

# Kobza v. Bowers

**Case Number**

A-14-0670

**Call Date**

May 12, 2015

**Case Time**

9:00 AM

**Case Summary**

A-14-670, Bernard J. Kobza and Vickey L. Kobza (Appellants) v. Rhonda Y Bowers and Melvin L. Bowers, Jr.

Sarpy County, District Court Judge David K. Arterburn

Attorney for Appellant: Paul F. Peters

Attorney for Appellee: Brian J. Muench

Civil Action: Request for permanent injunction

Action Taken by Trial Court: The district court denied the Kobzas' request for injunctive relief and denied the claims contained in the Bowerses' counterclaim.

Assignments of Error on Appeal: On appeal, the Kobzas assign that the district court erred in (1) finding that the evidence demonstrated that there does not appear to be a watercourse across the property, (2) applying the standard applicable to diffuse surface waters, (3) holding that a lower proprietor may take measures to defend its property against ground water discharges as long as that defense does not negligently or unnecessarily injure another, (4) finding that the Kobzas failed to meet their burden of proof for an injunction, (5) holding that the Bowerses had the right to construct a permanent damn on their property, (6) finding that the evidence demonstrated that the Bowerses allowed the Kobzas to run a pipe underground across their property so as to allow the discharge of water, (7) speculating that the evidence demonstrated that the ponding issues correlate with the elimination of ground water from the Kobzas' dewatering system and not from rainfall or snow melt alone, (8) speculating that Mr. Kobza lowered the elevation of the Kobzas' property in the northwest corner, (9) according undue weight to its own observations of the property, (10) finding that the rule set forth in Nichol does not apply to ground water, (11) failing and refusing to grant the injunctive relief they requested, and (12) overruling their motion to amend their complaint.

On cross-appeal, the Bowerses assign that the district court erred in (1) failing to award them damages for the damage to their trees, (2) failing to enjoin the Kobzas from pumping or wasting ground water, and (3) failing to award them court costs as part of the judgment in their favor.

**Case Location**

Papillion

**Panel Text**

Irwin, Inbody, and Riedmann, Judges

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