

January 27, 2011

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

FOR THE TENTH CIRCUIT

HENRY MORGAN SMITH;
DESIREE SMITH,

Plaintiffs - Appellants,

v.

BOARD OF COUNTY
COMMISSIONERS FOR THE COUNTY
OF CHAVES, NEW MEXICO;
COMMISSIONER MICHAEL
TRUJILLO, individually and in official
capacity; COMMISSIONER KIM
CHESSEY, individually and in official
capacity; COMMISSIONER KYLE D.
WOOTEN, individually and in official
capacity; RICHARD C. TAYLOR,
individually and in official capacity;
GREG NIBERT, individually and in
official capacity; CHAVES COUNTY
SHERIFF JAMES COON, individually
and in official capacity; CHAVES
COUNTY DEPUTY BARRY DIXON,
individually and in official capacity;
CHAVES COUNTY DEPUTY SHANE
BAKER, individually and in official
capacity; CHAVES COUNTY DEPUTY
JAMES MASON, individually and in
official capacity; CHAVES COUNTY
DEPUTY JASON TUTOR, individually
and in official capacity; and CHAVES
COUNTY DEPUTY SCOTT
OUILLETTE, individually and in official
capacity,

Defendants - Appellees.

No. 10-2259
(D.C. No. 1:09-CV-00026-LH-DJS)
(D. N.M.)

ORDER

Before **LUCERO, HARTZ, and TYMKOVICH**, Circuit Judges.

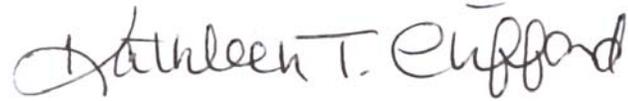
Plaintiffs Henry and Desiree Smith, proceeding *pro se*, appeal the district court's November 9, 2010 Order denying their motions to reconsider the August 23, 2010 Order that granted in part Defendants' motion to dismiss certain claims.

This appeal is presently before the court based on a show cause order challenging appellate jurisdiction and directing the parties to obtain a district court order containing a final judgment under Fed. R. Civ. P. 54(b) as to the district court's August 23, 2010 Order or a district court order explicitly resolving the remaining Fourth Amendment claims for unlawful seizure of a firearm. *See Stockman's Water Company, LLC v. Vaca Partners, L.P.*, 425 F.3d 1263, 1265 (10th Cir. 2005); *Lewis v. B. F. Goodrich Co.*, 850 F.2d 641, 645-46 (10th Cir. 1988).

This court lacks jurisdiction. A review of the latest district court docket reveals that neither party filed a motion for a Rule 54(b) certification, and the district court has not entered an order explicitly resolving Plaintiffs' remaining Fourth Amendment claims. Consequently, the district court orders appealed by Plaintiffs are interlocutory and not immediately appealable under 28 U.S.C. § 1291 or under any recognized exception to the final judgment rule.

The appeal is **DISMISSED** for lack of appellate jurisdiction.

Entered for the Court,
Elisabeth A. Shumaker, Clerk

A handwritten signature in black ink that reads "Kathleen T. Clifford". The signature is written in a cursive, flowing style.

Kathleen T. Clifford
Attorney - Deputy Clerk