

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-1997

JERRY C. MALLORY,

Plaintiff - Appellant,

versus

NORTH CAROLINA STATE; LUMBEE RIVER ELECTRIC
MEMBERSHIP CORPORATION,

Defendants - Appellees.

Appeal from the United States District Court for the Middle Dis-
trict of North Carolina, at Rockingham. Richard C. Erwin, Senior
District Judge. (CA-95-749)

Submitted: February 27, 1997

Decided: March 10, 1997

Before MURNAGHAN, NIEMEYER, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jerry C. Mallory, Appellant Pro Se. Ralf Frederick Haskell, Sr.,
Special Deputy Attorney General, Raleigh, North Carolina; Arlie
Jacobs, LOCKLEAR, BROOKS & JACOBS, Pembroke, North Carolina; Thomas
Edward Schroeder, W. Britton Smith, Jr., SMITH, SCHROEDER, THOMAS
& MEANS, LLP, Charlotte, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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 (1994) 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.

Because Appellant could have amended his complaint to assert some claims, the dismissal order is not appealable. Accordingly, we deny leave to proceed in forma pauperis and 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