

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1800

R. FRANCIS DIPRETE,

Plaintiff - Appellant,

v.

950 FAIRVIEW STREET, LLC; MICHAEL STRAMIELLO; MICHAEL
COSOLA,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at
Abingdon. James P. Jones, District Judge. (1:15-cv-00034-JPJ-PMS)

Submitted: March 26, 2018

Decided: April 10, 2018

Before DUNCAN, KEENAN, and WYNN, Circuit Judges.

Dismissed and remanded by unpublished per curiam opinion.

R. Francis DiPrete, Appellant Pro Se. Robert Lucas Hobbs, ELLIOTT, LAWSON &
MINOR, PC, Bristol, Virginia, for Appellee Michael Cosola.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

R. Francis DiPrete seeks to appeal the district court's order granting summary judgment to Michael Cosola, one of the three Defendants against whom DiPrete filed his complaint. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), DiPrete and the other Defendants, Michael Stramiello and 950 Fairview Street, LLC, stipulated to the voluntary dismissal without prejudice of DiPrete's claims against those Defendants. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949).

Because the Rule 41(a)(1)(A)(ii) stipulated dismissal without prejudice of DiPrete's claims against Stramiello and 950 Fairview Street, LLC, created a nonfinal split judgment, the summary judgment order DiPrete seeks to appeal—the dismissal as to Cosola—is neither a final order nor an appealable interlocutory or collateral order. *See Waugh Chapel S., LLC v. United Food & Commercial Workers Union Local 27*, 728 F.3d 354, 359 (4th Cir. 2013) (discussing the use of voluntary dismissal to manufacture jurisdiction over otherwise interlocutory orders); *Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623 (4th Cir. 2015). Accordingly, we dismiss the appeal for lack of jurisdiction and remand the case to the district court for further proceedings.* We dispense with oral argument

* Proceedings on remand could include reinstatement of the claims against Stramiello and 950 Fairview Street, LLC, or a stipulation that the claims against those Defendants be dismissed with prejudice.

because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED AND REMANDED