

**IN THE COURT OF APPEALS OF IOWA**

No. 7-263 / 06-0702  
Filed July 25, 2007

**ENID KIRBY,**  
Plaintiff-Appellee,

**vs.**

**GARY RUCHTI, d/b/a**  
**DOUBLE R BAR CORPORATION,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Appanoose County, Daniel P. Wilson, Judge.

Gary Ruchti appeals from district court orders entered in a fencing dispute.

**AFFIRMED IN PART AND REVERSED IN PART AND REMANDED.**

Robert E. Breckenridge of Breckenridge & Duker, P.C., Ottumwa, for appellant.

Bradley M. Grothe of Orsborn, Bauerle, Milani, Grothe & Mitchell, L.L.P., Centerville, for appellee.

Heard by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

**ZIMMER, J.**

Gary Ruchti appeals from rulings made by the district court on pending matters in a fencing dispute brought pursuant to Iowa Code chapter 359A (2003). He contends the court erred in accepting the costs associated with the trustee and clerk fees and in retaining the bond he posted after the court concluded his appeal was untimely. We affirm in part and reverse in part.

***I. Background Facts and Proceedings***

On August 30, 2004, Enid Kirby filed a notice to Double R Bar Corporation, attention of Gary Ruchti, claiming the partition line fence between the parties' property was in need of rebuilding or repair. Pursuant to chapter 359A, the Washington Township Trustees, acting as fence viewers, issued a decision on March 1, 2005, regarding the fence. The trustees found a portion of the fence needed replacing and the remainder needed repair. They determined the cost would be apportioned \$6235 to Kirby and \$8600 to Ruchti. The trustees also assessed the following costs: \$22 in recording fees, \$3000 in trustee fees, \$50 in service fees, and \$1250 in clerk fees. Of these fees, Kirby was deemed responsible for \$1440.67 and Ruchti for \$2881.33. The trustees set an appeal bond in the amount of \$20,000.

Ruchti appealed the decision of the fence viewers. He alleged the amount of trustee fees and clerk fees and the apportionment of the costs of the repair work and fees were arbitrary. He filed a separate application challenging the amount of the bond set by the township clerk.

The record reveals the parties came to a partial settlement regarding the fencing dispute.<sup>1</sup> They agreed to the division of responsibility for the fence repairs as decided by the fence viewers with one exception that they identified. The parties further agreed all the fence work would be completed no later than August 1, 2005. The parties did not resolve their differences regarding the amount and division of costs. There is no indication in the record that Ruchti ever posted the \$20,000 appeal bond, which had been set on March 1, 2005.

On August 24, 2005, Kirby filed a "Notice of Noncompliance with the Decision and Order of Fence Viewers and Settlement Agreement." On August 31 Ruchti filed a similar document. As a result, the district court ordered a second viewing by the fence viewers. The court also ordered the fence viewers to make a report to the court regarding the parties' compliance.

On September 30, 2005, the trustees filed their report to the court as directed. They reported that Kirby needed to replace a portion of her fence, but was otherwise in compliance with the prior order. They reported that Ruchti "has not complied with any portion of our order to replace a portion of his fence . . . ." On October 11 Ruchti filed a notice of appeal in district court challenging the conclusions reached by the fence viewers in their September report. He also challenged the costs assigned in the report.

On October 19, 2005, the district court held a hearing "concerning the issues of appeal bond, fees and costs." On October 20, 2005, the court entered

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<sup>1</sup> It is not clear exactly when the parties reached their agreement. At some point, the parties' attorneys signed a "Partial Stipulation Regarding Appeal From Decision and Order of Fence Viewers." That document was not filed, but was later submitted to the court at a hearing held October 19, 2005.

an order that affirmed the trustee fees and clerk fees, but apportioned responsibility for payment of the fees one-half to each party. The court then determined the amount of Ruchti's bond on appeal should be fixed at \$10,761, which was the sum of his fence costs and his portion of the clerk's and trustees' fees. The court's order provided that "[s]aid bond shall be posted within thirty days of the filing of this ruling."

On November 22, 2005, Ruchti filed his notice of appeal and posted the \$10,761 appeal bond. On December 2, 2005, the Appanoose County Attorney, acting on behalf on the Township Trustees, filed a motion to dismiss, contending the appeal was untimely because the bond necessary to perfect the appeal was filed too late. On December 9, 2005, Kirby filed also a motion to dismiss the appeal as untimely. The same day, Kirby filed an application for dispersal of the funds deposited as a bond by Ruchti.

The district court held another hearing on March 16, 2006, concerning the status of the appeal proceeding and other pending motions. On March 29, 2006, the district court ruled that the notice of appeal Ruchti filed on November 22, 2005, and the bond he posted that same date were untimely. The court dismissed the appeal, but did not exonerate the bond. Instead, the court ordered that the bond Ruchti had posted could be used to fund the fence work. Ruchti has appealed from the court's rulings.

## ***II. Scope of Review***

Our review on appeal from the district court's decision in a fence-viewing case is for the correction of errors at law. *Duncalf v. Ritscher Farms, Inc.*, 627

N.W.2d 906, 908 (Iowa 2001). We are bound by the court's well-supported factual findings but not by its legal conclusions. *Id.*

### **III. Costs**

Ruchti first contends the trial court erred in its October 20, 2005, order when it affirmed “the cost associated with the fence viewers and township clerk.” Kirby argues that we should not address this issue because Ruchti did not file a timely notice of appeal. Upon our review of the record, we conclude Kirby’s argument has merit.

The district court granted Ruchti thirty days from the order it entered October 20, 2005, to post a bond in the amount of \$10,761. Ruchti did not file a notice of appeal and post his bond until thirty-three days after October 20. As a result, the district court dismissed his appeal. We agree with the district court’s conclusion that Ruchti did not perfect his appeal. Accordingly, we decline to address this assignment of error.

### **IV. Appeal Bond**

Ruchti next contends the district court erred when it directed that his appeal bond be retained and used to fund the fencing required by the fence viewers. He argues the dismissal of his appeal foreclosed upon the court’s ability to retain the bond he posted. In response, Kirby argues it was within the trial court’s discretion to order the bond held to satisfy Kirby’s fence building obligations even though Ruchti’s appeal was dismissed. We agree with Ruchti on this issue.

We find nothing in chapter 359A that authorized the district court to retain the bond once it concluded that Ruchti’s appeal had not been perfected. That

does not mean Kirby is without a remedy. Chapter 359A provides the mechanism for executing judgment in the event the fence viewers' order is not ultimately followed. Section 359A.4 states:

If the fence is not erected, rebuilt, or repaired within the time prescribed in the order, the fence viewers shall require the complaining landowner to deposit with the fence viewers a sum of money sufficient to pay for the erecting, rebuilding, trimming, cutting back or repairing such fence together with the fees of the fence viewers and costs. Such complaining landowner shall be reimbursed as soon as the taxes are collected as provided in section 359A.6.

Kirby must follow the procedure set forth by the legislature. Because there was no valid appeal in this case, the appeal bond may not be retained and used in the manner provided for by the district court. Accordingly, we reverse the portion of the court's order that retained Ruchti's bond and remand for further proceedings not inconsistent with this opinion.

**AFFIRMED IN PART AND REVERSED IN PART AND REMANDED.**