

**IN THE COURT OF APPEALS OF IOWA**

No. 9-802 / 09-0172  
Filed November 12, 2009

**GLENWOOD PARK, L.C., JACK GETHMANN,  
and TORDSEN FARM MANAGEMENT, INC.,**  
Plaintiffs-Appellants,

**vs.**

**CITY OF MARSHALLTOWN, IOWA,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Marshall County, William J. Pattinson, Judge.

Plaintiffs appeal from an order dismissing their appeal of a condemnation award. **AFFIRMED.**

Kathryn S. Barnhill and Jonathan M. Barnhill of Barnhill & Associates, P.C., West Des Moines, for appellants.

David P. McManus of Sole, McManus, Pearson & Willems, P.C., Cedar Rapids, for appellee.

Considered by Doyle, P.J., Mansfield, J., and Zimmer, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**DOYLE, J.**

Plaintiffs appeal from an order dismissing their appeal of a condemnation award. The City of Marshalltown (the City) condemned about an acre of unimproved land from its owner, Glenwood Park, L.C., to extend a preexisting street. Jack Gethmann is the principal of Glenwood Park, L.C., and Tordsen Farm Management, Inc. is the leasing manager of a farm that included the land in question. On June 4, 2008, a compensation commission awarded \$12,604 in compensation for the land and \$2396 for the condemnee's attorney fees and costs. Two days later, Jonathan Barnhill, as attorney for Jack Gethmann and Glenwood Park, L.C., sent by ordinary mail a notice of appeal to the city attorney, the property's mortgagee, and to the Marshall County Auditor. He also faxed a copy to the Marshall County Sheriff. The notice was filed with the clerk of court on June 26, 2008, within the thirty-day limitation period allowed by Iowa Code section 6B.18(2) (2007). A file-stamped copy of the notice was mailed to the sheriff with no directions for service and no advance for service fees. As a result, the sheriff took no action. Another copy of the notice was faxed to the sheriff on July 22, 2008, again without service instructions or fees. The sheriff took no action for want of instructions.

On July 25, 2008, attorneys Kathryn Barnhill and Jonathan Barnhill filed with the clerk of court a petition on behalf of Glenwood Park, L.C., Jack Gethmann, and Tordsen Farm Management, Inc. requesting the court declare the condemnation invalid or determine a just value which would compensate plaintiffs for the loss of the property. Ultimately, another copy of the notice of appeal, together with the petition and original notice, were provided to the sheriff,

with directions to serve only the City by service on its administrator. Sufficient fees were included to serve just the City. The papers were served on the City's administrator, but it does not appear that the mortgagee or county auditor were served as required under Iowa Code section 6B.18(2). The City filed a motion to dismiss under Iowa Rule of Civil Procedure 1.421(1)(a), claiming the court lacked subject matter jurisdiction because the property owner had not served the notice of appeal within thirty days of its filing with the clerk of court, as required by section 6B.18(2). The district court granted the motion to dismiss finding that the plaintiffs failed to appropriately serve their notice of appeal on the City or the lienholders within the time allowed by section 6B.18(2).

Plaintiffs now appeal. Our review is for errors of law. Iowa R. App. P. 6.907; *Burnham v. City of West Des Moines*, 568 N.W.2d 808 (Iowa 1997).

Having reviewed the record, we agree that plaintiffs failed to serve their notice of appeal within the time allowed under section 6B.18(2), and they showed no good cause to warrant extension of the service deadline. Substantial compliance with the statutory procedure for condemnation appeals is required to confer jurisdiction on the district court. *Burnham*, 568 N.W.2d at 811. The district court's opinion identifies and considers all the issues presented, and we approve of the reasons and conclusions in that opinion. Iowa Ct. R. 21.29(d); see also Iowa R. App. P. 6.1203 (a) & (d).

We do not consider the additional arguments discernible from plaintiffs' brief as they were not presented to the district court. "[I]ssues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

The City filed “Motions for Sanctions, Consolidate and Reserve Jurisdiction” in this appeal. The motion is denied.

**AFFIRMED.**