

UNITED STATES COURT OF APPEALS **January 7, 2008**

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

NORBERT A. SCHUELLER,

Plaintiff - Appellant,

v.

GARY KING, Attorney General of
New Mexico; DANIEL
MANZANARES, Director of New
Mexico Livestock Board,

Defendants - Appellees.

MIKE MAJOR & TIM REED,
individually and d/b/a Major Cattle
Co.,

Real Parties in Interest.

No. 07-2149
(D.C. No. CIV-06-659)
(D.N.M.)

ORDER AND JUDGMENT*

Before **KELLY, ANDERSON**, and **MURPHY**, 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

Plaintiff-Appellant Norbert A. Schueller, appearing pro se, challenges the district court's final order dismissing his equal protection claim with prejudice for failure to state a claim and his remaining claims, including his takings and due process claims, without prejudice for lack of subject matter jurisdiction. R. Doc. 25. Our jurisdiction arises under 28 U.S.C. § 1291.

The parties are familiar with the facts and we need not repeat them here, other than to say that Plaintiff alleges he is an owner of an unfenced plot of land and that trespassing livestock owned by Mike Major and Tim Reed damaged his land. He filed this civil action against state officials seeking a declaratory judgment that certain New Mexico statutes which may limit recovery of damages caused by trespassing livestock (when property is unfenced) violated the Fifth and Fourteenth Amendments. Plaintiff also sought injunctive relief, and compensatory and punitive damages were he successful in his declaratory judgment action. The district court determined that takings and due process claims were not ripe, and that the livestock fencing statutes at issue had a rational basis. R. Doc. 24 at 8-10, 12-13.

On appeal, he contends that the district court's decision (1) violates longstanding Constitutional principles of property ownership, (2) continues the practice of giving third parties greater rights in his property than he has in violation of the Fifth and Fourteenth Amendments, (3) overlooks the

responsibility of federal courts to adjudicate federal constitutional questions. We review the district court's determination on these matters de novo. Colo. Envtl. Coal. v. Wenker, 353 F.3d 1221, 1227 (10th Cir. 2004). We have reviewed plaintiff's brief,¹ the record, and the applicable law and affirm the district court's final order for substantially the reasons contained in its memorandum opinion and order dated February 28, 2007. R. Doc. 24.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

¹ Defendants have chosen not to submit a brief in opposition to plaintiff's appeal.