

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

CATHERINE M. JACKSON; MICHAEL J.  
MORRISSEY,  
Plaintiffs-Appellants,

No. 98-2829

v.

ARTHUR DONALD MATHEWS,  
Defendant-Appellee.

Appeal from the United States District Court  
for the Eastern District of Virginia, at Richmond.  
Robert E. Payne, District Judge.  
(CA-98-711-3)

Submitted: May 25, 1999

Decided: August 20, 1999

Before WIDENER and MICHAEL, Circuit Judges, and HALL,\*  
Senior Circuit Judge.

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Affirmed as modified by unpublished per curiam opinion.

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**COUNSEL**

Catherine M. Jackson, Michael J. Morrissey, Appellants Pro Se.  
Laura Graham Fox, LECLAIR RYAN, P.C., Richmond, Virginia, for  
Appellee.

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\*Senior Judge Hall participated in the consideration of this case but  
died prior to the time the decision was filed. The decision is filed by a  
quorum of the panel pursuant to 28 U.S.C. § 46(d) (1994).

Unpublished opinions are not binding precedent in this circuit.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

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## OPINION

### PER CURIAM:

Appellants appeal the district court's order dismissing their action filed under 42 U.S.C.A. § 1983 (West Supp. 1998). The record does not contain a transcript of the motion hearing held on November 19, 1998. The burden of including in the record on appeal a transcript of all parts of the proceedings material to the issues raised on appeal is imposed upon the Appellants. See Fed. R. App. P. 10(b); 4th Cir. Loc. R. 10(c). Despite being advised by this court that a transcript of the motion hearing was necessary for a full consideration of their appeal and directed to either certify that they have arranged for preparation of the transcript or apply for in forma pauperis status so that the court could consider their eligibility for a free transcript under 28 U.S.C. § 753(f) (1994), Appellants have done neither. By failing to produce a transcript or to qualify for the production of a transcript at government expense, Appellants have waived review of the issues on appeal that depend upon the transcript to show error. See *Powell v. Estelle*, 959 F.2d 22, 26 (5th Cir. 1992); *Keller v. Prince George's Co.*, 827 F.2d 952, 954 n.1 (4th Cir. 1987). As no error appears on the record before us, we affirm the district court's order. We modify the district court's order to reflect that the dismissal is without prejudice. See 28 U.S.C. § 2106 (1994).

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.

AFFIRMED AS MODIFIED