

UNITED STATES COURT OF APPEALS

SEP 30 1997

TENTH CIRCUIT

PATRICK FISHER
Clerk

HARRISON DWIGHT FOOS;
CAROLYN SUE FOOS,

Plaintiffs-Appellants,

v.

STEVE TIMKEN,

Defendant-Appellee.

No. 97-3129
(D.C. No. 97-CV-1129-MLB)
(Kansas)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **PORFILIO** and **MURPHY**, Circuit Judges.

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); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Plaintiffs Harrison Dwight Foos and Carolyn Sue Foos appeal the dismissal

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, or collateral estoppel.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

without prejudice of their complaint against Steve Timken. We agree with the district court that plaintiffs have failed to state a claim upon which relief may be granted. Accordingly, we **AFFIRM** the judgment of the district court substantially for the reasons given in the court's Memorandum and Order dated May 5, 1997.

ENTERED FOR THE COURT

Stephanie K. Seymour
Chief Judge