UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-6075

MARCUS D. THOMAS,

Plaintiff - Appellant,

v.

L. ROSS, RN; E. JOHNSON, RN; D. SPIERS, DON,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, Senior District Judge. (1:13-cv-00989-TSE-TRJ)

Submitted: May 20, 2014 Decided: June 6, 2014

Before NIEMEYER, SHEDD, and FLOYD, Circuit Judges.

Affirmed in part; vacated and remanded in part by unpublished per curiam opinion.

Marcus D. Thomas, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marcus D. Thomas appeals the district court's order dismissing his 42 U.S.C. § 1983 (2006) complaint under Fed. R. Civ. P. 41(b) for failure to comply with its prior order. We review the district court's order for abuse of discretion. See Ballard v. Carlson, 882 F.2d 93, 95-96 (4th Cir. 1989). "A district court abuses its discretion when it . . . relies on erroneous factual or legal premises." United States v. Thompson-Riviere, 561 F.3d 345, 348 (4th Cir. 2009) (internal quotation marks omitted).

The district court dismissed Thomas' complaint because it found that Thomas "ha[d] not filed a signed consent order, amended complaint, or completed exhaustion affidavit." On appeal, Thomas claims that he has "done everything [he] was asked to do by the court." We agree. Upon reviewing the record, we have determined that the consent order, amended complaint, and completed exhaustion affidavit were submitted to the court along with Thomas' motion "for the allowance of testimony." We thus conclude that the district court relied on an erroneous factual premise in dismissing the complaint. Accordingly, we vacate the district court's order and remand for further proceedings.

Thomas also appeals the district court's orders directing him to file additional documents and denying his

motion for appointment of counsel. Finding no reversible error, we affirm those orders.* Thomas v. Ross, No. 1:13-cv-00989-TSE-TRJ (E.D. Va. filed Sept. 20, 2013 & entered Sept. 23, 2013; filed Oct. 9, 2013 & entered Oct. 10, 2013).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART;
VACATED AND REMANDED IN PART

* In so doing, we express no opinion on whether appointment of counsel may be appropriate later in the proceedings.