

UNITED STATES COURT OF APPEALS April 27, 2011

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

KIOWA ASSOCIATION, in association with the Kiowa Indian Tribe under the provision of CFR 25 through Elton Lowry, as Director; NEW MEXICO GAME FOWL BREEDERS ASSOCIATION, through Ronald Barron as President and its members and all others similarly situated and/or injured,

Plaintiffs - Appellants,

v.

GARY KING, Attorney General of New Mexico; OTERO COUNTY SHERIFF, individually; HEATHER FURGESON, of Animal Protection of New Mexico, and as a member of the Task Force; DARREN WHITE, Sheriff of Bernalillo County; STEVE SUTTLE, Assistant Attorney General as Head of the Task Force; PATRICIA FEESER, as DVM Vet; FARON SEGOTTA, Chief of N.M. State Police; CURTIS CHILDRESS, as Animal Control Officer of Dona Ana County; DONA ANA COUNTY SHERIFF, individually,

Defendants - Appellees,

JOHN P. GOODWIN, of the Humane Society of the United States; JON DOES, to be later identified; HUMANE SOCIETY OF THE UNITED STATES,

Defendants.

No. 11-2056
(D.C. No. 2:09-CV-00467-MV-WPL)

ORDER

Before **KELLY, TYMKOVICH, and GORSUCH**, Circuit Judges.

This matter is before the court on the appellees' motion to dismiss and the response filed by the appellants. Upon consideration thereof, this appeal is **DISMISSED**.

The appellants appeal the denial of a preliminary injunction as well as the denial of class certification.

The appellants did not file their notice of appeal from the denial of injunctive relief until more than nine months after the district court entered its order. Contrary to the appellants' arguments, their appeal under 28 U.S.C. § 1292(a)(1) needed to be filed within 30 days from the entry of the order. Under 28 U.S.C. § 2107(a), "no appeal shall bring any judgment, order or decree in an action suit, or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed within thirty days after the entry of such judgment, order or decree." *See also* Fed. R. App. P. 4(a)(1)(A); *Autoskill, Inc. v. National Educational Support Systems, Inc.*, 984 F.2d 1476, 1483-84 (10th Cir. 1993) (Fed. R. App. P. 4(a) sets the time period to appeal under § 1292(a)(1)).

As for the denial of class certification, the appellants needed to seek

permission to appeal from this court within 14 days of the entry of the district court order. *See* Fed. R. Civ. P. 23(f). The appellants failed to do so.

Accordingly, the appellees' motion to dismiss is **GRANTED**, and this appeal is **DISMISSED**.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney