

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

MICHAEL McEVILY,
Plaintiff-Appellant,

v.

KIM ORDILE; KIM AUSTIN; DARYL
PAYNE; J. D. TERRY; SCOTT BUSH,
Defendants-Appellees.

No. 02-6419

Appeal from the United States District Court
for the Western District of Virginia, at Roanoke.
Samuel G. Wilson, Chief District Judge.
(CA-01-297-7)

Submitted: July 25, 2002

Decided: August 8, 2002

Before WILKINS, MOTZ, and TRAXLER, Circuit Judges.

Affirmed in part and vacated and remanded in part by unpublished
per curiam opinion.

COUNSEL

Michael McEvily, Appellant Pro Se. Pamela Anne Sargent, Assistant
Attorney General, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Michael McEvily appeals the district court's orders denying relief on his 42 U.S.C.A. § 1983 (West Supp. 2002) complaint. Our review of the record leads us to conclude that the district court prematurely dismissed McEvily's claim that his prison's substance abuse treatment program violated the Establishment Clause of the First Amendment. We have previously held that standing to assert an Establishment Clause claim requires direct contact with the offending practice, but that a plaintiff's change in conduct so as to avoid the offensive practice does not serve to negate standing. *Suhre v. Haywood County*, 131 F.3d 1083, 1086-88 (4th Cir. 1997); cf. *Taylor v. Rogers*, 781 F.2d 1047, 1048 n.1 (4th Cir. 1986) (noting that transfer of inmate moots only claims for declaratory and injunctive relief). On the present record, we are unable to conclude that the district court correctly found that McEvily lacked standing to assert this claim.

We have reviewed the record and the district court's opinion dismissing McEvily's remaining claims and find no reversible error. Accordingly, we deny McEvily's motion for appointment of counsel, vacate the district court's order dismissing McEvily's Establishment Clause claim, and remand for further proceedings on that claim, and affirm the district court's judgment dismissing McEvily's remaining claims on the reasoning of the district court. See *McEvily v. Ordile*, No. CA-01-297-7 (W.D. Va. June 13, 2001; Jan. 31, 2002).

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 IN PART AND

VACATED AND REMANDED IN PART