

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-6390

DONALD CORNELIUS GENTRY,

Plaintiff - Appellant,

versus

GEORGE DEEDS, Warden; Y. ELSWICK, TPS,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, Chief District Judge. (CA-98-768-7)

Submitted: June 17, 1999

Decided: June 23, 1999

Before MURNAGHAN and TRAXLER, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Donald Cornelius Gentry, Appellant Pro Se. Alexander Leonard Taylor, Jr., OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Donald Wayne Gentry appeals from the district court's order dismissing without prejudice his 42 U.S.C.A. § 1983 (West Supp. 1998) action. 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 [in the complaint] could cure the defects in the plaintiff's case." Id. 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." Id. Because the grounds for dismissal of this action show that Gentry could save his action in the district court, the dismissal order is not appealable. Accordingly, we dismiss the appeal for lack of jurisdiction and deny Gentry's motion for the appointment of counsel. 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