

May 31, 2011

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re: KAY SIEVERDING; DAVID
SIEVERDING,

Petitioners.

No. 11-1227
(D.C. No. 1:02-CV-01950-CMA-OES)
(D. Colo.)

ORDER

Before **MURPHY, O'BRIEN**, and **GORSUCH**, Circuit Judges.

David and Kay Sieverding have filed a petition for writ of prohibition asking us to vacate the district court's March 2004 order directing petitioners to pay the several defendants' attorney fees as a sanction under Federal Rule of Civil Procedure 11 in case No. 02-CV-1950 in the United States District Court for the District of Colorado. Petitioners contend the district court's order is void.

"The standards for reviewing petitions for writs of prohibition are similar to the standards for reviewing petitions for writs of mandamus." *In re McCarthy*, 368 F.3d 1266, 1268 (10th Cir. 2004). Like a writ of mandamus, a writ of prohibition may not be used as a substitute for appeal, and a party must show that his right to the writ is clear and indisputable. *Sangre de Cristo Cmty. Mental Health Serv., Inc. v. United States (In re Vargas)*, 723 F.2d 1461, 1468 (10th Cir. 1983).

Petitioners contend the district court failed to “explain the basis for the sanction” as required by Rule 11(c)(6), so the sanctions were not proper under Rule 11. Because the sanctions were improper under Rule 11, petitioners reason, they could have been imposed only under the court’s inherent power, but the district court did not give them advance notice that it might impose sanctions under its inherent powers, so the order imposing sanctions is void.

Petitioners’ arguments are frivolous. This court has twice upheld the district court’s order awarding attorney fees in favor of the defendants in the underlying litigation as a sanction against petitioners. In *Sieverding v. Colorado Bar Association*, 237 F. App’x 355, 359 (10th Cir. 2007), we upheld the district court’s imposition of sanctions under Rule 11. And in *Sieverding v. Colorado Bar Association*, 310 F. App’x 229, 232 (10th Cir. 2009), we specifically rejected petitioners’ argument that they did not know the basis for the imposition of sanctions, calling their argument “an outright misrepresentation of the facts of this case” and detailing the extensive notice given petitioners.

The petition for writ of prohibition is dismissed as frivolous.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a long horizontal flourish.

ELISABETH A. SHUMAKER, Clerk