

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-6647

ERIC D. HARRIS,

Plaintiff - Appellant,

versus

RUFUS FLEMING, et als,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, District Judge. (CA-95-273-R)

Submitted: December 14, 1995

Decided: June 18, 1996

Before WIDENER, ERVIN, and WILKINS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Eric D. Harris, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant appeals from the district court's order dismissing without prejudice his 42 U.S.C. § 1983 (1988) 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 could be final if "no amendment [to the complaint] could cure defects in the plaintiff's case." Id. at 1067. 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 the complaint." Id. at 1066-67.

Since Appellant could have amended his complaint to assert some claims, we dismiss the appeal for lack of jurisdiction because we find the order is not appealable. 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