

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-6754

ERNEST L. BYRD,

Plaintiff - Appellant,

versus

MRS. MCKNIGHT; MR. ARMANTROUT,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Jackson L. Kiser, Senior District Judge. (CA-00-0064-7)

Submitted: August 24, 2000

Decided: August 30, 2000

Before MICHAEL and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Ernest L. Byrd, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Ernest L. Byrd appeals from the district court's order dismissing without prejudice his 42 U.S.C.A. § 1983 (West Supp. 2000) complaint. The district court's dismissal without prejudice is not appealable. See Domino Sugar Corp. v. Sugar Workers' Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). A dismissal without prejudice is a final order only if "no amendment [in the complaint] could cure the defects in the plaintiff's case." Id. at 1067 (quoting Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461, 463 (7th Cir. 1988)). In ascertaining whether a dismissal without prejudice is reviewable in this court, the court must determine "whether the plaintiff could save his action by merely amending his complaint." Domino Sugar, 10 F.3d at 1066-67. In this case, Byrd may move in the district court to reopen his case and to file an amended complaint specifically alleging facts sufficient to state a claim under 42 U.S.C.A. § 1983. Therefore, the dismissal order is not appealable. Accordingly, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED