

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-1672**

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DEREK N. JARVIS,

Plaintiff - Appellant,

v.

MONTGOMERY COUNTY, MARYLAND,

Defendant - Appellee.

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Appeal from the United States District Court for the District of Maryland, at Greenbelt. Peter J. Messitte, Senior District Judge. (8:10-cv-01330-PJM)

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Submitted: August 26, 2010

Decided: September 1, 2010

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

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Dismissed by unpublished per curiam opinion.

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Derek N. Jarvis, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derek N. Jarvis appeals from the district court's order dismissing his complaint, without prejudice, because it failed to contain a short, plain statement of facts, as required by Fed. R. Civ. P. 8(a)(2). The order also denied Jarvis' motion to recuse the district judge.

Generally, a district court's dismissal of a complaint without prejudice is not appealable. See Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993) (holding that "a plaintiff may not appeal the dismissal of his complaint without prejudice unless the grounds for dismissal clearly indicate that no amendment [in the complaint] could cure the defects in the plaintiff's case") (alteration in original) (internal quotation marks omitted). In this case, Jarvis would be able to save his action by amending his complaint to comply with the district court's order. Therefore, the district court's dismissal of Jarvis' complaint without prejudice is not an appealable final order. Accordingly, we dismiss the appeal for lack of jurisdiction.

On appeal, Jarvis has filed a petition for writ of mandamus seeking this court to compel the district court judge to recuse himself from Jarvis' proceeding below. Mandamus relief is available only when the petitioner has a clear right to the relief sought. In re First Fed. Sav. & Loan Ass'n, 860

F.2d 135, 138 (4th Cir. 1988). Further, mandamus is a drastic remedy and should only be used in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). Jarvis has not made such a showing. Accordingly, we deny the petition for writ of mandamus. 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