



Document 2013 2297

Book 2013 Page 2297 Type 06 013 Pages 8

Date 8/02/2013 Time 2:55 PM

Rec Amt \$42.00

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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

Fence Dispute

Type of Document

PREPARER INFORMATION: (name, address, phone number)

Denny Busch
P.O. Box 247
Winterset Iowa 50273

TAXPAYER INFORMATION: (name and mailing address)

RETURN DOCUMENT TO: (name and mailing address)

Denny Busch

GRANTOR: (name)

GRANTEE: (name)

LEGAL DESCRIPTION: (if applicable)

See page: ~~See Exhibit B & C~~

Document or instrument of associated documents previously recorded:

(if applicable) Book 2013 Page 1616

Mr. Dale Lents, Webster Township Trustee
2664 Carriage Trail
Winterset, IA 50273

27 April 2013

Dear Mr. Lents:

I am writing to request a Fence Viewing for a boundary fence. This is a North-South fence separating the Elderkin property in Lincoln Township and the Busch property in Webster Township.

On 17 January 2011, Gary Elderkin made a formal request for a fence viewing of this same fence. At that time, he and his wife Karen represented themselves as owners of the Elderkin land.

The viewing was completed on 19 February 2011, and a ruling was issued and filed with the Madison County Recorder. All work was to be completed by 30 April 2011.

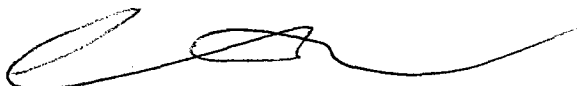
While the Busch fence was completed in a timely manner, the Elderkin fence remained in disrepair. On 5 April 2012 Dale Lents and Jim Busch again viewed the fence and found that the work had not been completed as per the ruling. Again on 30 August 2012 the three trustees viewed the fence and found that the work still had not been completed. At that time, Gary Elderkin was verbally instructed to fix the fence.

After more than two years, involving considerable financial and emotional expense to me, the fence still has not been repaired. My attorney has written to Frank Elderkin, sole owner of the property, to express my concerns. It would appear that from Frank Elderkin's response that he does not understand the Trustee's ruling.

In conclusion, I am requesting a Fence Viewing of the North-South fence between Denny Busch and Frank Elderkin.

Thank you for your help in this matter.

Denny Busch

A handwritten signature in black ink, appearing to read 'Denny Busch', with a long horizontal flourish extending to the right.

cc: Jim Busch, Webster Township Trustee

Susan Busch, Webster Township Trustee

Robert Newton, Lincoln Township Trustee

Benjamin M. Clark

Apr 5, 2012

To Whom it may concern;

Dale Lents and Jim Busch, Webster township trustees, check the fence between Gary Elderkin and Wilma Busch. We found the following: starting on the north road of both properties going south.

Gary's first stretch is missing steel posts on the last 210 yards, and the fifth wire has not been put on. Also the trees on both side of the fence still need to be cut, and several wood post need to be replaced.

Then ~~the~~ Wilma Busch fence has been put in and the trees are cut back so they can't fall on the fence on both sides.

Then Gary has put the rest of the fence in going south to the corner ~~and~~ ~~is~~ new.

The flood gap is in except on the north end which is very steep. The trees on the west side ^{of the south fence has} ~~been~~ been cut back 15 feet approximately the rest could still hit the fence if they fall. ^{They need to be cut back.}

IN SE corner on Gary there is 10' ~~of~~ of Barb wire ^{where} two bulls went through while we walked this fence so it needs fixed. Going West from the South East corner (Gary's) is new but the trees on Northside (Busch side) still ~~need~~ ~~cut~~.

still need to be cut.

Then Wilm's fence is new and trees cut back ok.

Then Gary has some new fence and in the water way was old fence (needs to be new as we requested, and trees cut back.

Then Wilma's fence it's new going west to finish up with. Trees are cut back.

Dale Rents

webster twps
trustee

Jim Busch



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 [1919-1999]

John V. Donnelly
 [1940-2010]

Of Counsel
 * Jill M. Corry

Also Admitted in:
 * Minnesota * Colorado

March 19, 2012

Gary Elderkin
 1575 280th Street
 Winterset, Iowa 50273

Re: Fence & Stray Livestock Issues
 Busch Farm in Webster Township, Winterset, Iowa

Dear Mr. Elderkin,

I have been retained by Mr. Denny Busch regarding some fence and stray livestock issues between your two properties in Madison County. Mr. Busch has asked that I bring a few issues to your attention in hopes of a swift resolution. As you are aware, the Webster township trustees acting as fence viewers pursuant to Iowa Code § 359A, issued a Notice of Findings on or around March 1, 2011. These findings set forth the responsibilities of you and the owner of the Busch property regarding replacement and/or maintenance of the fence. Mr. Busch has satisfied all of his duties under the findings, but you have not.

The best reference point for your remaining responsibilities under the Notice of Findings is Exhibit B, which is a three page narrative dated February 21, 2011 which specifically sets forth the fence issues. It is enclosed in this envelope for your convenient reference, along with a map. Items remaining to be addressed by you are:

- The northernmost 1370 feet of fence running north-south. The fence viewers found that this fence needs to have the trees removed from the fence row, broken wires need to be repaired, and some of the wooden parts are rotted off and they need to be replaced. Steel posts need to be driven in 1/2 way between each wooden post, all the way along the fence line, and there needs to be a fifth barbed wire added to this section. This all still needs to be completed by you.
- In the area where the fence crosses Fletcher Creek, there is a water gap. The fence viewers find it is your responsibility to maintain this. However, the fence has not been properly maintained. This needs to be repaired to a condition where livestock are not able to cross in this area. Further, it should be repaired to a condition that will withstand high water and debris from the creek. Any remaining trees should be cleared. Livestock will be addressed later in this note.

- South of the water gap, regarding the section of fence running north-south up to the spot where the fence jogs to the west, trees are required to be removed in a wide enough path so they do not fall on the new fence. You have failed to do this. These trees need to be removed according to the Notice of Findings.
- On the most southeastern portion of the Busch land, you are required to place proper corner posts with any bracing needed to maintain a tight fence, and run the fence to the west 647 feet, clearing out any trees that could damage the new fence by falling. Although you have replaced the 647 feet of east-west fence, you have not yet placed the proper corner posting so the fence is tight, nor have you cleared out the trees. These items need to be remedied pursuant to the Notice of Findings.
- The only remaining fence portion for which you are responsible is the 705' section running east-west along the southern line of the Busch property. The fence viewers noted that it would be difficult to utilize a bulldozer in this section to remove trees, although they required that you cut back the trees to a point where they will not fall on the new fence. You have yet to perform this maintenance, and this should be remedied pursuant to the Notice of Findings.

These fence issues need to be resolved by you not only because it is the Order of the fence viewers, but more importantly because the fence is necessary to keep out stray livestock that emanates from your property. Mr. Busch, Mr. Michael Myers, the fence viewers, and other neighbors have noted evidence that a herd of approximately 20-30 cattle belonging to you has been crossing from your property to the Busch property through the broken fence sections. These animals not only pose a safety risk to visitors of the Busch property, adjoining properties, and to vehicles on the nearby public roads, but have caused significant damage to crops on the Busch property. The crop loss related to destruction by your cattle has been investigated by a crop adjuster and valued at \$21,824.52.

Mr. Busch was most recently on his property on March 16, 2012 and again saw approximately 3 of your cattle trespassing onto the Busch property, specifically near the pond. He took photographs of the cattle, fresh tracks, and manure. This shall serve as notice under Iowa Code § 169C.3(1) of trespass of your livestock onto my client's property.

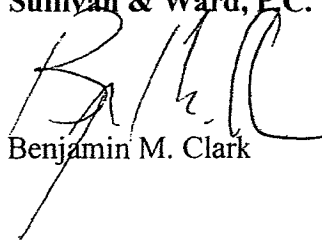
To conclude, Mr. Busch seeks the following actions from you:

1. Address all fence-related deficiencies addressed above at your nearest convenience, but no later than March 31, 2012. Included in this is continued maintenance of all fence sections for which you are responsible pursuant to the fence viewer's Notice of Findings.
2. Take possession of your stray cattle, and maintain them on your property.
3. Pursuant to Iowa Code § 169C.5(1)(a), remit payment to Mr. Busch in the amount of \$21,824.52 for loss of crops caused by your stray livestock. This payment should be made on or before March 31, 2012.

Please do not hesitate to contact me if you have clarifying questions, or wish to seek to resolve these issues. Mr. Busch is prepared to seek all legal remedies available, including those available to him under Iowa Code § 169C.5(1)(b). Please govern yourself accordingly.

Very Truly Yours,

Sulliyān & Ward, P.C.

A handwritten signature in black ink, appearing to read 'B. M. Clark', written over the printed name.

Benjamin M. Clark

cc: Denny Busch
Steven C. Despotovich
D. Scott Simpson