UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1956

JONES, BLECHMAN, WOLTZ & KELLY, PC,

Plaintiff - Appellee,

v.

TATYANA A. BABAKAEVA,

Defendant – Appellant,

and

NIKOLAI I. SINKINE,

Defendant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Raymond A. Jackson, District Judge. (4:08-cv-00123-RAJ-JEB)

Submitted: March 30, 2010 Decided: April 21, 2010

Before NIEMEYER, MICHAEL, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Tatyana A. Babakaeva, Appellant Pro Se. Raymond Bernard Bacon, QUADROS & ASSOCIATES, PC, Newport News, Virginia; Lawrence Hoyt Glanzer, ROUSSOS LASSITER GLANZER & MARCUS, PLC, Norfolk, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tatyana A. Babakaeva seeks to appeal the district court's order, entered after a hearing, denying her motion to strike Plaintiff's Fed. R. Civ. P. 41(a)(1)(A)(i) notice of voluntary dismissal. In its order, the district court stated that "[t]he dismissal of the case remains effective as of the date of the Notice of Voluntary Dismissal." We dismiss the appeal.

Babakaeva did not file an answer or a motion for summary judgment prior to the filing of the Rule 41(a)(1)(A)(i) notice. Therefore, the voluntary dismissal became effective upon filing of the notice with the clerk of the district court. At that point, the action terminated, and the district court was divested of jurisdiction. See In re Matthews, 395 F.3d 477, 480 (4th Cir. 2005); Marex Titanic, Inc. v. The Wrecked & Abandoned Vessel, 2 F.3d 544, 546 (4th Cir. 1993). Accordingly, the district court was without authority to conduct the hearing or to enter the order Babakaeva seeks to appeal, and that order is void. See Safeguard Business Sys., Inc. v. Hoeffel, 907 F.2d 861 (8th Cir. 1990). The order being void, the voluntary dismissal remains effective as of the date the notice of dismissal was filed in the district court.

We accordingly deny leave to proceed in forma pauperis and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately addressed in the materials before the court and argument would not aid the decisional process.

DISMISSED