No. 04-2330

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ELAINE L. CHAO, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,
Plaintiff-Appellant,

v.

RIVENDELL WOODS, INC., d/b/a RIVENDELL WOODS
and RIVENDELL WOODS FAMILY CARE; LANDRAW-I,
LLC; ANDREA WELLS JAMES, Individually;
and RODNEY JAMES, Individually,
Appellees-Defendants.

On Appeal from the United States District Court
for the Western District of North Carolina

# SUPPLEMENTAL MEMORANDUM OF THE SECRETARY OF LABOR

On May 27, 2005, this Court requested the parties to "address[] the issue of whether or not a final judgment has been entered by the district court in this case." The Secretary of Labor ("Secretary") submits that this Court has jurisdiction over this case because the district court's dismissal, despite being issued "without prejudice," was a final, appealable order.

1. In Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066 (4th Cir. 1993), this Court held that a complaint dismissed without prejudice can be considered a final order within the meaning of 28 U.S.C. 1291, and thus subject to appeal, only if "the grounds of the dismissal ma[de] clear that no amendment could cure the defects in the [the company's] case" (quoting Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461, 463 (7th Cir. 1988)). This Court, however, prefaced its holding with the statement that "[a]n order which dismisses a complaint without expressly dismissing the action is [generally] not . . . an appealable order." Id. at 1066 (internal quotation marks omitted; emphases added). In this regard, in Coniston, in an opinion authored by Judge Posner, the Seventh Circuit explained that

> [t]he dismissal of a complaint is not the dismissal of the lawsuit, since the plaintiff may be able to amend his complaint to cure whatever deficiencies had caused it to be dismissed. As long as the suit itself remains pending in the district court, there is no final judgment and we have no jurisdiction under 28 U.S.C. §1291. This is particularly clear in a case such as the present one, where the plaintiff had not amended his complaint before it was dismissed and the defendant had not filed a responsive pleading; for then the plaintiff has a right to amend his complaint without leave of court. Fed.R.Civ.P. 15(a).

844 F.2d at 463 (citations omitted; emphases added).[1]

In the instant case, the district court's Memorandum and Order of Dismissal, under the heading "Order," states as follows:

> It is, therefore, ordered that the Defendants' renewed and amended motion to dismiss is hereby granted and this action is hereby dismissed without prejudice in its entirety. It is further ordered that all remaining motions are hereby denied as moot.

(APP-195) (emphases added). Thus, despite using the words "without prejudice," the district court dismissed the action in its entirety. Moreover, the fact that all pending motions were denied as moot is further evidence that the district court dismissed the action itself.[2] Additionally, subsequent to the issuance of the Order, the court entered a "case closed" notation on the docket sheet, and the case was not returned to the Clerk's Office, as it had been when the court previously denied Defendants' motion to dismiss without prejudice to renew (APP-5-6). See infra.

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[1] The Seventh Circuit went on to conclude that "the order dismissing the complaint is final in fact and we have jurisdiction despite the absence of a formal judgment under Fed.R.Civ.P. 58. That is the case, notwithstanding the district judge's mysterious statement that he was dismissing the complaint 'in its present state.' The complaint sets forth the plaintiffs' case in full; there appear to be no disputed or unclear facts; and the district judge found that the complaint stated no claim under federal law and he then relinquished his jurisdiction of the pendent state law counts in accordance with the usual rule that pendent claims are dismissed when the federal claims drop out before trial. The plaintiffs have no feasible options in the district court; the case is over for them there." Coniston, 844 F.2d at 463 (citations omitted; emphasis added).

[2] The Secretary's motion to compel discovery and the Defendants' motion for a protective order were pending (APP-190).

2. Even if this Court concludes that the district court did not in fact dismiss the action,[3] the Secretary maintains that the district court's dismissal order was final.[4] Unlike the situation in Coniston, where the Seventh Circuit stated that a failure to amend a complaint before dismissal and the absence of a responsive pleading from defendants made it "particularly clear" that "there is no final judgment," 844 F.2d at 463, the Secretary here amended her original complaint (APP-38-43), and the Defendants filed two motions to dismiss as well as responsive pleadings to both the Secretary's original and amended complaints (APP-13-18, 44-50). Therefore, even if the district court had dismissed only the complaint, the Secretary could not have amended the complaint "as a matter of course." Fed. R. Civ. P. 15(a).[5]

3. Moreover, this Court recently has ruled that a dismissal of a complaint without prejudice is a final, appealable order when the applicable statute of limitations period has expired. Thus, in Curbelo v. Pendergraph, No. 04-7420, 124 Fed. Appx. 162, 2005 WL 468307 (4th Cir. 2005),[6] this Court stated that "[w]e note that Curbelo's complaint was dismissed without prejudice. Because some of the claims in his complaint were timely when filed, but would be barred by the statute of limitations if refiled at this juncture, the dismissal order is reviewable. *Cf. Domino Sugar Corp. v.*

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[3] In the Memorandum portion of the decision, the district court states that it dismissed the complaint. (APP-195).

[4] This Court stated in Domino Sugar that to determine whether a district court's dismissal of a complaint without prejudice is a final order, "an appellate court may evaluate the particular grounds for dismissal in each case . . . ." 10 F.3d at 1066-67. Thus, the nature of the complaint itself, as well as the surrounding circumstances, are critical in determining finality.

[5] "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . ." Fed. R. Civ. P. 15(a).

[6] Any unpublished decisions cited in the Secretary's memorandum are attached. See Local Rules 36(c) and 28(b).

*Sugar Workers Local Union 392*, 10 F.3d 1064, 1067 (4th Cir. 1993)." See also Staley v. Rider, No. 04-6210, 114 Fed. Appx. 83, 2004 WL 2580984 (4th Cir. 2004); Howard v. Mr. Smith, No. 03-6777, 87 Fed. Appx. 309, 2004 WL 144221 (4th Cir. 2004); Vanfleet v. Coleman, No. 00-6300, 215 F.3d 1323 (Table), 2000 WL 631043 (4th Cir. 2000). In the present case, the applicable statute of limitations for nonwillful violations goes back two years from the date of the complaint. See 29 U.S.C. 255(a). The complaint originally was filed on June 11, 2003, and seeks relief for back wage violations that have occurred "since June 11, 2001." (APP- 4, 42). Thus, the statute of limitations period has expired with respect to all of the violations that occurred prior to two years from the filing of any new complaint.

4. A comparison of the district court's two orders in this case supports the conclusion that the instant order is final. The first Memorandum and Order, issued subsequent to the Defendants' motion to dismiss, states that "rather than dismiss the action at this point, the Court will provide the Plaintiff an opportunity to amend the complaint." (APP-37) (emphasis added). The Defendants' motion to dismiss was then "denied without prejudice to renewal in the event that on or before 15 days from entry of this Order the Plaintiff fails to cure the defective complaint by amendment." (App-37). An appeal by the Secretary at this juncture would have been interlocutory, because the action was still pending. See, e.g., Dew v. Dewald, No. 03-7847, 96 Fed. Appx. 147, 2004 WL 962751 (4th Cir. 2004) ("[A]s the district court explained, Dew can 'cure the defect by amending his complaint to comply with Rule 8.' Therefore the dismissal order is not appealable."). By contrast, the second Memorandum and Order provides that "the Plaintiff has been given every opportunity to make a case against the Defendants but has not done so. As a result, the complaint will be dismissed." (APP-195) (emphasis added). The district court thus effectively provided no further

opportunities for amendment.

5. Finally, if the decision below is not regarded as final, the Secretary will have no opportunity to obtain review of the sufficiency of her complaint, which was filed in accordance with this Court's dictates in Hodgson v. Virginia Baptist Hospital, Inc., 482 F.2d 821 (4th Cir. 1973). The district court could continue to require the Secretary to include information in her complaints beyond what is required by Federal Rule of Civil Procedure 8(a), and then repeatedly dismiss the action "without prejudice." This is not the kind of situation contemplated by Domino Sugar in which a plaintiff can amend her complaint to cure any deficiencies. The Secretary files hundreds of Fair Labor Standards Act ("FLSA") cases annually, and her complaint in this case is consistent with her longstanding practice. Unlike the typical plaintiff, who can simply modify an individual complaint, it is crucial that the Secretary be able to challenge the district court's erroneous application of Federal Rule of Civil Procedure 8(a) to her FLSA complaints so as to maintain a uniform, nationwide practice.[7]

The Secretary therefore requests that this Court find that the district court order is final and

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[7] This reasoning is consistent with the criteria of the collateral order doctrine, an alternative ground for review by this Court. See Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 (1949). The collateral order doctrine provides that "to be subject to immediate [interlocutory] appeal, a ruling of the district court 'must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment.'" United States v. Moussaoui, 333 F.3d 509, 515 (4th Cir. 2003) (quoting Coopers & Lybrand, 437 U.S. 463, 468 (1978)). In this case, the district court's ruling conclusively determined that the Secretary's amended complaint was insufficient (a question separable from the merits), and the ruling is effectively unreviewable on appeal from a "final" judgment. But see, e.g., Vaughan v. Bledsoe, No. 03-6593, 77 Fed. Appx. 670, 2003 WL 22321458 (4th Cir. 2003) ("The order appealed from is neither a final order nor an appealable interlocutory or collateral order because Vaughan may proceed by simply amending his complaint to provide proof that he has exhausted his administrative remedies. *See Domino Sugar Corp. v. Sugar Workers Local Union 392*, 10 F.3d 1064, 1066-67 (4th Cir. 1993).").

appealable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Supplemental Memorandum of the Secretary of Labor has been served to the following by overnight mail this 3rd day of June 2005:

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**Briefs and Other Related Documents**

This case was not selected for publication in the Federal Reporter.

UNPUBLISHED

Please use FIND to look at the applicable circuit court rule before citing this opinion. Fourth Circuit Rule 36(c). (FIND CTA4 Rule 36(c).)

United States Court of Appeals,
Fourth Circuit.
Francisco CURBELO, Plaintiff--Appellant,
v.
Jim PENDERGRAPH, Sheriff; Elaine Gravitt, Nurse; Norman H. Goode, Captain; Dennis Ray Sergeant; G. Miller, Mecklenburg County Jail Officer; Wade Robinson Skinner, Mecklenburg County Jail Officer, Defendants--Appellees.
**No. 04-7420.**

Submitted: Jan. 26, 2005.
Decided: March 1, 2005.

**Background:** Federal inmate filed § 1983 action. The United States District Court for the Western District of North Carolina, Graham C. Mullen, Chief Judge, dismissed complaint as unintelligible, and inmate appealed.

**Holding:** The Court of Appeals held that inmate's § 1983 complaint was sufficiently intelligible to meet minimum requirements under federal pleading standards.
Vacated and remanded.

West Headnotes

**Civil Rights ⇐1395(7)**

78k1395(7) Most Cited Cases
Inmate's § 1983 complaint was sufficiently intelligible to meet minimum requirements of rules applicable to federal pleading, even though complaint was written in broken English, where allegations clearly set forth claims of deliberate indifference to his serious medical needs between specific dates, and indicated that toilet in his cell was not in working order. 42 U.S.C.A. § 1983; Fed.Rules Civ.Proc.Rule 8, 28 U.S.C.A.
***162** Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Chief District Judge. (CA-04-21-3).

Francisco Curbelo, Appellant pro se.

Before MOTZ and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

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

PER CURIAM.

****1** Francisco Curbelo appeals from the order of the district court dismissing his amended complaint as unintelligible. We vacate this decision and remand for further proceedings.

Curbelo, a federal inmate in the custody of the Mecklenburg County Jail in Charlotte, North Carolina, filed a complaint in the district court on a standard, court-provided form used for filing complaints under 42 U.S.C. § 1983 (2000), in January 2004. In a § 1983 civil rights case, the minimal Rule 8 notice pleading requirements are met when a plaintiff alleges "some person has deprived him of a federal right" and that "the person who has deprived him of that right acted under

color of state ... law." *Gomez v. Toledo,* 446 U.S. 635, 640, 100 S.Ct. 1920, 64 L.Ed.2d 572 (1980). Although Curbelo's complaint was written in broken English, his allegations clearly set forth claims of deliberate indifference to serious medical needs between August 2000 and December 2003. For example, he asserts:

> *163 On several occasions to [A]ugust 12, 2000, Plaintiff informed Mecklenburg medical dept. jail for the inmate medical request inform facial problem to caused by a facial virus; and that such condition had caused swelling and displacement of his face or disfiguring on suffered excruciating pain health to the nurse start Mrs Linda McGuire to deny medical attention for not translator available and deliberate indifference.

(Complaint at 5). Curbelo also added that "the problem is causing Plaintiff to become sick[.] I've been getting very bad high fevers and stomachs acme problems." (*Id.* at 8). He asserted that the problems persisted, and he sought treatment for stomach pain, facial problems, and vision problems on numerous occasions, including August 2000, October 2000, April 2001, and April 2002, to no avail. (*Id.* at 5-12).

Curbelo also appears to raise a claim relating to the conditions of his confinement. He states that: "the toilet in Plaintiff cell has been out of order and full of human waste and not water toilet the cell # 25 of NHF is still not working for two weeks." (*Id.* at 8).

Although these claims are not a model of clarity, we conclude that they meet the minimum requirements of the rules applicable to federal pleading. [FN*] Accordingly, we vacate the judgment of the district court and remand for further proceedings. On remand, we recommend that the district court consider exercising its discretion to appoint Curbelo Spanish speaking counsel by way of North Carolina Prisoner Legal Services, Inc. We grant Curbelo's "Motion To Petition of consolidation," which we construe as a motion to supplement his informal brief. We deny Curbelo's motions for appointment of appellate counsel and for bail pending appeal. We deny Curbelo's motion for 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.

> FN* We note that Curbelo's complaint was dismissed without prejudice. Because some of the claims in his complaint were timely when filed, but would be barred by the statute of limitations if refiled at this juncture, the dismissal order is reviewable. *Cf. Domino Sugar Corp. v. Sugar Workers Local Union 392,* 10 F.3d 1064, 1067 (4th Cir.1993).

**2 *VACATED AND REMANDED*

124 Fed.Appx. 162, 2005 WL 468307 (4th Cir.(N.C.))

**Briefs and Other Related Documents (Back to top)**

- 04-7420 (Docket) (Sep. 10, 2004)

END OF DOCUMENT

**Briefs and Other Related Documents**

This case was not selected for publication in the Federal Reporter.

UNPUBLISHED

Please use FIND to look at the applicable circuit court rule before citing this opinion. Fourth Circuit Rule 36(c). (FIND CTA4 Rule 36(c).)

United States Court of Appeals,
Fourth Circuit.
Daniel L. STALEY, Plaintiff--Appellant,
v.
Doe RIDER, Mental Health Counselor at Kirkland Correctional Institution R & E Center; Unidentified Individuals, Defendants--Appellees.
**No. 04-6210.**

Submitted June 16, 2004.
Decided Nov. 15, 2004.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Patrick Michael Duffy, District Judge. (CA-03-3489-23BG-9).

Daniel L. Staley, Appellant pro se.

Before WILKINSON and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished PER CURIAM opinion.

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

PER CURIAM:

**1 Daniel L. Staley appeals the district court's order dismissing his 42 U.S.C. § 1983 (2000) action for failure to comply with an order of the magistrate judge. Staley contends in his informal brief that he did not receive that order, and that an examination of the prison mail logs will support his contention. We decline to remand the case for a determination of whether Staley did or did not receive the order in question. We conclude that, even if Staley did not receive the order, his complaint is subject to summary dismissal as it fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B) (2000). Accordingly, we affirm the order of the district court dismissing the complaint without prejudice. [FN*] 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.

FN* Though a dismissal without prejudice is ordinarily not a final, appealable order, *see Domino Sugar Corp. v. Sugar Workers Local Union 392,* 10 F.3d 1064, 1066-67 (4th Cir.1993), the applicable three-year statute of limitations period appears to have passed in this case. *See* S.C.Code Ann. § 15-3-530(5) (Law.Co-op.Cum.Supp.2003). Thus, the order is effectively a final order.

*AFFIRMED*

114 Fed.Appx. 83, 2004 WL 2580984 (4th Cir.(S.C.))

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- 04-6210 (Docket) (Jan. 29, 2004)

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**Briefs and Other Related Documents**

This case was not selected for publication in the Federal Reporter.

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Please use FIND to look at the applicable circuit court rule before citing this opinion. Fourth Circuit Rule 36(c). (FIND CTA4 Rule 36(c).)

United States Court of Appeals,
Fourth Circuit.
Jerome Anthony HOWARD, Plaintiff-Appellant,
v.
MR. SMITH, Physician at Wallens Ridge State Prison; S.K. Young, Warden at Wallens Ridge State Prison; Ms. McCurry, R.N. at Wallens Ridge State Prison; John Doe, Corrections Officer at Wallens Ridge State Prison, Defendants-Appellees.
**No. 03-6777.**

Submitted: Nov. 21, 2003.
Decided: Jan. 28, 2004.

**Background:** Inmate brought in forma pauperis § 1983 action against physician, warden, nurse, and officer claiming deliberate indifference to serious medical needs. The United States District Court for the Western District of Virginia, James C. Turk, J., dismissed the action.

**Holdings:** The Court of Appeals held that:
(1) claims which accrued more than two years before filing suit were barred by statute of limitations, but
(2) deliberate indifference action was not frivolous.

Affirmed in part, reversed in part, and remanded.

West Headnotes

**[1] Limitation of Actions ⇐58(1)**
241k58(1) Most Cited Cases
Inmate's § 1983 claims against prison officials regarding his incarceration which accrued more than two years before he filed suit were barred by the statute of limitations. 42 U.S.C.A. § 1983.

**[2] Prisons ⇐17(2)**
310k17(2) Most Cited Cases

**[2] Sentencing and Punishment ⇐1546**
350Hk1546 Most Cited Cases
Inmate's in forma pauperis § 1983 action against physician, warden, nurse, and officer claiming deliberate indifference to serious medical needs was not frivolous and thus should not have been dismissed; inmate alleged he was housed on second tier notwithstanding his clubbed foot, after a fall in which he broke or dislodged a bone prison doctor did not examine him for 11 days, and examination consisted only of viewing inmate through cell door. U.S.C.A. Const.Amend. 8; 28 U.S.C.A. § 1915A; 42 U.S.C.A. § 1983.

***310** Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, Senior District Judge. (CA-03-144-7)

Jerome Anthony Howard, Appellant Pro Se.

Before NIEMEYER, MOTZ, and GREGORY, Circuit Judges.

Affirmed in part, vacated and remanded in part by unpublished PER CURIAM opinion.

**OPINION**

PER CURIAM:

**1 Jerome Anthony Howard appeals the order of the district court dismissing without prejudice pursuant to 28 U.S.C. § 1915A (2000) his suit under 42 U.S.C. § 1983 (2000) for failure to state a claim. [FN*] This court reviews de novo a district court's § 1915A dismissal. *De'Lonta v. Angelone,* 330 F.3d 630, 633 (4th Cir.2003); *Veney v. Wyche,* 293 F.3d 726, 730 (4th Cir.2002).

> FN* Although a dismissal without prejudice is ordinarily not an appealable order, *see Domino Sugar Corp. v. Sugar Workers Local Union 392,* 10 F.3d 1064, 1066-67 (4th Cir.1993), the applicable statute of limitations period has passed. *See* Va.Code Ann. § 8.01-243(a) (Michie 2000). Thus, the order is effectively a final order.

[1] Howard's claims accruing more than two years before he filed suit are barred by the applicable statute of limitations. As to these claims, we affirm on the reasoning of the district court. *See Howard v. Smith,* No. 7:03-CV-00144 (W.D.Va. Apr. 29, 2003).

[2] Turning to Howard's remaining claims, we cannot conclude "beyond doubt" that Howard's complaint fails to state a claim. *See Gordon v. Leeke,* 574 F.2d 1147, 1151 (4th Cir.1978). Howard asserts that he was housed on the second tier notwithstanding his clubbed foot, which made traversing the stairs hazardous. He also contended that after a fall in which he broke or dislodged a bone, the prison doctor did not examine him for eleven days, and the examination consisted only of viewing Howard through a window in his cell door. Liberally construing Howard's complaint, we find that he has alleged that prison officials were deliberately indifferent to an objectively serious medical need sufficient to preclude summary dismissal under § 1915A. *See Johnson v. Quinones,* 145 F.3d 164, 167 (4th Cir.1998) (providing standard).

Accordingly, we vacate the district court's order as to the timely filed claims and remand for further proceedings. We express no opinion as to the proper ultimate disposition of Howard's claims. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court ***311** and argument would not aid the decisional process.

*AFFIRMED IN PART; VACATED AND REMANDED IN PART*

87 Fed.Appx. 309, 2004 WL 144221 (4th Cir.(Va.))

**Briefs and Other Related Documents (Back to top)**

- 03-6777 (Docket) (May. 16, 2003)

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215 F.3d 1323 (Table), 2000 WL 631043 (4th Cir.(Va.))
**Unpublished Disposition**

**(Cite as: 215 F.3d 1323, 2000 WL 631043 (4th Cir.(Va.)))**

**Briefs and Other Related Documents**

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA4 Rule 36 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Fourth Circuit.
John Henry VANFLEET, Plaintiff-Appellant,
v.
B. COLEMAN, Corporal/Corrections Officer; Corporal Jones, Corporal/Correctional Officer, Defendants-Appellees.
**No. 00-6300.**

Submitted May 11, 2000.
Decided May 16, 2000.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Jerome B. Friedman, District Judge. (CA-99-2107-2).

John Henry Vanfleet, pro se.

Before MURNAGHAN, LUTTIG, and TRAXLER , Circuit Judges.

PER CURIAM.

**1 John Henry Vanfleet appeals from the district court's order dismissing his 42 U.S.C.A. § 1983 action without prejudice for his failure to comply with the court's order to provide a copy of his complaint for service on Appellees. [FN1] We have reviewed the record, find no reversible error, and affirm on the reasoning of the district court. *See Vanfleet v. Coleman,* No. CA-99-2107-2 (E.D.Va. Feb. 18, 2000). [FN2] 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.

FN1. Although a dismissal without prejudice is ordinarily not an appealable order, *see Domino Sugar Corp. v. Sugar Workers Local Union 392,* 10 F.3d 1064, 1066-67 (4th Cir.1993), the applicable two year statute of limitations period has passed. *See* Va.Code Ann. § 8.01-243(A) (Michie 1992). Thus, the order is effectively a final order.

FN2. Although the district court's order is marked as "filed" on February 17, 2000, the district court's records show that it was entered on the docket sheet on February 18, 2000. Pursuant to Rules 58 and 79(a) of the Federal Rules of Civil Procedure, it is the date the order was entered on the docket sheet that we take as the effective date of the district court's decision. *See Wilson v. Murray,* 806 F.2d 1232, 1234-35 (4th Cir.1986).

*AFFIRMED.*

215 F.3d 1323 (Table), 2000 WL 631043 (4th Cir.(Va.)), Unpublished Disposition

**Briefs and Other Related Documents (Back to top)**

- 00-6300 (Docket) (Mar. 03, 2000)

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**Briefs and Other Related Documents**

This case was not selected for publication in the Federal Reporter.

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Please use FIND to look at the applicable circuit court rule before citing this opinion. Fourth Circuit Rule 36(c). (FIND CTA4 Rule 36(c).)

United States Court of Appeals,
Fourth Circuit.
Albert E. DEW, Plaintiff--Appellant,
v.
Katherine DEWALD, Nurse; Renee Wolfe, Nurse, Defendants--Appellees.
**No. 03-7847.**

Submitted April 29, 2004.
Decided May 4, 2004.

Appeal from the United States District Court for the Eastern District of North *148 Carolina, at Raleigh. James C. Fox, Senior District Judge. (CA-03- 92-5-F).

Albert E. Dew, Appellant pro se.

Before LUTTIG, WILLIAMS, and SHEDD, Circuit Judges.

Dismissed by unpublished PER CURIAM opinion.

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

PER CURIAM.

**1 Albert E. Dew appeals from the district court's order dismissing without prejudice his 42 U.S.C. § 1983 (2000) complaint. The district court dismissed the complaint for failure to comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a party to provide "a short and plain statement of the claim." 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 1067 (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, we 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, as the district court explained, Dew can "cure the defect by amending his complaint to comply with Rule 8." Therefore, the dismissal order is not appealable. Accordingly, we 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*

96 Fed.Appx. 147, 2004 WL 962751 (4th Cir.(N.C.))

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- 03-7847 (Docket) (Dec. 05, 2003)

END OF DOCUMENT

**Briefs and Other Related Documents**

This case was not selected for publication in the Federal Reporter.

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Please use FIND to look at the applicable circuit court rule before citing this opinion. Fourth Circuit Rule 36(c). (FIND CTA4 Rule 36(c).)

United States Court of Appeals,
Fourth Circuit.
Ronnie VAUGHAN, Plaintiff-Appellant,
v.
Correctional Officer BLEDSOE; Sergeant Coleman; Grievance Coordinator Bedwell; Lieutenant Cassel, Correctional Lieutenant, Powhatan, Investigator Lieutenant; Lieutenant Rogers; Sergeant Brown, Defendants-Appellees.
**No. 03-6593.**

Submitted June 12, 2003.
Decided Oct. 10, 2003.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T.S. Ellis, III, District Judge. (CA-02-1756-AM).

Ronnie Vaughan, Appellant Pro Se.

Before LUTTIG and SHEDD, Circuit Judges. [FN*]

FN* The opinion is filed by a quorum of the panel pursuant to 28 U.S.C. § 46(d) (2000).

Dismissed by unpublished PER CURIAM opinion.

PER CURIAM.

**1 Ronnie Vaughan, a Virginia inmate, appeals the district court's order dismissing without prejudice his 42 U.S.C. § 1983 (2000) complaint. We dismiss the appeal for lack of jurisdiction because the order is not appealable. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2000), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2000); Fed.R.Civ.P. 54(b); *671*Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949). The order appealed from is neither a final order nor an appealable interlocutory or collateral order because Vaughan may proceed by simply amending his complaint to provide proof that he has exhausted his administrative remedies. *See Domino Sugar Corp. v. Sugar Workers Local Union 392,* 10 F.3d 1064, 1066-67 (4th Cir.1993).

Accordingly, we deny Vaughan's motion for appointment of counsel 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.*

77 Fed.Appx. 670, 2003 WL 22321458 (4th Cir.(Va.))

**Briefs and Other Related Documents (Back to top)**

- 03-6593 (Docket) (Apr. 18, 2003)

END OF DOCUMENT