

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 24, 2019

Elisabeth A. Shumaker
Clerk of Court

COMCAST OF COLORADO I, LLC,

Plaintiff - Appellee,

v.

ANDREW J. O'CONNOR; MARY E.
HENRY,

Defendants - Appellants.

No. 19-1013
(D.C. No. 1:18-CV-03158-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ, HOLMES, and MORITZ**, Circuit Judges.

Defendants-Appellants Andrew J. O'Connor and Mary E. Henry appeal the district court's order remanding this action to Colorado state court. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Defendants have refused to allow Plaintiff-Appellee Comcast of Colorado I, LLC (Comcast) access to the public utility easement on their property. As a result, Comcast filed this action against Defendants in Colorado state court, seeking

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

injunctive and declaratory relief based on Defendants' alleged violation of the Cable Communications Policy Act of 1984, 47 U.S.C. § 521-55.

Comcast filed a motion for a temporary restraining order (TRO) and a preliminary injunction prohibiting Defendants from denying Comcast access to the easement. The state court granted Comcast's motion for a TRO and set a date for a hearing on Comcast's motion for preliminary injunction. Defendants, acting pro se, responded by filing (1) a motion to dismiss Comcast's action for failure to state a claim, (2) their own motion for TRO and a preliminary injunction, and (3) an answer that included a counterclaim against Comcast. The state court denied Defendants' motions. Defendants then filed a notice removing this action to the U.S. District Court for the District of Colorado hours before the preliminary injunction hearing.

Comcast filed an Emergency Motion to Remand to State Court, urging the district court to remand this action because Defendants had waived their right to remove the action to federal court by actively participating in litigation of the case in the state court. Based on our decision in *City of Albuquerque v. Soto Enterprises, Inc.*, 864 F.3d 1089 (10th Cir. 2017), the district court agreed Defendants had waived removal and ordered this action remanded to the state court. R. at 347-49.

Defendants timely appealed the district court's remand order. But in their opening brief, they do not mention the order or make any arguments challenging it. "[W]e routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant's opening brief. . . . Stated differently, the omission of an issue in an opening brief generally forfeits appellate consideration of

that issue.” *Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007); *see Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (holding pro se plaintiff’s inadequate “briefs disentitle him to review by this court”). Accordingly, we decline to review the district court’s remand order, which is the only issue Defendants could properly raise in this court. The district court’s remand order is therefore AFFIRMED.

Because Defendants have not advanced “a reasoned, nonfrivolous argument” that the district court erred, *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991), we also DENY their motion to proceed without prepayment of costs and fees. Defendants must immediately pay the filing fee to the Clerk of the U.S. District Court for the District of Colorado.

Entered for the Court

Nancy L. Moritz
Circuit Judge