

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 98-7847**

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RONALD G. BAILEY-EL,

Plaintiff - Appellant,

versus

PRISON HEALTHCARE SERVICES,

Defendant - Appellee.

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Appeal from the United States District Court for the District of Maryland, at Baltimore. William M. Nickerson, District Judge. (CA-98-1510-WMN)

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Submitted: May 4, 1999

Decided: June 24, 1999

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Before WIDENER and WILLIAMS, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Ronald G. Bailey-El, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Ronald Bailey-El appeals from the district court's order dismissing without prejudice his complaint under 42 U.S.C.A. § 1983 (West Supp. 1998). 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 is a final order only if "no amendment [to the complaint] could cure the defects in the plaintiff's case." Id. at 1066 (quoting Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461, 463 (7th Cir. 1988)). 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 his complaint." Domino Sugar, 10 F.3d at 1066-67. In this case, Bailey-El may move the district court to reopen his case and file an amended complaint either realleging Prison Healthcare Services as the proper defendant or, alternatively, naming another party as the proper defendant. Therefore, 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