IN THE COURT OF APPEALS OF IOWA

No. 0-493 / 99-1627
Filed September 27, 2000

KEITH E. MEYER,
Petitioner-Appellant,

vs.

IOWA UTILITIES BOARD,
Respondent-Appellee,

and

CALENERGY COMPANY n/k/a MIDAMERICAN ENERGY HOLDINGS COMPANY, MIDAMERICAN ENERGY HOLDINGS COMPANY n/k/a MHC INC., and MIDAMERICAN ENERGY CO.,
Intervenors-Appellees.

FILED
SEP 27 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, Mark D. Cleve, Judge.

The appellant seeks review of the district court's dismissal of his petitions for judicial review. **AFFIRMED.**

Keith E. Meyer, Davenport, pro se.

Allan Kniep and Gary D. Stump, Des Moines, for appellee Iowa Utilities Board.

Sheila K. Tipton of Dorsey & Whitney LLP, Des Moines, and Randall B. Palmer, Des Moines, for intervenors-appellees.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

SACKETT, C.J.

Petitioner-Appellant Keith E. Meyer is a consumer of natural gas and electricity from MidAmerican Energy and its predecessor, Iowa Illinois Gas and Electric. He filed two petitions for judicial review of the Iowa Utilities Board's response to a proposal for reorganization filed by CalEnergy Company, Inc., MidAmerican Energy Holdings Company and MidAmerican Energy Company. His petitions were dismissed finding he had failed to exhaust his administrative remedies and that he did not have standing to challenge because he had not appeared in earlier proceedings. We affirm.

The proposal for reorganization pursuant to Iowa Code section 476.78 and 476.77 was filed with the Iowa Utilities Board on September 21, 1998. On November 5, 1998, the Board issued a Notice of Hearing and Order Setting Procedural Schedule, Setting Intervention Deadlines, and Granting Waiver. The order further provided the last day to file a request for intervention was November 12, 1998. The Board held hearings on December 8 and 9, 1998. On February 17, 1999, Meyer contacted the Consumer Advocates Office seeking assistance in protesting the proposed reorganization. On March 5, 1999, a further hearing was held on the proposed reorganization. On March 11, 1999 the Board issued an order to "not disapprove" the reorganization. The Board determined the proposed reorganization was not contrary to the interests of the ratepayers or the public and the statutory requirements for reorganization had been met. The Board terminated the docket and allowed the reorganization to proceed by operation of law, as is its charge under applicable statutes Iowa Code Section

476.76 and 476.77. On March 31, 1999, Meyer made his first contact with the Board when he filed with it a letter requesting a rehearing. On April 8, 1999, the Board denied Meyer's request for rehearing finding he did not "intervene in this proceedings pursuant to the board's rules or otherwise participate as a party." On April 12, 1999, Meyer filed his first appeal in Scott County District Court. On April 26, 1999, Meyer filed with the Board a request to intervene. His request was denied by the Board. He again attempted to intervene and was again denied the opportunity to do so. On April 20, 1999, Meyer next filed a request to amend his district court filing. The Board filed a motion to dismiss the district court filing. On May 10, 1999 Meyer filed an addendum which was docketed as a separate case. On May 24, 1999 Meyer filed a motion for change of venue. On June 1, 1999 the Board filed a motion to consolidate the two actions and further asking to dismiss them both. On June 3, 1999 the district court denied the Board's motion to dismiss the first action. On June 10, 1999 a motion was filed for reconsideration of the district court's denial of their motion to dismiss. On August 17, 1999 the district court dismissed the first petition finding that Meyer was not a party to the Board proceedings and he had not exhausted all adequate administrative remedies. On August 26, 1999 Meyer filed a motion to reconsider this dismissal. On September 23, 1999 the district court heard Meyer's motion for reconsideration of the order dismissing the first action and on the Board's motion to dismiss the second one. On September 29, 1999 the

district court affirmed the dismissal of the first petition and dismissed the second on the same grounds finding the issues presented to be identical to those presented in the first case. On October 13, 1999 Meyer filed this appeal challenging both dismissals.

Meyer's brief fails to comply with the rules of appellate procedure in a number of respects. Meyer represents himself in this proceeding. He is not an Iowa lawyer. Iowa law dictates that we judge his brief by the same standard as a brief filed by an Iowa lawyer. *See Metropolitan Jacobson Dev. Venture v. Board of Review of Des Moines*, 476 N.W.2d 726, 729 (Iowa App.1991). The law does not judge by two standards, one of lawyers and another for non-lawyers. *See id.* All are expected to act with equal competence. *Id.* If a non-lawyer chooses to represent herself, she does so at her own risk. *Kubik v. Burk*, 540 N.W.2d 60, 63 (Iowa App.1995).

The Iowa Rules of Appellate Procedure govern the form and manner for briefs filed in the Supreme Court. Substantial departures from appellate procedures cannot be permitted on the basis that a non-lawyer is handling his own appeal. *Simmons v. Brenton Nat'l Bank of Perry*, 390 N.W.2d 143, 145 (Iowa App.1986). Meyer, in proceeding without a lawyer, does so at his own risk. *Polk County v. Davis*, 525 N.W.2d 434, 435 (Iowa App.1994).

Meyer's brief is not in compliance with the Iowa Rules of Appellate

Procedure in a number of ways.[1] The brief does not refer to the place in the record the claimed errors arose and were preserved for review, and where in the record and the appendix the issues were decided. He makes no reference to where in the appendix and record the evidence supporting his contentions appear. Such failures can lead to summary disposition of an appeal. *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 239 (Iowa 1974). We are not bound to consider a party's position when the brief fails to comply with the Iowa Rules of Appellate Procedure. *See James v. Rosen*, 203 N.W.2d 256 (Iowa 1972); *Olson v. Olson*, 180 N.W.2d 427 (Iowa 1970). In some situations the court, as a matter of grace, will determine the appeal supplying our own efforts to do so. *See Inghram*, 215 N.W.2d at 240. We grant Meyer that grace only to the extent we

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[1] Rule of Appellate Procedure 14 provides in part:

(a) Appellant's brief. The brief of appellant shall contain under appropriate headings and in the following order:

. . .

(4) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings and the disposition of the case in the trial court. It shall then recite the facts relevant to the issues presented for review. All portions of the statement shall be supported by appropriate references to the record or the appendix in accordance with subdivision (g).

(5) An argument. The argument may be preceded by a summary. The argument shall contain in separately numbered divisions corresponding to the separately stated issues the contentions of appellant with respect to the issues presented and the reasons therefore, with citations to the authorities relied on and to the pertinent parts of the record in accordance with subdivision (g). Each division of the argument shall begin with a discussion, citing relevant authority, concerning the scope or standard of appellate review (e.g., "on error," "abuse of discretion," "de novo") and shall state how the issue was preserved for review, with references to the places in the record where the issue was raised and decided.

. . .

(g) References in briefs to the record. Proof briefs shall contain appropriate references to the pages of the parts of the record involved, e.g., Petition p. 6, Judgment p. 5, Transcript p. 298. References in the final briefs to portions of the record shall be to the pages of the appendix at which those parts appear. If references are made in the briefs to parts of the record not reproduced in the appendix, the references shall be to the pages of the parts of the record involved, e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence, the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered and received or rejected.

believe we can do so without assuming a partisan role and undertaking his research and advocacy. *See In re Estate of DeTar*, 572 N.W.2d 178, 180 (Iowa App. 1997).

Meyer first contends that he should have been granted a change of venue out of Scott County. The motion for change of venue was filed July 2, 1999. The basis for the motion was that the Scott county clerk of court had sent a letter to the district court administrator with a copy to the chief judge making what Meyer alleges was a false claim that he was causing a problem in the Office of the Clerk of Court. Attached to the motion was Meyer's affidavit outlining an event at the courthouse when three Sheriff's department personnel confronted him and there was an indication of a complaint. A copy of the letter from the Clerk of Court was attached to the motion as was a note form the county sheriff indicating that Meyer was not restricted from being in the courthouse but was requested to notify courthouse security in order that they may monitor his movement there for his safety and that of others in the courthouse.

In reviewing a ruling on a motion for change of venue we review for an abuse of discretion based on the record made by the moving party, Meyer in this case. *Peters v. Vander Kooi*, 494 N.W.2d 708, 711 (Iowa 1993).

The theory of changing venue is that circumstances arise with reference to judges, jurors and the nature of actions, which deny to one of the litigants a fair and unbiased trial in the local court jurisdiction. *See Willesen v. Davidson*, 249 Iowa 1104, 90 N.W.2d 737, 738 (1958). Regulations for changes of venue are designed to secure to parties fair and impartial trials of causes, and to secure the

right to trials at such places as are most convenient for the parties and witnesses; the extent to which such regulations may go, for the accomplishment of these purposes, is addressed to a sound legislative discretion, in view of the nature of the case to be provided for and the probable conditions likely to arise. *See id.* The purpose being to secure to every litigant the right to a trial of his cause before a fair and impartial tribunal and to provide the procedure whereby such right may be enforced and protected.

Iowa Rule of Civil Procedure 167 specificies the ground where on motion the place of a trial may be changed. The allegations Meyer makes would most reasonably be an attempt to seek a change under Rule 167(c), which provides in applicable part:

> **Prejudice or Influence.** If the trial judge, or the inhabitants of the county, are so prejudiced against the moving party, *** that movant cannot obtain a fair trial. The motion in such case shall be supported by affidavit of the movant and three disinterested persons, none being the agent, servant, employee or attorney of the movant, nor related to the movant by consanguinity or affinity within the fourth degree.***

Meyer failed to comply with the requirement of the rule as he did not provide the necessary affidavits of three disinterested persons. There is information in the record to show he was not receiving a welcome reception in the courthouse, yet nothing in the record would support a finding that the district court judge hearing the matter was in any way prejudiced against Meyer.

Nor has Meyer met the burden for recusal of a judge. The burden of showing grounds for recusal is on the party seeking it. *State v. Mann*, 512 N.W.2d 528, 532 (Iowa 1994). While there is a constitutional right to a neutral

and detached judge, mere speculation as to judicial bias is not sufficient for recusal. *Id.* In determining whether a judge should recuse himself or herself, the judge is to consider the reasonable person test embodied in Canon 3(D)(1) of the Code of Judicial Conduct. This test inquires "whether reasonable persons with knowledge of all facts would conclude that the judge's impartiality might be questioned." *Campbell v. Quad City Times, Div. of Lee Enterprises, Inc.*, 547 N.W.2d 608, 612 (Iowa App. 1996). We affirm on this issue.

Meyer next contends that it was not necessary he attend the original hearing to protest the manner in which the agency made its decision in order to have standing to file an application for rehearing. He contends he should have been allowed to challenge a decision by the Iowa Utilities Board to "not disapprove" the reorganization and his petition to do so should not have been dismissed on the finding he had not exhausted all his administrative remedies. He contends the district court should not have granted the Utilities Board's request to dismiss his petition.

Meyer argues he was represented in the original hearing on the issue of reorganization by the Office of the Consumer Advocate, a division of the Department of Criminal Justice of the Attorney General's Office. He advances that the Consumer Advocate recommended to the Iowa Utilities Board that the reorganization was not in the interest of Iowans and that it should not be approved. He further contends that the staff of the Iowa Utilities Board also recommended to the Board that the reorganization not be approved. He argues that the Consumer Advocate despite its earlier position took no appeal from the

Board action because it was of the opinion the Utilities Board did not commit reviewable error.

Section 17A.19 provides the exclusive means of judicial review of agency action. *Richards v. Iowa State Commerce Commission*, 270 N.W.2d 616, 619 (Iowa 1978). "Agency action" includes a declaratory ruling or a refusal to issue such a ruling. *See* § 17A.2(9); *Burlington Community School Dist. v. PERB*, 268 N.W.2d 517, 521 (Iowa 1978). Cf. *Schmitt v. Iowa Department of Social Services*, 263 N.W.2d 739, 743 (Iowa 1978). The agency's dismissals of Meyer's petitions were "Agency actions".

Therefore we review the action under the standards set forth in section 17A.19(8). A district court, reviewing agency action, exercises only appellate jurisdiction. *Iowa Public Service Co. v. Iowa State Commerce Commission*, 263 N.W.2d 766, 768-69 (Iowa 1978). When resolution of a controversy has been delegated to an administrative agency, the district court has no original authority to declare the rights of parties or the applicability of any statute or rule. *Public Employment Relations Bd. v. Stohr*, 279 N.W. 2d 286 (Iowa 1979). Its power to decide such issues is derived from and is dependent upon its authority to review agency action. *Id.*

The issue of whether persons not parties in the agency proceeding can petition for judicial review is controlled by the language of section 17A.19(1) that says: "A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review . . . ."

Meyer has not "exhausted all adequate administrative remedies." Not having done so the agency and the district court were correct in dismissing his petitions. We affirm.

AFFIRMED.