NOTE: This order is nonprecedential

United States Court of Appeals for the Federal Circuit

UNDERWOOD LIVESTOCK, INC.,
Plaintiff-Appellant,

v.

UNITED STATES,
Defendant-Appellee.

Miscellaneous Docket No. 981

Appeal From the United States Court of Federal Claims in case No. 05-CV-162, Judge Mary Ellen Coster Williams.

Before GAJARSA, LINN, and MOORE, *Circuit Judges*.

PER CURIAM.

O R D E R

Underwood Livestock, Inc. ("Underwood") appeals from a decision of the Court of Federal Claims ("Claims Court") granting the government's motion for summary judgment that Underwood cannot establish a property interest in a destroyed tire dam structure because of issue preclusion. The relevant facts of this case and the court's decision on the merits are detailed in this court's opinion

affirming the decision of the Claims Court. *Underwood Livestock, Inc. v. United States*, No. 2010-5072.

On appeal to this court, Underwood has not explained how there is any error in the Claims Court's decision, has essentially ignored the Claims Court's determination of issue preclusion, and has instead asked this court to review and vacate the decision of the Interior Board of Land Appeals, a matter over which this court lacks jurisdiction.

"If a court of appeals determines that an appeal is frivolous, it may, after . . . notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Fed. R. App. P. 38. We have held that an appeal may be "frivolous as filed" when "no basis for reversal in law or fact can be or is even arguably shown," and may be "frivolous as argued" when an appellant "has not dealt fairly with the court, [or] has significantly misrepresented the law or facts." *Abbs v. Principi*, 237 F.3d 1342, 1345 (Fed. Cir. 2001).

Appellant's failure to point to any legal errors by the Claims Court; appellant's incorrect statement of statutory authority concerning our jurisdiction; appellant's demand for this court to take mandatory judicial notice of, among other items, "all Acts of Congress" and "the Constitution of the United States"; and appellant's assertion of arguments relating to matters wholly outside this court's jurisdiction raise serious questions under Rule 38.

Accordingly,

IT IS ORDERED THAT:

(1) Appellant and its counsel are directed to show cause in writing as to why this case should not be deemed frivolous as filed and frivolous as argued in the submitted briefs, as to why sanctions should not imposed, and as to how such sanctions, if imposed, should be apportioned between appellant and its counsel.

(2) The written submission shall be in the form of a letter brief, due no later than 15 days from the date of this order and not to exceed 10 pages, double spaced.

FOR THE COURT,

March 31, 2011
Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Martin G. Crowley, Esq.
Kurt G. Kastorf, Esq.