

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

AUG 14 2001

PATRICK FISHER
Clerk

MAREK JAKUBOWSKI and JANINA
T. JAKUBOWSKI,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

No. 00-1270
(D.C. No. 99-S-735)
(D. Colo.)

ORDER AND JUDGMENT *

Before **SEYMOUR** and **McKAY**, Circuit Judges, and **BRORBY**, Senior Circuit
Judge.

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

* This order and judgment is not binding precedent, except under the
doctrines of law of the case, res judicata, and collateral estoppel. The court
generally disfavors the citation of orders and judgments; nevertheless, an order
and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Marek Jakubowski and Janina T. Jakubowski (taxpayers) appeal the judgment of the United States District Court for the District of Colorado granting summary judgment to the Internal Revenue Service (IRS) on their tax refund suit. ¹

Taxpayers sought the refund of allegedly overpaid income taxes based on an alleged capital loss from the sale of real property. In response, the IRS submitted evidence showing that taxpayers had claimed too much in settlement expenses on the sale of the property and had improperly calculated the cost basis of the property resulting in a capital gain to taxpayers of \$21,970.

We review the district court's grant of summary judgment de novo, applying the same legal standard used by the district court. Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. When applying this standard, we view the evidence and draw reasonable inferences therefrom in the light most favorable to the nonmoving party.

Simms v. Oklahoma ex rel. Dep't of Mental Health & Substance Abuse Servs., 165 F.3d 1321, 1326 (10th Cir. 1999) (quotation and citation omitted).

¹ Although Ms. Jakubowski's name did not appear on the notice of appeal, her name was included on the docketing statement filed within sixty days of the date of the district court judgment. As such, the docketing statement will be construed as a timely notice of appeal for Ms. Jakubowski, *see Ayala v. United States*, 980 F.2d 1342, 1344 (10th Cir. 1992), making her a proper appellant in this proceeding.

After reviewing the record on appeal, the submissions of the parties, and the relevant law, we affirm the judgment of the district court for substantially the reasons stated by that court in its memorandum opinion and order dated June 28, 2000.

The judgment of the United States District Court for the District of Colorado is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

Monroe G. McKay
Circuit Judge