendants' motion for summary judgment.

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court.

¶ 32 Affirmed.