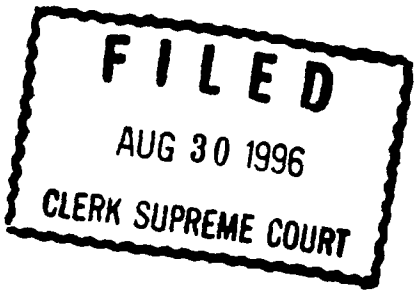
IN THE COURT OF APPEALS OF IOWA

No. 6-145 / 95-307



JEROLENE E. GLASS and
MILO E. GLASS,
Appellants,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
Appellee.

Appeal from the Iowa District Court for Muscatine County, Patrick J. Madden, Judge.

Plaintiffs appeal a district court order dismissing their appeal from a final agency action and denying their application for a declaratory judgment. **AFFIRMED.**

T. Todd Becker and Sara Riley Brown of Tom Riley Law Firm, P.C., Cedar Rapids, for appellants.

Thomas J. Miller, Attorney General, and David A. Ferree, Special Assistant Attorney General, for appellee.

Considered by Cady, P.J., and Streit and Vogel, JJ.

VOGEL, J.

The Iowa Department of Transportation (IDOT) condemned a part of Jerolene and Milo Glass's (Plaintiffs) property pursuant to Iowa Code chapter 6B (1993). A compensation commission (the Commission) assessed the Plaintiff's damages to be $380,000.

Plaintiffs filed an appeal with the district court on September 13, 1994. The IDOT filed a motion to dismiss the appeal on October 21, 1994. On January 17, 1995, the district court granted Plaintiffs' motion to file an amended and substituted petition in which they sought a declaratory judgment to invalidate the appraisement of damages for lack of subject matter jurisdiction. Plaintiffs claimed the IDOT failed to notify First National Bank of Muscatine (FNB), a lienholder on the property, of the condemnation proceedings as required under sections 6B.3(3) and 6B.9. The IDOT filed a motion to dismiss the amended and substituted petition, on January 27, 1995, claiming Plaintiffs had not perfected the appeal by failing to serve the sheriff and lienholders in a timely fashion as required under section 6B.18.

The district court denied Plaintiffs' application for a declaratory judgment holding Plaintiffs did not have standing to challenge the lack of notice to FNB. The court further granted the IDOT's motion to dismiss the appeal.

Plaintiffs appeal.

Plaintiffs only appeal the district court's denial of their claim for declaratory relief and do not challenge the dismissal of the their appeal of the Commission's

damage award. Plaintiffs argue the failure to name FNB in the application for condemnation invalidated that proceeding and hence no appeal, timeliness aside, could be taken.[1]

In their claim for declaratory relief, Plaintiffs contended the Commission did not have subject matter jurisdiction since IDOT failed to give notice to FNB, a lienholder. The district court found this claim must be denied because Plaintiffs lacked standing to raise the issue.

Both parties dispute whether *Bourjaily v. Johnson County*, 167 N.W.2d 630 (Iowa 1969) or *Koss v. City of Cedar Rapids*, 271 N.W.2d 730 (Iowa 1978), should guide our decision in this case. Plaintiffs contend that, under *Bourjaily*, the Commission had no jurisdiction and the award of damages was void since FNB received no notice. We, however, find *Koss* is the more applicable case.

In *Koss*, the court began by distinguishing *Bourjaily* when it found the plaintiff in *Koss*, in contrast to the plaintiffs in *Bourjaily*, made no allegations of prejudice. *Koss v. City of Cedar Rapids*, 271 N.W.2d 730, 734 (Iowa 1978). In commenting on the separate nature of interests in a condemnation proceeding, the supreme court stated:

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[1]The deed of trust between Plaintiffs and FNB noted the mortgage secured credit in the amount of $150,000. A state warrant for $380,000 payable to Plaintiffs was issued. The amount of the warrant is sufficient to cover the mortgage.

> The separate and identifiable nature of the interests involved is illustrated in Nichols on Eminent Domain, 1976 Ed., Vol. 6A, § 26.1134, pp. 2-97 and 2-98:
>
> > "It is generally held that, when the condemnation of land is effected by judicial decree, failure to designate in the petition (and to make a party respondent) the owner of any interest in the land taken whose title appears of record or is otherwise ascertainable on reasonable inquiry renders the proceedings ineffectual to transfer *such interest* to the condemnor, but does not invalidate the entire proceedings or affect the validity of the taking of other interests, the owners of which were properly designated and made parties." (Emphasis added.)
>
> Absent prejudice to the rights of the plaintiff, any irregularity in the notice given to third parties can be challenged only by those whose interests are adversely affected. To conclude otherwise would be in contravention of the traditional limitations on judicial subject matter, most particularly those relating to standing and justiciability.

Id. at 734. Further, as a general proposition, we note the "[f]ailure to notify one owner invalidates the proceedings only as to him. *One person cannot complain because another has received no notice . . . .*" 6 Julius L. Sackman, *Nichols on Eminent Domain* § 26.121, at 26-161 (rev. 3d ed. 1996) (emphasis added).

If FNB had been the party challenging the condemnation proceedings, then we would be applying a different analysis to the situation. In this case, however, Plaintiffs are challenging the validity of the condemnation based on a claim that FNB did not receive notice. Our reading of *Koss* leads us to the conclusion that only FNB has standing to raise the issue of lack of notice in this case. Since Plaintiffs do not have standing to raise the issue, we affirm the ruling of the district court dismissing the claim for declaratory relief. The appeal to the district court was not properly

perfected as conceded by Plaintiffs, and we affirm the district court's ruling to dismiss on this ground as well.

AFFIRMED.