

UNITED STATES COURT OF APPEALS

February 3, 2017

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

DENNIS LEON SMITH; BRUCE
CLYDE SMITH,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA;
STATE OF COLORADO; STATE OF
OKLAHOMA; STATE OF KANSAS;
STATE OF NEW MEXICO; STATE OF
TEXAS; and John and Jane Does 1-50,

Defendants - Appellees.

No. 16-1414
(D.C. No. 1:07-CV-1446-ZLW)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BRISCOE** and **McHUGH**, Circuit Judges.**

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** The Honorable Neil Gorsuch considered this appeal originally but did not participate in this Order and Judgment. The practice of this court permits the remaining two panel judges, if in agreement, to act as a quorum in resolving the appeal. See 28 U.S.C. § 46(d); see also United States v. Wiles, 106 F.3d 1516, 1516 n* (10th Cir. 1997) (noting this court allows remaining panel judges to act as a quorum to resolve an appeal); Murray v. National Broadcasting Co., 35 F.3d 45, 48 (2nd Cir. 1994), cert. denied, 513 U.S. 1082 (1995) (remaining two judges of original three judge panel may decide petition for rehearing without third judge).

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is, therefore, submitted without oral argument.

Dennis Leon Smith and Bruce Clyde Smith, a father and son proceeding *pro se*, appeal a minute order of the district court for the District of Colorado striking three filings. This appeal is the third in a lawsuit begun in July, 2007, when the Smiths filed a letter and two documents titled “Private Case to Appropriate Suitor’s Superior Claim” and “Suitor’s One [S]upreme Court Rules.” The district court dismissed the case for uncured filing deficiencies. Over the next nine years, the Smiths twice appealed and filed additional, incomprehensible documents. In August and September, 2016, they filed three more documents — a “Procedurally Modified Declaratory Judgment & *Mandatory Injunction*,” a “Writ of Mandamus,” and a “Writ of Prohibition” — which the district court struck in a minute order on September 14, 2016. The Smiths timely appealed.

Because the contested minute order is not a final appealable order, we lack jurisdiction pursuant to 28 U.S.C. § 1291. See Catlin v. United States, 324 U.S. 229, 233 (1945) (a final decision is “one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.”). The district court did enter a final appealable order on August 22, 2007, dismissing the case. The Smiths never timely appealed this order. By now, the time for appeal has long since expired. None of the other avenues to jurisdiction applies. We therefore DISMISS this appeal for lack of

jurisdiction. We DENY Appellants' Motions for Leave to Proceed in Forma Pauperis.

Entered for the Court

Mary Beck Briscoe
Circuit Judge