

IN THE COURT OF APPEALS OF IOWA

No. 0-385 / 09-1218
Filed June 30, 2010

MIDLAND POWER COOPERATIVE,
Plaintiff-Appellee,

vs.

**GREGORY SWECKER and
BEVERLY SWECKER,**
Defendant-Appellants.

Appeal from the Iowa District Court for Greene County, Joel E. Swanson,
Judge.

Gregory and Beverly Swecker appeal the district court's ruling concluding they were not legally entitled to file UCC financing statements based on their business relationship with Midland Power Cooperative. **AFFIRMED.**

Gregory R. Swecker and Beverly F. Swecker, Dana, pro se.

Thomas W. Polking of Wilcox, Polking, Gerken, Schwarzkopf & Copeland,
P.C., Jefferson, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ. Danilson, J.
and Schechtman, S.J., take no part.

DOYLE, J.

This is another appeal generated by the long-standing dispute between the Sweckers and Midland Power Cooperative (Midland).¹ The Sweckers purchased wind-powered generators seeking to reduce their energy expenses by producing their own power and selling the excess. Midland purchases a variable amount of electricity produced by the Sweckers' generators. The method of computation and amount of compensation seems to be central to the Sweckers' dispute with Midland.

On January 28, 2008, Gregory and Beverly Swecker each filed UCC-1 financing statements with the Iowa Secretary of State identifying themselves as the secured parties and Midland as the debtor. The financing statement covered all of Midland's:

equipment and fixtures including, but not limited to all machinery, tools, vehicles, cars, trucks, trenchers, storage sheds, accounts receivable, office buildings including office fixtures real estate, lands, easements, stocks, patronage dividend, licenses, permits, leases, insurance claims owed or existing or hereafter existing or acquired.

The real estate of Midland in Boone, Greene, Webster, Polk, Story, and Hardin counties was listed. Midland had not authorized the filing of the financing statements. When Midland's requests that the financing statements be terminated went unheeded by the Sweckers, Midland filed suit requesting injunctive relief and damages. On October 27, 2008, the district court entered a

¹ Other appeals include: *Windway Technologies, Inc. v. Midland Power Cooperative*, No. 07-1222 (Iowa Ct. App. July 16, 2008); *Windway Technologies, Inc. v. Midland Power Cooperative*, No. 06-0276 (Iowa Ct. App. Mar. 14, 2007); *Windway Technologies, Inc. v. Midland Power Cooperative*, 696 N.W.2d 303 (Iowa 2005); *Office of Consumer Advocate v. Iowa Utilities Board*, 656 N.W.2d 101 (Iowa 2003).

stipulated order terminating the UCC-I financing statements pending a final hearing. The order also enjoined the Sweckers from contacting any of Midland's customers and requesting joint checks regarding customer payments to Midland. Sweckers filed no responsive pleading to the petition.

Trial was held on July 2, 2009. At trial, the Sweckers argued they were authorized to file the financing statements pursuant to Iowa Code section 554.9509 (2007),² arguing that because the generator is located on agricultural land that the resulting electricity production is "agriculture." The district court, by its order filed July 20, 2009, found the Sweckers generation of electricity was not an agricultural function, Midland had not authorized the filing of the financing statements, and the Sweckers did not terminate the financing statements after Midland requested them to do so. The court made permanent the stipulated order and "permanently enjoined [the Sweckers] from filing financing statements pertaining to co-generation and resulting net metering with [Midland]." Midland was awarded damages. The Sweckers appeal.

The Sweckers argue on appeal that to exclude electricity from the definition of "commodity" in Iowa Code chapter 579B violates equal protection guarantees under the United States and Iowa Constitutions. These issues were not presented to or decided by the district court. Therefore error was not preserved on the constitutional issues. *See State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008) ("Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal.").

² Iowa Code section 554.9509 authorizes a person to file a financing statement if the debtor authorizes the filing or if the person holds an agricultural lien.

The Sweckers argue they were authorized in filing the financing statements since they had an agricultural lien resulting from their sale of electricity to Midland. They claim electricity is a “commodity” as defined in Iowa Code chapter 579B. Section 579B.3(1) establishes that a commodity production contract “lien is an agricultural lien as provided in section 554.9302.” Section 579B.1(1) defines “commodity” as “livestock, raw milk, or a crop.” The term “crop” is defined in section 579B.1(8),³ and “livestock” in section 579B.1(11).⁴

The goal of statutory construction is to determine legislative intent. We determine legislative intent from the words chosen by the legislature, not what it should or might have said. Absent a statutory definition or an established meaning in the law, words in the statute are given their ordinary and common meaning by considering the context within which they are used. Under the guise of construction, an interpreting body may not extend, enlarge, or otherwise change the meaning of a statute.

Zimmer v. Vander Waal, 780 N.W.2d 730, 733 (Iowa 2010) (citation omitted).

“When the statute’s language is plain and unambiguous, we will look no further.”

Id. We believe the statute’s language is plain and unambiguous. “Electricity” is not a “commodity” as defined in chapter 579B. Because electricity is not a “commodity” as defined in chapter 579B, the Sweckers are not entitled to a commodity production lien, or an agricultural lien as provided in section 554.9302. The district court correctly concluded the Sweckers were not legally

³ “Crop” means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage. Iowa Code § 579B.1(8)(a). A “crop” does not include trees or nuts or fruit grown on trees; sod; shrubs; greenhouse plants; or plants or plant parts produced for pre-commercial, experimental, or research purposes. *Id.* § 579B.1(8)(b).

⁴ “Livestock” means beef cattle, dairy cattle, sheep, or swine. *Id.* § 579B.1(11).

entitled to file the financing statements based on their business relationship with Midland.

Error was not preserved on the remaining arguments we were able to glean from the Sweckers' briefs. See Iowa R. App. P. 6.903(2)(g)(3) (2009); *Mitchell*, 757 N.W.2d at 435.

For all the foregoing reasons, we affirm the district court.

Additionally, we note that the Sweckers are no virgins to the world of appellate practice. Their appearance here pro se is no excuse for their violations of the rules of appellate procedure. They have appeared pro se in two previous appeals.⁵ Pro se or not, parties to an appeal are expected to follow the applicable rules. It has long been the rule that procedural rules apply equally to parties who are represented by counsel and to those who are not. Pro se parties receive no preferential treatment. See *Hays v. Hays*, 612 N.W.2d 817, 819 (Iowa Ct. App. 2000). Although this rule may seem harsh to a pro se litigant, it is justified by the notion that appellate judges must not be cast in the role of advocates for a party who fails to comply with court rules and inadequately presents an appeal. The Sweckers' brief did not include a routing statement. Iowa R. App. P. 6.903(2)(d). Statements in the brief did not reference to the appendix or record. See Iowa Rs. App. P. 6.903(2)(e); 6.903(2)(g)(3); 6.904(4). Rules violated in the appendix include rules 6.905(2)(b)(1) and 6.905(4) (no table of contents), rules 6.905(2)(b)(2) and 6.905(5) (no list of relevant docket entries), rule 6.905(2)(b)(5) (no file-stamped copy of the notice of appeal), and rule

⁵ See *Windway Techs., Inc. v. Midland Power Coop.*, No. 07-1222 (Iowa Ct. App. July 16, 2008) (dismissing appeal for failure to comply with rules of appellate procedure); see also *Windway Techs., Inc. v. Midland Power Coop.*, 696 N.W.2d 303 (Iowa 2005).

6.905(4). Additionally, no portion of the trial transcript was included in the appendix. Compliance with the rules promotes judicial efficiency and aids this court in meeting its mandate to achieve maximum productivity in deciding a high volume of cases. See Iowa Ct. R. 21.30(1).

AFFIRMED.