

IN THE COURT OF APPEALS OF IOWA

No. 7-213 / 06-1349
Filed May 23, 2007

RICHARD K. RICHARDS,
Plaintiff-Appellant,

vs.

XENIA RURAL WATER DISTRICT,
Defendant-Appellee.

Appeal from the Iowa District Court for Hamilton County, David R. Danilson, Judge.

Plaintiff appeals the district court's grant of summary judgment to defendant in condemnation proceedings. **AFFIRMED.**

Richard K. Richards, Ames, appellant pro se.

Andrew R. Anderson and Brian S. McCormac of Faegre & Benson, L.L.P.,
Des Moines, for appellee.

Considered by Huitink, P.J., and Mahan, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BEEGHLY, S.J.**I. Background Facts & Proceedings**

Xenia Rural Water District filed an application for condemnation in order to obtain an easement to install and maintain a water pipeline on property in Hamilton County owned by Richard Richards. The application was approved by the chief judge of the judicial district, and a condemnation commission was appointed. See Iowa Code § 6B.4 (2005). Richards was awarded damages of \$1544.40 by the commission for a thirty-foot wide permanent easement across his property.

Richards filed a pro se petition which was entitled, "Petition to Void Application for Condemnation and/or to Quiet Title and/or Appeal." He claimed an easement across his property was not necessary and the water pipeline could be placed somewhere else. Richards also claimed Xenia had not followed the statutory requirements of section 6B.3(1)(b) by showing the location of the right-of-way sought to be condemned.

Xenia filed a motion to dismiss under Iowa Rule of Civil Procedure 1.421(1)(f), claiming Richards's petition failed to state a claim upon which relief could be granted. While the motion to dismiss was pending, Richards filed a request to amend his petition to include a claim that Xenia had failed to provide notice of a public hearing, as required by section 6B.2A(2). He also claimed the condemnation statutes were unconstitutional because he was not provided with due process. He stated the chief judge signed the application for condemnation without notice or an opportunity to be heard.

Richards resisted the motion to dismiss, and filed a motion for summary judgment. Xenia resisted Richards's motion for summary judgment. Xenia additionally filed a motion seeking to dismiss Richards's amended claims. The district court granted Richards's request to amend his petition. The court granted Xenia's motion to dismiss on the issue of the description of the easement for ingress and egress from the property and the issue of due process. Richards's motion for summary judgment was denied.

Xenia filed a motion for summary judgment. The district court determined that Richards's petition was untimely in regard to issues of statutory compliance which were alleged to have arisen when the chief judge signed the application for condemnation. The court granted summary judgment to Xenia on these issues. The court found Richards's petition was timely, however, to challenge the action of the condemnation commissioners, including the issues of the necessity and size of the easement.

Richards filed a second request to amend his petition. He alleged the description of the easement was nonsensical and the description was not made in the manner required by section 6A.20. The district court denied the request to amend.

Xenia filed a new motion for summary judgment on the remaining claims, which were whether the easement was "necessary" for a public improvement and whether the scope of the easement was greater than necessary. Xenia stated a reasonable necessity was sufficient, and it had considerable discretion to select a site for a public improvement. The district court did not consider Richards's

affidavits or exhibits because they were not filed in a timely manner. The court noted that while Richards claimed the site was unreasonable, he did not submit any evidence to support his argument. The court concluded the condemnation was reasonably necessary and summary judgment should be granted to Xenia. As a result of these rulings, Richard's action was dismissed in its entirety.

Richards has appealed the decisions of the district court.

II. Motion to Dismiss

We review a district court ruling on a motion to dismiss for the correction of errors at law. *Kingsway Cathedral v. Iowa Dep't of Transp.*, 711 N.W.2d 6, 7 (Iowa 2006). A motion to dismiss under rule 1.421(1)(f), should be granted only if there is no state of facts conceivable under which a plaintiff might show a right to relief. *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994). However, on constitutional issues our review is de novo. *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006).

A. The district court determined any claim raised in Richards's petition contending the condemnation proceedings were void due to the lack of a description of ingress and egress was dismissed. The court noted that in *SMB Investments v. Iowa-Illinois Gas & Electric Co.*, 329 N.W.2d 635, 639 (Iowa 1983), a condemnation notice was adequate even though the specific ingress and egress routes were not described. On appeal, Richards has not appealed this ruling.

B. The district court also dismissed Richards's claim he was not afforded due process at the time the chief judge signed the application for

condemnation. This issue was addressed in *Owens v. Brownlie*, 610 N.W.2d 860, 870-71 (Iowa 2000). The supreme court stated, “a pre-determination hearing is not required to satisfy due process.” *Owens*, 610 N.W.2d at 870. Like Richards in this case, Owens filed a petition challenging the condemnation of his property. The court concluded Owens was not denied due process because “he took substantial steps to alert the court of his objection and resistance to the condemnation.” *Id.* at 871. On our de novo review of this constitutional issue, we concur in the district court’s decision dismissing the due process claim.

III. Motion to Amend Petition

On appeal, Richards claims the description of the easement was nonsensical. The district court denied Richards’s motion to amend his petition to include this claim. Richards does not argue that the district court improperly denied his motion to amend, he simply raises the issue on the merits. We conclude the district court did not abuse its discretion in denying Richards’s motion to amend. See *Porter v. Good Eavespouting*, 505 N.W.2d 178, 180 (Iowa 1993) (noting a trial court has wide discretion to rule on a motion to amend). Where a proposed amendment to a petition appears on its face to be legally ineffectual, it is properly denied. *Midthun v. Paternack*, 420 N.W.2d 465, 468 (Iowa 1988).

IV. Motions for Summary Judgment

We review a district court’s ruling on a motion for summary judgment for the correction of errors at law. *Perkins ex rel. Perkins v. Dallas Center-Grimes Cmty. Sch. Dist.*, 727 N.W.2d 377, 378 (Iowa 2007). Summary judgment is

appropriate where there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Fennelly v. A-1 Mach. & Tool Co.*, 728 N.W.2d 163, 167 (Iowa 2006). We review the record in the light most favorable to the non-moving party. *Otterberg v. Farm Bureau Mut. Ins. Co.*, 696 N.W.2d 24, 27 (Iowa 2005).

A. Richards claimed Xenia failed to comply with section 6B.2A(1), by failing to provide written notice of a public hearing, and with section 6B.3(1)(b), by failing to submit a plat showing the proposed easement. The district court granted summary judgment to Xenia on these issues, finding they had been raised in an untimely manner. The court found these issues should have been raised within thirty days after the chief judge approved the application for condemnation.

On appeal, Richards does not dispute the district court's ruling that these issues were raised in an untimely manner. He raises only the merits of his claims, stating Xenia failed to follow statutory requirements, and therefore the condemnation should be declared void. Richards's failure to argue the issues were raised in a timely manner waives this issue on appeal. See Iowa R. App. P. 6.14(1)(c) ("Failure in the brief to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue.").

B. The district court granted summary judgment to Xenia on Richards's claim the condemnation was not necessary. Section 6A.1 provides, "Proceedings may be instituted and maintained by the state of Iowa, or for the use and benefit thereof, for the condemnation of such private property as may be

necessary for any public improvement” In an action challenging a condemnation, the landowner whose land is sought to be condemned has the burden of proof. *Owens*, 610 N.W.2d at 866.

A condemning authority need not show an absolute necessity for taking particular land; a reasonable necessity is sufficient. *Mann v. City of Marshalltown*, 265 N.W.2d 307, 314 (Iowa 1978); *Weiss v. City of Denison*, 491 N.W.2d 805, 807 (Iowa Ct. App. 1992). When a condemning authority selects a particular site, “all that is required is that the legislative determination not totally disregard the facts before the body or otherwise constitute a clearly arbitrary selection.” *Banks v. City of Ames*, 369 N.W.2d 451, 455 (Iowa 1985).

Xenia presented evidence to show the site selected for the water pipeline was reasonable. An affidavit of Daniel Miller, Xenia’s executive director, stated that if Xenia had installed the water pipeline within the road right-of-way, Xenia would be required to move the pipeline if the road were expanded or relocated, and this would cause an interruption of water service to Xenia’s customers. Miller stated the pipeline through Richards’s property allowed Xenia to obtain a linear pipeline. If the pipeline had been within the road right-of-way, bends in the lines would have unreasonably reduced water flow. Also, installation in the road right-of-way would have resulted in disruption to other utilities.

The district court determined Richards’s affidavits and response were untimely under rule 1.981(3), which provides any party resisting a motion for summary judgment must file a resistance within fifteen days. Thus, Richards presented no evidence to show the site selected for the water pipeline was

unreasonable. We find no error in the district court's conclusion Xenia was entitled to summary judgment on this issue.

C. In addition to arguing the condemnation was not necessary as to the location of the water pipeline, Richards argued the condemnation was not necessary as to the amount of land condemned. In Miller's affidavit, he stated the easement was thirty-feet wide, which was the minimum necessary to install the water pipeline. Richards did not present any evidence to show the easement could have been less than thirty-feet wide. The district court found the easement was not excessive or unreasonable. We find no error in the district court's grant of summary judgment to Xenia on this issue.

D. On appeal, Richards claims the amount of land condemned for ingress and egress was not necessary. The district court did not separately address this issue. As noted above, the court found the easement was not excessive or unreasonable. The court also reiterated its ruling from the motion to dismiss, that Xenia was not required to describe the ingress and egress routes to be used. See *SMB Invs.*, 329 N.W.2d at 639. To the extent this issue has been preserved, we find no error in the district court's grant of summary judgment to Xenia.

E. The district court granted summary judgment to Xenia on Richards's claim that the description of the easement was not sufficiently precise. Although the court had previously determined Richards's claims under section 6B.3 were untimely, the court went on to consider whether the application for

condemnation sufficiently set forth a description and plat of the property sought to be condemned. See Iowa Code § 6B.3(1)(a), (b).

The court noted that substantial compliance with these statutory requirements would be sufficient. See *Norgard v. Iowa Dep't of Transp.*, 555 N.W.2d 226, 229 (Iowa 1996) (noting substantial compliance with the notice provisions of the statute is sufficient, while the statutory provisions regulating the exercise of eminent domain require strict compliance). The court concluded, however, “literal compliance with the statutory requirements have been met as the description and plat are specific and identify the property.” Xenia attached a description and plat to the application for condemnation. We find no error in the district court’s conclusions on this issue.

V. Other Issues

Richards raises two additional issues on appeal, whether a self-limiting easement complies with Iowa statutes, and whether Xenia complied with section 6B.2B, which requires a condemning authority to make a good faith effort to negotiate prior to initiating condemnation proceedings. These issues were not raised before the district court or decided by that court. We do not consider issues raised for the first time on appeal. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

We affirm the decisions of the district court.

AFFIRMED.