

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2010-1047

ALLEGRA HEMPHILL,

Plaintiff-Appellant,

v.

KIMBERLY-CLARK CORPORATION,

Defendant-Appellee,

and

PROCTER & GAMBLE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court for the District of Columbia
in case no. 09-CV-0004, Judge Rosemary M. Collyer.

ON MOTION

Before LINN, Circuit Judge.

ORDER

Kimberly-Clark Corporation and The Proctor & Gamble Company (Kimberly-Clark) move for summary affirmance of the United States District Court for the District of Columbia's judgment in Hemphill v. Kimberly-Clark Corp., case no. 09-CV-0004.* Allegra Hemphill opposes. Hemphill moves "for leave of court to file actual exhibits of the correct device." Kimberly-Clark opposes. Hemphill replies.

* In addition to the motion that Kimberly-Clark first submitted to the United States Court of Appeals for the District of Columbia Circuit, Kimberly-Clark also submits a separate motion for summary affirmance. This order denies both motions.

This appeal and the aforementioned motions were transferred to this court by the United States Court of Appeals for the District of Columbia Circuit. Kimberly-Clark asserts that Hemphill is appealing only the order of the district court that imposed a filing restriction on Hemphill and that we should summarily affirm that ruling. We deem the better course is to have the matter briefed in the usual course, so that a merits panel may if appropriate consider the criteria for an injunction against a pro se litigant's access to court as set forth by the District of Columbia Circuit in In re Powell, 851 F.2d 427 (D.C. Cir. 1988).

It appears that Hemphill's motion concerns the merits of the case, i.e., whether the district court should have required or relied on "actual exhibits." Although Hemphill may make arguments in her brief concerning whether the district court may rely on documents or photographs instead of exhibits, she may not include in her submissions to this court items such as "actual exhibits" if those exhibits were not filed in the district court. Fed. R. App. P. 10(a). Thus, we deny her motion without prejudice to her making arguments in her brief concerning what the district court relied on in making its determinations.

Accordingly,

IT IS ORDERED THAT:

(1) Kimberly-Clark's motions to summarily affirm are denied. A copy of this order shall be transmitted to the merits panel assigned to hear this case.

(2) Hemphill's motion is denied.

(3) Hemphill's opening brief is due within 30 days of the date of filing of this order.

FOR THE COURT

DEC 14 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Allegra Hemphill
Vicki Margolis, Esq.
Gregory A. Castanias, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

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JAN HORBALY
CLERK