

IN THE COURT OF APPEALS OF IOWA

No. 8-432 / 07-1222
Filed July 16, 2008

WINDWAY TECHNOLOGIES, INC.,
WELCH MOTELS, INC.,
Petitioners,

GREGORY SWECKER and BEVERLY SWECKER,
Petitioners-Appellants,

vs.

MIDLAND POWER COOPERATIVE,
Respondent-Appellee.

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

Petitioners appeal from an order denying their motion for new trial and
motion to recuse. **APPEAL DISMISSED.**

Gregory and Beverly Swecker, Dana, pro se.

Thomas W. Polking and John A. Gerken of Wilcox, Polking, Gerken,
Schwartzkopf & Copeland, P.C., Jefferson, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

PER CURIAM

Gregory R. Swecker and Beverly Swecker appeal from an order denying their motion for new trial and motion to recuse.

In a ruling filed on March 14, 2007, this court affirmed a grant of summary judgment which dismissed the Sweckers' claims. *Windway Technologies, Inc. v. Midland Power Cooperative*, No. 06-0276 (Iowa Ct. App. Mar. 14, 2007). *Procedendo* issued on May 16, 2007. In the meantime, the Sweckers filed a motion for new trial and motion for recusal. By order dated May 17, 2007, and filed on May 21, 2007, the district court denied the motions, finding the new trial motion to be untimely and no reason to recuse.¹

This is the latest in an extended attempt by the Sweckers to force Midland Power Cooperative to accede to their wishes. The procedural history of this case is fully set out in *Windway Technologies, Inc. v. Midland Power Cooperative*, 696 N.W.2d 303 (Iowa 2005), and *Windway Technologies, Inc.*, No. 06-0276.

Midland Power Cooperative urges this case be summarily dismissed for failure to comply with the Rules of Appellate Procedure. See *Myers v. Sellers*, 234 N.W.2d 152, 154 (Iowa 1975) (holding failure to adhere to the rules of appellate procedure can lead to summary disposition of an appeal). We find dismissal is appropriate. The Sweckers' brief does not contain a routing statement as required in rule 6.14(1)(e). There is also a wholesale failure to

¹ We doubt the court had authority to hear the "motions" as the prior order dismissing the case was affirmed by this court. See *Briney v. Katko*, 197 N.W.2d 351, 352 (Iowa 1972) ("Generally, where a final judgment of the lower court is affirmed on appeal in all its parts and the case is not remanded to the lower court for further proceedings, the controversy is at an end the rights of the parties are conclusively adjudicated.").

comply with rule 6.14(1)(f), which requires each argument to be made in separately numbered divisions with citations to the record relied on. It additionally requires that each argument contain a discussion concerning the scope of appellate review with citation to relevant authority as well as a statement of how the issue was preserved for review with references to the places in the record the issue was raised and decided. Iowa R. App. P. 6.14(1)(f). Although the Sweckers represent themselves in this action, pursuing an appeal without the aid of a lawyer does not excuse one from following the rules of appellate procedure. *In re Estate of DeTar*, 572 N.W.2d 178, 180 (Iowa Ct. App. 1997).

When a party's brief fails to comply with our rules of appellate procedure, we are not bound to consider that party's position. *Id.* at 181. Failures such as those set forth above "can lead to summary disposition of an appeal." *Id.*; see also *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974) (dismissing appeal based on party's failure to cite any authority). We will not proceed to the merits of the appeal if it "would require us to assume a partisan role and undertake the appellant's research and advocacy." *Inghram*, 215 N.W.2d at 240. Proceeding to the merits of Swecker's appeal in this case would require us to do so. Accordingly, the appeal is dismissed.

Midland Power Cooperative also asks that this court sanction the Sweckers for filing a frivolous appeal, requesting its appellate attorney fees be paid by the Sweckers. We decline to award appellate attorney fees.

APPEAL DISMISSED.