IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE

Civil Case No. 06-cv-02148-LTB-BNB

DARRELL FORTNER and
JENNIFER FORTNER, d/b/a Diamond/Dundee Tree Service,

Plaintiffs,

v.

ATF AGENTS DOG 1, CAT 2, AND HORSE 3,
THE CITY OF COLORADO SPRINGS,
MAYOR LIONEL RIVERA, individually and in his official capacity as Mayor of C/S,
KATHRYN YOUNG, individually and in her official capacity as City Clerk of C/S,
DARREL PEARSON, individually and in his official capacity as City Forrester of C/S,
JAMES A. CHOATE, individually and in his official capacity as Sergeant for El Paso County Sheriff's Office,
TERRY MAKETA, individually and in his official capacity as Sheriff of El paso County, Colorado,
SHANE WHITE, individually and in his official capacity as Asst. City Attorney for the City of Colorado Springs, CO, and
JAMES E. MCGANNON, individually and in his official capacity as City Forrester for the City of Colorado Springs, CO,

Defendants.

ORDER

The following appears from the record in this case. As to the County Defendants, on January 25, 2010, I reversed the Magistrate Judge's denial of the County Defendants' request to file a supplemental summary judgment motion (Doc 352) and ordered the Magistrate Judge to consider and issue recommendations upon the County Defendants' Supplemental Motion for Summary Judgment (Doc 322). The City Defendants filed a Supplemental Motion for Summary Judgment (Doc 324). The Magistrate Judge denied the

City Defendants' request to file supplemental summary judgment motions (Doc 338). While I reversed the Magistrate Judge's denial of the request of the County Defendants to file supplemental summary judgment motions, that Order did not address the City Defendants' motion to file supplemental summary judgment motions. The Magistrate Judge denied the City Defendants' Motion to File Supplemental Summary Judgment Motions (Doc 338) and that order was not appealed by the City Defendants to me pursuant to Fed.R.Civ.P. 72(a). The City Defendants are therefore barred from review of the Magistrate Judge's order of denial. Then on April 5, 2010, I improvidently referred the City Defendants' Supplemental Motion for Summary Judgment to the Magistrate Judge (Doc 377). Because the City Defendants are barred from review of the Magistrate Judge's now final order denying their request to file supplemental summary judgment motions

IT IS ORDERED that the City Defendants' Supplemental Motion for Summary Judgment (Doc 324) is STRICKEN.

BY THE COURT:

s/Lewis T. Babcock
Lewis T. Babcock, Judge

DATED: April 8, 2010