

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

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October 21, 2026

In the Court of Appeals of Georgia

**A26A1326. WALLACE v. PRACTICAL LEARNING IVY
LEAGUE COLLEGE PREPARATORY ACADEMY, INC.
et al.**

MARKLE, Judge.

In 2019, while Netty Brown, the owner of a day care called Practical Learning Ivy League College Preparatory Academy, Inc. (“Practical Learning”), was ill and unable to run the daycare, Tanya Walker Wallace handled Practical Learning’s operations to ensure it remained compliant with state regulations. In doing so, Wallace collected tuition payments, which she deposited into her own account and not the account of Practical Learning. Brown and Practical Learning (collectively, “the plaintiffs”) then sued Wallace for conversion. Following a bench trial, the court found in favor of the plaintiffs, and awarded them \$101,763.43 in compensatory damages.

Wallace now appeals, arguing that (1) Brown failed to establish the amount of damages; (2) Wallace was not Brown's agent; and (3) the plaintiffs failed to establish that there was a demand for repayment. For the reasons that follow, we vacate the damages award, and remand the case for further proceedings.

On an appeal from an entry of judgment following a bench trial, we apply a de novo standard of review to any questions of law decided by the trial court, but will defer to any factual findings made by that court if there is any evidence to sustain them. Nevertheless, if the trial court makes a finding of fact which is unsupported by the record, that finding cannot be upheld, and any judgment based upon such a finding must be reversed.

Sanders v. TD Auto Fin., 366 Ga. App. 376, 378 (883 SE2d 53) (2023).

So viewed, the evidence at the bench trial showed Brown was the owner of Practical Learning day care center. In 2019, she hired Wallace, who owned Early Education Essentials("E3"), to assist with compliance applications and state-funded meal programs for Practical Learning. When Brown became ill, she asked Wallace to help with Practical Learning's day-to-day operations. Wallace instituted software management programs Square and Brightwheel to collect tuition; she monitored the facility to ensure regulatory compliance; and she hired staff. When the state regulatory

agency visited Practical Learning, Wallace told them she was the interim director and, after they found Practical Learning out of compliance, Wallace submitted an improvement plan.

Wallace collected tuition payments through Brightwheel and Square, but she did not deposit those funds into Practical Learning's bank accounts; instead she admitted that she deposited the monies into E3's accounts. She then transferred money from E3's account to her personal account. Brown had not given Wallace permission to deposit the money in E3's accounts. According to Wallace, following the transfers, Practical Learning's funds were commingled with E3's, and she could not discern from the bank statements which deposits belonged to Practical Learning.

When Brown realized that the funds were missing from Practical Learning's accounts, she asked Wallace to return the money, and, in a phone call with Brown before the trial, Wallace promised that she would turn over the remaining money in the account to Brown immediately. Wallace, however, failed to do so. Brown and Practical Learning then sued Wallace for conversion, seeking the return of the funds, plus punitive damages and attorney fees.

At the close of evidence, Wallace moved for directed verdict, which the trial court denied, noting that Wallace conceded the tuition payments made through Brightwheel were identifiable in the bank statements, but others, such as the ones through Square, were not. Brown then argued that, because Wallace acted as her agent, Brown was entitled to the full amount of the commingled funds under OCGA § 10-6-29. Brown submitted the monthly bank statements showing the Brightwheel and Square deposits totaling \$101,098.43. She further argued that, as the agent, Wallace had a fiduciary duty and bore the burden to provide an accounting.

After the parties submitted post-trial briefs on the issue of agency, the trial court found Wallace was Brown's agent; she owed Brown a fiduciary duty; and she was liable for the full amount of the commingled funds. Accordingly, the court entered judgment in favor of Brown in the amount of \$101,763.43, plus punitive damages and attorney fees. Wallace now appeals.

In related arguments, Wallace contends that the verdict cannot stand because (1) Brown bore the burden of proof as to the amount of damages; (2) Wallace was not Brown's agent because Brown did not control the time, manner, and method of

Wallace's work; and (3) there was no evidence of any repayment demand.¹ We conclude that the trial court improperly shifted the burden of proof to Wallace to prove the amount of damages.

“To make out a prima facie case, in an action for damages for conversion of personal property, the plaintiff must show title to the property, possession by the defendant, demand for possession, and refusal to surrender the property, or an actual conversion prior to the filing of the suit.” *Taylor v. Powertel*, 250 Ga. App. 356, 358(2) (551 SE2d 765) (2001) (quotation marks omitted). See also OCGA §§ 51-10-1 (“The owner of personalty is entitled to its possession. Any deprivation of such possession is a tort for which an action lies.”); 51-10-6(a) (“Any owner of personal property shall be authorized to bring a civil action to recover damages from any person ... who

¹ Wallace does not challenge the award of punitive damages and attorney fees. Regardless, “conversion is an intentional tort and will support an award of attorney fees and an award of punitive damages.” *Mims v. Exclusive Ass’n Mgmt.*, 372 Ga. App. 777, 780(2) (906 SE2d 799) (2024) (quotation marks omitted). Nor does it matter that Brown named only Wallace as the defendant, and not E3, because Wallace controls E3 and directed the theft of the funds that were placed in E3’s account. See *Bo Phillips Co. v. R. L. King Prop.*, 336 Ga. App. 705, 710(1) (783 SE2d 445) (2016) (“A LLC member may be held individually liable if he or she personally participates or cooperates in a tort committed by the LLC or directs it to be done.” (quotation marks omitted)).

commits a theft as defined in [the criminal theft statute] involving the owner's personal property.”).

Although generally money cannot be the subject of a conversion claim, where, as here, “the money comes from a specific, separate account,” the plaintiff may bring an action to recover the amount of damages. *Richardson v. Hohmann*, 378 Ga. App. 677, 681(2)(a) (927 SE2d 303) (2026). See also *Mims v. Exclusive Ass’n Mgmt.*, 372 Ga. App. 777, 779(1) (906 SE2d 799) (2024) (“An action for conversion applies to ‘specific money’ as well as personal property” (citation modified)); *Unified Serv. v. Home Ins. Co.*, 218 Ga. App. 85, 89(4)(c) (460 SE2d 545) (1995) (“[M]oney can be the subject of a conversion claim as long as the allegedly converted money is specific and identifiable”). And, it is irrelevant if the conversion was in good faith. *Levenson v. Word*, 294 Ga. App. 104, 106(1) (668 SE2d 763) (2008). Tracing is a common way to establish damages where the defendant has converted money and commingled it with her own funds. See *Adler v. Hertling*, 215 Ga. App. 769, 774(3) (451 SE2d 91) (1994).

To begin, we are not persuaded that Brown failed to make a demand. Brown testified at trial that she made a demand, and a note written by Wallace wrote in which she agreed to return the money immediately was admitted as evidence. It was for the

trial court to judge the credibility of the witness. *Brown v. Sapp*, 368 Ga. App. 61, 62 (888 SE2d 179) (2023). Under these circumstances, there is evidence to support the trial court's conclusion that a demand was made. See *Brown*, 368 Ga. App. at 62; *Sanders*, 366 Ga. App. at 378.

Wallace does not actually dispute any of the remaining elements of a conversion claim. Instead, her arguments are relevant to the amount of damages. As Wallace conceded at trial, the Brightwheel tuition payments are identifiable in her bank statements, and that amounted to \$43,405. She argued, however, that any additional amount of damages was speculative because she could not match the Square deposits to tuition payments. And she contends that the trial court erred by shifting the burden of proof to her based on its finding that Wallace was her agent.

We agree that the trial court improperly shifted the burden of proof to the defendant. The trial court found that “[s]ince Ms. Wallace did not provide any proof as to the source of the Square payments, she is liable to Ms. Brown for all the mingled funds.” The court further noted that, as the agent of Brown, it was Wallace’s duty to account for all of Brown’s funds that had been deposited into her account. Thus, the trial court awarded damages equal to the total amount of deposits. But in a conversion

suit involving the conversion of specific funds, the burden is on the plaintiff to show the specific funds that were taken. *Adler*, 215 Ga. App. at 774(3) (evidence was sufficient to establish damages where plaintiff traced funds through deposits and transfers). See also *Levenson*, 294 Ga. App. at 106(1), n.5.

Moreover, the trial court misapplied agency principles and OCGA § 10-6-29 to the facts of this case. Under OCGA § 10-6-29, “[a]n agent, by willfully mingling his own goods with those of his principal, shall not create a tenancy in common; but, if incapable of separation, the whole shall belong to the principal.” Nothing in this statute relieves the plaintiff of her burden to prove her damages in a conversion suit. See, e.g., *City of Atlanta v. Hotels.com*, 332 Ga. App. 888, 891(2)(a) (775 SE2d 276) (2015) (plaintiff bears the burden of showing the money belongs to it); *Levenson*, 294 Ga. App. at 106(1), n.5 (plaintiff bears burden to show specific money she is entitled to recover); *Adler*, 215 Ga. App. at 774(3) (providing for recovery of commingled funds that can be traced). See also OCGA § 10-6-27 (“A principal may follow his money deposited by an agent in the latter’s name and recover the same wherever found, unless the rights of innocent third persons shall have intervened.”). Thus,

regardless of whether Wallace acted as Brown's agent and commingled Brown's money with her own, the burden remained on Brown to prove the specific amount of funds converted. *Adler*, 215 Ga. App. at 774(3) ("Mingling of the funds in a mixed bank account does not destroy their identity so as to prevent their recovery in an action for conversion as long as the funds or a portion thereof can be traced." (quotation marks omitted)).

Because, the trial court erred by shifting the burden of proof to Wallace, we must vacate the damages award, and remand the case for further proceedings consistent with this opinion.

Judgment vacated and case remanded with direction. Barnes, P. J., and Hodges, J., concur.