#31293-r-MES
2026 S.D. 57

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

IGLESIA PENTECOSTAL
FUENTE DE VIDA, INC., — Plaintiff and Appellee,

v.

MARIO TORRES, — Defendant and Third-Party Plaintiff and Appellant,

v.

NOHEMY HERRERA, — Third-Party Defendant.

APPEAL FROM THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
DAVISON COUNTY, SOUTH DAKOTA

THE HONORABLE PATRICK T. SMITH
Judge

TUCKER J. VOLESKY
Mitchell, South Dakota — Attorney for defendant and third-party plaintiff and appellant.

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CONSIDERED ON BRIEFS
AUGUST 25, 2026
OPINION FILED **11/10/26**

#31293

SALTER, Justice

[¶1.] Iglesia Pentecostal Fuente De Vida, Inc. (the Church) sued Pastor Mario Torres for conversion and breach of fiduciary duty after he withdrew $223,000 from the Church's account and deposited the money into his personal account. Torres counterclaimed for conversion and fraud. The Church moved for summary judgment on its own claims and on Torres's counterclaims, which the circuit court granted. Torres appeals, and we reverse and remand for further proceedings.

Factual and Procedural History

[¶2.] Nohemy Herrera and her husband Francisco Herrera formed the Church in 2009. Nohemy serves as both its president and lead pastor. The Church's main parish is located in Columbus, Nebraska. However, at the time of the events giving rise to this case, the Church also had two satellite parishes in South Dakota—one in Yankton and another in Mitchell. Torres moved from Columbus to Mitchell to start and lead the new parish there, and Daniel Cabrerra served as pastor for the Yankton parish. The pastors at the South Dakota parishes served under Nohemy's direction.

[¶3.] In the spring of 2022, Columbus parish member Alex Cooper Vasquez received a monetary settlement for a work injury and met with Nohemy to discuss his desire to make a monetary gift, or gifts. The meeting occurred prior to a Church-sponsored event—referred to by the parties as a "campaign"—held in Columbus over the last weekend in April.

[¶4.] At the start of the campaign weekend, Torres claims he met with Nohemy, who told him that Vasquez would be providing him with a donation to the Church. According to Torres, Nohemy explained that the Church was going to use that donation to buy a car for Torres and to pay him $350 per week, and in addition, the Church would buy a van for Cabrerra.

[¶5.] Over the course of that weekend, Vasquez wrote three checks, each in the amount of $300,000 and dated May 2, 2022. Vasquez made one check payable to "Iglesia Pentecostal Fuente De Vida" and delivered it to Nohemy. On the check's memo line, Vasquez wrote the word "tithe."

[¶6.] Vasquez treated the second and third checks differently. For these, he left the "pay to the order of" line blank and wrote "mission" on the memo line. He then placed each check in separate, sealed envelopes and gave one to Cabrerra and the other to Torres. Vasquez did not discuss the check with Torres that night, and aside from the check itself, Vasquez did not explain his intent, at least at the time.

[¶7.] After Torres received the check, he gave it to Nohemy, who wrote "Iglesia Pentecostal Fuente De Vida Inc." on the payee line. She did the same with the check Vasquez gave to Cabrerra. The day after the campaign, Nohemy, her husband Francisco, and Torres met Cabrerra in Yankton, where they deposited the checks that Torres and Cabrerra had received into the individual accounts for the Yankton and Mitchell parishes at First Dakota National Bank (First Dakota).

[¶8.] Soon after, a number of checks were written from the Mitchell parish's account. Two checks were written to the Columbus parish: one for $30,000 and one for $2,000. A third check was written to Torres for $25,000. Torres, who was a

signatory on the account, signed all three of these checks. Torres also started to receive a $350 weekly stipend that was paid out of the Mitchell parish bank account; however, these checks were signed by Nohemy.

[¶9.] Torres claims that sometime later, Vasquez informed him that the check he had given him after the campaign was meant for Torres, himself, and not a donation to the Mitchell parish. In his deposition testimony, Vasquez explained that he advised Torres that he could take the money out of the Mitchell parish's account and transfer it to his personal account. And Torres did just that.

[¶10.] On July 13, 2022, Torres transferred $223,000 from the Mitchell parish's account into his personal account at First Dakota. The Church contacted First Dakota and reported the transfer as unauthorized, which prompted First Dakota to freeze the $223,000 in Torres's account. Torres refused to return the $223,000 to the Church, insisting the money was a personal gift.

[¶11.] The Church sued Torres for conversion and breach of fiduciary duty.[1] Torres answered and asserted counterclaims of conversion and fraud.[2] The Church

1. The Church also alleged a cause of action for claim and delivery, seeking immediate possession of the money. The parties ultimately entered into a stipulation to move the $223,000 from Torres's account into a joint trust account at First Dakota where it would be held until the case was resolved. The circuit court entered an order approving the stipulation and dismissed as moot the Church's cause of action for claim and delivery.

2. In addition, Torres filed a third-party complaint against Nohemy, alleging violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act under 18 U.S.C. § 1962(c). The circuit court granted Nohemy's motion for judgment on the pleadings for the civil RICO claim. We denied Torres's petition for intermediate appeal, and Torres does not seek review of the civil RICO decision in this current appeal.

moved for summary judgment, both on its own claims against Torres and on Torres's counterclaims.[3]

[¶12.] The circuit court granted the Church's motion over Torres's opposition. In its written decision, the court made a "finding" that "[a]ll monies in [the Mitchell parish's] account belonged to the Church or its parish." The court also concluded that "[a] blank check is not an assignment of funds and is not sufficient delivery of a gift of money." Based upon its decision, the court awarded the Church $81,994.86 in prejudgment interest.

[¶13.] Torres appeals, arguing the circuit court erred when it granted the Church's motion for summary judgment.

Analysis and Decision

Standard of Review

[¶14.] "We review a circuit court's entry of summary judgment" de novo. *Anderson Indus., LLC v. Thermal Intel., Inc.*, 2025 S.D. 47, ¶ 23, 25 N.W.3d 257, 264 (citation omitted). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SDCL 15-6-56(c). When reviewing the record, "we view the evidence most favorably to the nonmoving party and resolve reasonable doubts against the moving party." *Anderson Indus.*, 2025 S.D. 47, ¶ 23, 25 N.W.3d at 264 (citation modified).

3. Vasquez and Cabrerra have never been parties to this litigation.

[¶15.] To defeat a motion for summary judgment, the nonmoving party "must present specific facts showing a genuine, material issue for trial exists." *Zochert v. Protective Life Ins.*, 2018 S.D. 84, ¶ 19, 921 N.W.2d 479, 486 (citation modified). "[T]hose resisting summary judgment must show that they will be able to place sufficient evidence in the record at trial to support findings on all the elements on which they have the burden of proof." *Chem-Age Indus., Inc. v. Glover*, 2002 S.D. 122, ¶ 18, 652 N.W.2d 756, 765 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)).

Conversion

[¶16.] The Church and Torres each assert competing conversion claims against the other. Because the Church moved for summary judgment on Torres's conversion claim, it must prove that Torres could *not* establish a prima facie case of conversion. *See, e.g.*, *RTI, LLC v. Pro Eng'g, Inc.*, 2025 S.D. 64, ¶ 51, 28 N.W.3d 167, 181 (holding that where plaintiff could not establish the elements of its claims against defendants, summary judgment was proper). In addition, because the Church also moved for summary judgment on its own conversion claim, it must establish it *could* prove the elements of conversion, as a matter of law. *See Wm. Collins, Inc. v. S.D. State Bd. of Transp.*, 264 N.W.2d 491, 494 (S.D. 1978) (concluding plaintiff was not entitled to summary judgment on its claim because it "failed to establish a prima facie case").

[¶17.] "Conversion is the unauthorized exercise of control or dominion over personal property [of another] in a way that repudiates an owner's right in the property or in a manner inconsistent with such right." *Johnson v. Markve*, 2022

S.D. 57, ¶ 59, 980 N.W.2d 662, 678 (quoting *First Am. Bank & Tr., N.A. v. Farmers State Bank of Canton*, 2008 S.D. 83, ¶ 38, 756 N.W.2d 19, 31). A successful conversion claim requires the plaintiff to prove four elements:

> (1) The plaintiff owned or had a possessory interest in the property; (2) the plaintiff's interest in the property was greater than the defendant's; (3) the defendant exercised dominion or control over or seriously interfered with the plaintiff's interest in the property; and (4) such conduct deprived the plaintiff of its interest in the property.

Id. (citation modified).

[¶18.] Torres seeks to establish his ownership or superior possessory interest in the $300,000, which would defeat the Church's summary judgment motion on his conversion claim, by asserting that the check constituted a completed gift to him. The Church maintains that Torres cannot establish a completed gift, and consequently, cannot establish the first two elements of his conversion claim—a possessory interest that was superior to the Church's interest.

[¶19.] "A gift is a transfer of personal property, made voluntarily and without consideration." SDCL 43-36-1. A completed gift requires proof of three elements: "(1) intent; (2) delivery; and (3) acceptance." *Stockwell v. Stockwell*, 2010 S.D. 79, ¶ 19, 790 N.W.2d 52, 60 (citation modified). "A present donative intent must be executed by a complete and unconditional delivery." *Meyer v. S.D. Dep't of Soc. Servs.*, 1998 S.D. 62, ¶ 13, 581 N.W.2d 151, 155 (citation modified).

[¶20.] For nearly a century, we have recognized the rule that "the delivery of the donor's check on his own bank account with the intention of making a gift of the amount thereof does not constitute a valid gift of such amount until it has been presented and paid or accepted." *Steffen v. Davis*, 217 N.W. 221, 224 (S.D. 1927)

(Campbell, P.J., concurring) (citation omitted); *see also* SDCL 57A-3-408 ("A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.").

[¶21.] This view aligns with the one expressed in the Third Restatement of Property:

> The delivery of an uncertified personal check to a noncharitable donee, however, does not ordinarily constitute a completed gift. Delivery does not serve to transfer the donor's funds in the hands of the drawee bank, nor does delivery of the check obligate the donor to make the payment. The gift becomes complete when the funds are transferred or the donor becomes obligated to make the payment. This occurs when the check is accepted, certified, or paid by the drawee bank or when the payee or a subsequent holder negotiates the check to a holder in due course.

Restatement (Third) of Prop.: Wills and Donative Transfers § 6.2, Westlaw (database updated Sept. 2025); *see also* SDCL 57A-4-403(a) (authorizing a bank customer to "stop payment on any item drawn on the customer's account").[4]

[¶22.] Based upon these rules, Vasquez giving the check to Torres was not a completed gift because the check did not constitute Vasquez's unconditional delivery of the funds. But this does not definitively resolve whether the Church or Torres

4. While we have recognized that constructive delivery of a gift may be possible, it only occurs in circumstances, unlike here, where actual delivery is impossible or impracticable. *See, e.g.*, *Steffen v. Davis*, 217 N.W. 221, 221–22 (holding a dying donor's order to his bank to "turn" a certificate of deposit to his fiancé was a valid gift because there was no practical way the donor could have delivered the certificate); *Bunt v. Fairbanks*, 134 N.W.2d 1, 3 (S.D. 1965) (recognizing that a donor's gift of a jointly held stock with a right of survivorship constituted constructive delivery because each cotenant had an equal right to possession but neither could simultaneously possess it).

has the superior right to the money, or more precisely, whether the Church can prevail on its motion for summary judgment.

[¶23.] On this point, Torres presses his gift theory further to argue that if he cannot prevail on his completed gift theory, then the Church also cannot establish itself as the object of Vasquez's donative intent in the absence of a specific payee. We make two observations about this construct.

[¶24.] First, Torres's claim to outright ownership of the check is rather beside the point; he did not move for summary judgment, and, in any event, the check no longer exists. For this reason, there is no need to address his claim that a gift may be perfected by donative intent alone.

[¶25.] And second, we do not understand the Church's position to be that it should prevail, at least on its motion for summary judgment, because it was, in fact, Vasquez's intended beneficiary. However, having said that, it is difficult to understand why it is that the Church believes it should prevail, other than perhaps an argument that its possession of the negotiated funds was, itself, sufficient to vest it with a superior right of possession. But this is not persuasive, as we explain below.[5] *See infra* at ¶¶ 31–35.

[¶26.] And for its part, the circuit court simply concluded that any gift from Vasquez to Torres was incomplete, apparently because it lacked a specific payee and not because Vasquez retained a right to cancel payment. Missing from the court's

5. Torres asserts the circuit court erred in finding that the monies in the First Dakota bank account belonged to the Church or its parish and that there is a "distinction between account title and maintenance . . . and beneficial ownership of particular funds." We need not address these arguments in light of our resolution of the fraud issue.

written decision is a basis for its conclusion that the Church has superior ownership or possessory rights to the $223,000. Also missing is any analysis of the claim that Nohemy obtained the check by fraud.

[¶27.] The Church cannot, of course, prevail by default, simply on the strength of neutralizing Torres's completed gift theory. To be successful on its summary judgment motion, the Church must demonstrate the absence of disputed material facts relating to its own conversion claim and to Torres's fraud claim and also that it is entitled to judgment as a matter of law. Under the current record, the Church cannot show either in light of Torres's asserted fraud claim.

Torres's fraud claim

[¶28.] In his counterclaim for fraud, Torres challenges the Church's claim to ownership of the funds remaining from the negotiated check under the theory that Nohemy obtained possession of the check from Torres by misrepresenting its true nature and Vasquez's donative intent. For this reason, Torres argues that the Church's mere possession of the funds in its account does not establish ownership or a superior possessory interest.[6] We agree.

[¶29.] Article 3 of the Uniform Commercial Code (UCC) governs negotiable instruments and has been enacted by our Legislature. *See generally* SDCL chapter 57A-3. Checks are considered negotiable instruments under the UCC. *See* SDCL 57A-3-104(b) (defining "Instrument" to mean a negotiable instrument); SDCL 57A-

6. The circuit court addressed Torres's fraud claim only once at the summary judgment hearing, stating "[it]cannot be said to be fraud if Mr. Torres's access was unfettered to this money as the evidence is undisputed was the case." The court did not further discuss the fraud claim in its order or written decision.

3-104(c) (stating that a check is a negotiable instrument); SDCL 57A-3-104(f) (defining a check as "a draft . . . payable on demand and drawn on a bank").

[¶30.] A check that does not specify a payee is often referred to as bearer paper because it is payable to whoever possesses it, or "bears" it. *See* SDCL 57A-3-109(a)(2) ("A promise or order is payable to bearer if it . . . [d]oes not state a payee."); *see also* SDCL 57A-3-115 cmt. 2 (noting that a check without a named payee "is enforceable in its incomplete form and it is payable to bearer because it does not state a payee").[7] Here, then, the Church could negotiate the check because it possessed a bearer instrument. This is true even if, as Torres alleges, the Church obtained physical possession of the check through fraud. SDCL 57A-3-202(a) (stating that a "[n]egotiation is effective even if obtained . . . by fraud").

[¶31.] But Torres is not so much challenging the legality of the Church's *negotiation* of the check; he is alleging the Church acted fraudulently to *obtain* the check—a question to be determined under common law principles, as the UCC itself recognizes. Comment 1 to SDCL 57A-3-203 explains that the "right to enforce an instrument and ownership of the instrument are two different concepts." For this reason, "[o]wnership rights in instruments may be determined by principles of the law of property, independent of [UCC] Article 3." *Id.*

[¶32.] We have identified three elements necessary to constitute fraud:

> First, the representation at issue must be made as a statement of fact, which was untrue and known to be untrue by the party making it, or else recklessly made. Second, the representation must have been made with intent to deceive and for the purpose

7. While the comments to the Uniform Commercial Code were not adopted by the South Dakota Legislature, we find them helpful. *Anderson Indus., LLC v. Thermal Intel., Inc.*, 2025 S.D. 47, ¶ 31 n.7, 25 N.W.3d 257, 266 n.7.

> of inducing the other party to act upon it. Finally, the person to whom the representation is made must show that he did in fact rely on it and was induced thereby to act to his injury or damage. To avoid summary judgment, the essential elements of fraud must be adequately supported by alleged facts.

Aqreva, LLC v. Eide Bailly, LLP, 2020 S.D. 59, ¶ 56, 950 N.W.2d 774, 791 (citation modified).

[¶33.] Torres relies, in part, on Vasquez's affidavit, which directly supports his allegations of fraud:

> Nohemy and Fra[n]cisco Herrera knew that the checks I delivered to Mario and Daniel were for Mario and Daniel personally. I had specifically told them this prior to writing the checks.
>
> Nohemy and Fra[n]cisco Herrera deceived Mario Torres into believing that the check I gave to him on May 2, 2022 . . . was for the Church.
>
> Had it been my intent to donate $900,000 to the Church . . ., I would have written only one check. Instead, I wrote three separate checks. The $300,000 check that I delivered to Mario Torres was for Mario Torres personally.[8]

[¶34.] This information and similar testimony from Vasquez's deposition convince us that Torres has sufficiently established his fraud allegations, and they

8. Torres asserted estoppel as an affirmative defense to the Church's claims and he raised the issue in his opposition to the Church's motion for summary judgment. Torres argued then, as he does on appeal, that the Church made representations to him, which he relied on to his detriment. Neither the Church nor the circuit court addressed this issue below. While Torres's estoppel and fraud claim may not, as the Church argues, be one and the same, we conclude that the genuine issues of material that preclude summary judgment on Torres's fraud claim are, at least in this case, also sufficient to preclude summary judgment on the equitable estoppel defense.

are not at all, as the Church argues, bare insinuations or conclusory allegations.[9] *Cf. Chem-Age Indus.*, 2002 S.D. 122, ¶ 17, 652 N.W.2d at 765 (concluding averments in affidavit that included speculation and an allegation the affiant read about in a newspaper did not even reach the level of "bare insinuation"). These statements contain specific factual assertions from which a jury could infer Nohemy's fraudulent intent. *See Olson v. Berggren*, 2021 S.D. 58, ¶ 33, 965 N.W.2d 442, 453 (holding that "fraud, like any other fact, may be inferred from circumstantial evidence" (citation modified)); *see also* 37 Am. Jur. 2d *Fraud and Deceit* § 465, Westlaw (database updated Aug. 2026) (explaining that "fraud is, in its nature, a subject not readily susceptible of direct proof, and it is seldom that fraud can be proved by direct evidence").[10]

[¶35.] Viewing the record in a light most favorable to Torres, the non-moving party, there are genuine disputes of material fact regarding whether the Church obtained the funds through fraud. Indeed, even the Church characterizes the fraud

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9. The Church asserts that despite Vasquez's deposition testimony and sworn statements regarding who was his intended beneficiary of the check, Vasquez "made the choice to ratify the deposit of funds into the Church account," principally because he did not sue the Church or Nohemy. We fail to understand how this claim implicates the legal doctrine of ratification. *See Bank of Hoven v. Rausch*, 382 N.W.2d 39, 41 (S.D. 1986) (describing ratification as "the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him").

10. For this reason, we cannot accept the Church's argument that Torres lacks any evidence concerning the elements of fraud because his "only evidence on this point is [Vasquez's] conclusory and hearsay allegations that (1) he said specific words to Nohemy, and (2) because he said those specific words, Nohemy understood them to mean the check is for Mario's personal account."

allegations as "he said versus she said," which suggests exactly the type of factual dispute that should always preclude summary judgment.

[¶36.] The circuit court erred when it granted the Church's motion for summary judgment on Torres's fraud claim. And, because the Church's claim to the funds turns on whether the Church obtained the check fraudulently, as alleged by Torres, the court also erred in granting summary judgment to the Church on its conversion claim.

Breach of Fiduciary Duty

[¶37.] The circuit court also granted summary judgment on the Church's claim that Torres breached his fiduciary duty to the Church. Torres argues that we lack subject matter jurisdiction to adjudicate this claim because it involves matters of ecclesiastical concern. Even though we are reversing the court's decision to grant the Church's summary judgment motion, we think it prudent to address this issue, which seems likely to recur in the ensuing litigation after our remand.

[¶38.] The First Amendment to the United States Constitution and Article VI, § 3 of the South Dakota Constitution limit civil courts from adjudicating ecclesiastical matters. *Wipf v. Hutterville Hutterian Brethren, Inc.*, 2012 S.D. 4, ¶ 11, 808 N.W.2d 678, 682. Under what has become known as the ecclesiastical abstention doctrine or church autonomy doctrine,[11] "[s]ecular courts lack subject matter jurisdiction over lawsuits involving 'theological controversy, church

11. Victor E. Schwartz & Christopher E. Appel, *The Church Autonomy Doctrine; Where Tort Law Should Step Aside*, 80 U. Cin. L. Rev. 431, 448 (2011) (noting how "[s]cholars have dubbed this line of jurisprudence the 'church autonomy doctrine' or the 'ecclesiastical abstention doctrine'").

discipline, ecclesiastical government, or the conformity of the members of the church to the standards of morals required of them.'" *Id.* (quoting *Hutterville Hutterian Brethren, Inc. v. Waldner*, 2010 S.D. 86, ¶ 31, 791 N.W.2d 169, 178).

[¶39.] Therefore, "a civil court may only adjudicate a church controversy if it can do so without resolving underlying controversies over religious doctrine." *Id.* In other words, "[u]nder the 'neutral principles of law' doctrine, civil courts may perform a 'completely secular examination into church documents, state statutes[,] and other relevant evidence to determine the dispute.'" *Id.* ¶ 12. (quoting *Hutterville*, 2010 S.D. 86, ¶ 23, 791 N.W.2d at 175). *See also Jones v. Wolf*, 443 U.S. 595, 604 (1979) (same).

[¶40.] Here, the questions presented do not require us to rely on religious precepts, nor do they involve any of the prohibited topics we identified in *Wipf*. Rather, the circuit court would address purely secular questions concerning the right to possess the money held in the Church's bank account and the ecclesiastical abstention doctrine does not apply.

[¶41.] Though the circuit court was authorized to consider the fiduciary claim on its merits, free of the constraints of the ecclesiastical abstention doctrine, its determination that Torres breached his fiduciary duty to the Church by withdrawing the money from its account must be reversed given our disposition above.

Conclusion

[¶42.] The circuit court correctly determined that the $300,000 check Vasquez gave to Torres was not a completed gift. But that cannot support the court's decision to grant the Church's motion for summary judgment because the ultimate question of the parties' relative interests in what are now the negotiated funds from Vasquez implicates disputed issues of material fact that can only be resolved by determining Torres's fraud claim. That resolution will also impact the Church's breach of fiduciary duty claim which, in any event, does not implicate the ecclesiastical abstention doctrine. Accordingly, the court erred when it granted the Church's motion for summary judgment. We reverse and remand for further proceedings.[12]

[¶43.] JENSEN, Chief Justice, and DEVANEY, MYREN, and GUSINSKY, Justices, concur.

12. Torres also appealed the circuit court's prejudgment interest. In light of our decision, prejudgment interest is no longer authorized under SDCL 21-1-13.1, and we reverse the award on that basis.