

SUPREME COURT OF IOWA

Duncalf v. Ritscher Farms, Inc.

627 N.W.2d 906 (Iowa 2001) · No. No. 99-1186 · Decided May 31, 2001

SUMMARY

The Supreme Court of Iowa held that Iowa Code chapter 359A requires adjoining landowners to share responsibility for maintaining partition fences, regardless of whether each landowner keeps livestock. The court concluded that chapter 169C, which addresses liability for trespassing livestock, did not relieve Ritscher Farms of its fencing obligations. The judgment was reversed and remanded for the fence viewers to reapportion the parties' fencing responsibilities.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Justice Neuman; Justice Larson; All other participating justices of the Supreme Court of Iowa
JURISDICTION	Iowa
DECIDED	May 31, 2001
DOCKET	No. 99-1186
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Action at law under Iowa Code chapter 359A to review a fence viewers' decision allocating responsibility for maintaining partition fences. The district court upheld the fence viewers' decision, and the plaintiffs appealed to the Supreme Court of Iowa.
STANDARD OF REVIEW	Review for correction of errors at law. The court was bound by well-supported factual findings but not by the district court's legal conclusions.
PRECEDENTIAL VALUE	Published Iowa Supreme Court opinion; precedential.
PARTIES	Mabel Duncalf, Harold R. Parr, Irene T. Parr v. Ritscher Farms, Inc., Dean Werner, Clerk of Union Township, Benton County, Iowa, Steven Van Deusen, Gary Kelly, Kevin J. Nolan, Township Trustees of Union Township, Benton County, Iowa, acting as fence viewers

TOPICS

real estate

statutory interpretation

appellate procedure

standard of review

preservation of error

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the plaintiffs preserved a claim that an implied contract required Ritscher Farms to perform the predecessor's fence-maintenance obligations.
2. Whether Iowa Code chapter 169C relieved Ritscher Farms of its obligation under Iowa Code chapter 359A to share responsibility for maintaining partition fences because Ritscher Farms did not keep livestock.
3. Whether the fence viewers were required to apportion partition-fence maintenance obligations among adjoining landowners under chapter 359A.

HOLDINGS

1. The plaintiffs did not preserve their implied-contract argument because neither the fence viewers nor the district court made a finding on that issue, and the plaintiffs did not file a motion under Iowa Rule of Civil Procedure 179(b) to expand the district court's findings.
2. Iowa Code chapter 169C, which addresses liability for damage caused by trespassing livestock, does not relieve an adjoining landowner of independent obligations to maintain partition fences under Iowa Code chapter 359A.
3. Under Iowa Code section 359A.1, adjoining landowners share the duty to maintain partition fences after a written demand, regardless of whether each landowner keeps livestock.
4. Fence viewers must apportion the shared costs and maintenance obligations under chapter 359A, with authority to adjust the allocation to equalize the burden in light of circumstances such as the difficulty and expense of maintaining a fence across a frequently flooded creek.

KEY QUOTATIONS

“The respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year.” (907)

“Because chapter 169C deals with liability for trespassing livestock, not responsibility for maintaining partition fences, the district court erred in applying it to relieve Ritscher Farms from its fencing obligation here.” (909)

“Under the plain language of section 359A.1, the duty to maintain partition fences must be shared by adjoining landowners once such relief is demanded.” (909)

FACTUAL BACKGROUND

The plaintiffs' farms adjoined property owned by Ritscher Farms, and partition fences ran along the shared boundaries. The plaintiffs raised livestock, while Ritscher Farms did not. Oral agreements with Ritscher Farms' predecessor had allocated responsibility for portions of the fences, but those agreements were neither written nor recorded and were not renewed after Ritscher Farms acquired the property. After Ritscher Farms failed to respond to a written demand for repairs, the plaintiffs sought a fence-viewers' determination under Iowa Code chapter 359A.

PROCEDURAL HISTORY

The plaintiffs requested that Union Township trustees, acting as fence viewers, determine the parties' obligations to repair and maintain partition fences. The fence viewers assigned the plaintiffs complete responsibility until Ritscher Farms kept livestock. The district court affirmed, reasoning that Iowa Code chapter 169C required the livestock owners to fence in their animals and relieved Ritscher Farms of chapter 359A obligations. The Supreme Court of Iowa reversed and remanded for reapportionment under chapter 359A.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings and reapportionment of the parties' fencing obligations in accordance with Iowa Code chapter 359A. The fence viewers must determine the appropriate allocation in the first instance, including consideration of the particular difficulty of maintaining the fence across Prairie Creek.

CASES CITED

- Gravert v. Nebergall, 539 N.W.2d 184 (Iowa 1995)
- Falczynski v. Amoco Oil Co., 533 N.W.2d 226 (Iowa 1995)
- Ritz v. Wapello County Board of Supervisors, 595 N.W.2d 786 (Iowa 1999)
- Talbot v. Blacklege, 22 Iowa 572 (1867)
- In re Swisher, 204 Iowa 1072, 216 N.W. 673 (1927)
- In re Estate of Wallis, 276 Ill. App. 3d 1053, 659 N.E.2d 423 (1995)