

June 16, 2009

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

FOR THE TENTH CIRCUIT

DARRELL FORTNER; JENNIFFER
FORTNER, d/b/a Diamond/Dundee Tree
Service,

Plaintiffs - Appellants,

v.

SARAH PELTON, individually and in her
official capacity as ATF agent,

Defendant - Appellee,

and

ATF AGENTS, Dog 1, Cat 2 and Horse 3;
CITY OF COLORADO SPRINGS;
MAYOR LIONEL RIVERA, individually
and in his official capacity as Mayor of
C/S; KATHRYN YOUNG, individually
and in her official capacity as City Clerk
of C/S; DARREL PEARSON,
individually and in his official capacity as
City Forester of C/S; JAMES A.
CHOATE, individually and in his official
capacity as Sergeant for El Paso County
Sheriff's Office; TERRY MAKETA,
individually and in his official capacity as
Sheriff of El Paso County, Colorado;
SHANE WHITE, individually and in his
official capacity as Asst. City Attorney for
the City of Colorado Springs, CO;
JAMES E. MCGANNON, individually
and in his official capacity as city
Forrester for the City of Colorado Springs,
CO,

Defendants.

No. 09-1136

(D. C. No. 1:06-CV-02148-LTB-BNB)

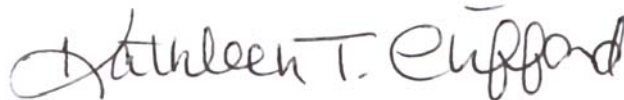
(D. Colorado)

ORDER

In an April 20, 2009 letter from the court, Appellants-Plaintiffs Darrell and Jennifer Fortner, d/b/a/ Diamond/Dundee Tree Service, were directed to pay the required filing fees in the district court *or* file in this court a completed motion for leave to proceed on appeal without prepayment of fees form within 40 days, *i.e. June 1, 2009*. The fees have not been paid in the district court and a motion for leave to proceed on appeal without prepayment of fees has not been filed in this court.

Accordingly, this appeal is **DISMISSED** for failure to prosecute. *See* 10th Cir. R. 3.3(B) and 42.1. The mandate shall issue forthwith.

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