

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

March 7, 2014

Elisabeth A. Shumaker
Clerk of Court

VIRGINIA KINNEY,

Plaintiff - Appellant,

v.

UNITED STATES GOVERNMENT,
USDA FOREST SERVICE, and their hired
subcontractors; NANCY ROSE,
Supervisor of Cibola National Forest-
Mountainair; ALAN WARREN, employee
of Cibola National Forest-Mountainair
overseeing fence building,

Defendants - Appellees.

No. 14-2010
(D.C. No. 1:12-CV-01008-MCA-RHS)

ORDER

Before **KELLY, BACHARACH**, and **PHILLIPS**, Circuit Judges.

Pro se plaintiff Virginia Kinney appeals the stipulation to dismiss her case with prejudice, which was filed voluntarily by all parties to the case. After the appeal was opened, the clerk challenged whether this court can consider the dismissal being appealed. The plaintiff and the defendants filed separate memorandum briefs in response to the jurisdictional challenge. Upon careful consideration of the parties' submissions, the record as a whole, and the applicable law, we conclude that the plaintiff lacks standing to appeal the voluntary dismissal of her case.

A party must have standing to seek appellate review. *Thomas v. v. Metropolitan Life Ins. Co.*, 631 F.3d 1153, 1159 (10th Cir. 2011). Generally, only a party aggrieved by a district court judgment or order may exercise the statutory right to appeal from the judgment or order. *Miami Tribe of Oklahoma v. United States*, 656 F.3d 1129, 1137 (10th Cir. 2011) (citing *Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326, 333 (1980)). It follows that “[a] plaintiff may not appeal a voluntary dismissal because it is not an involuntary adverse judgment against him.” *Seidman v. City of Beverly Hills*, 785 F.2d 1447, 1448 (9th Cir. 1986). We have held previously that a plaintiff who settles claims and voluntarily dismisses a case with prejudice pursuant to a settlement agreement is deemed to have waived any objections to and appeal from the voluntary dismissal. See *Mock v. T.G.&Y.*, 971 F.2d 522, 526 (10th Cir. 1992).

In this case, the plaintiff appeals the stipulation dismissing her remaining claim with prejudice. The plaintiff agreed to dismiss the remaining claim after reaching a settlement with the defendants. The plaintiff voluntarily consented to dismissing her case, which means that she is not an aggrieved party. As a result, the plaintiff lacks standing to appeal the voluntary dismissal.

Accordingly, this appeal is dismissed because the plaintiff cannot appeal from the voluntary dismissal of her case.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith
Counsel to the Clerk