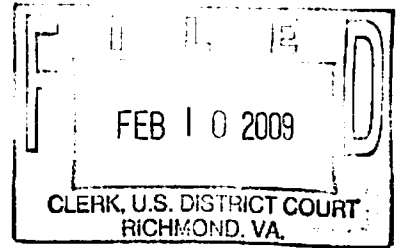


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**



DANIEL VESLEY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:08CV619-HEH
)	
DARNLEY HODGE, <i>et al.</i> ,)	
)	
Defendants.)	

**MEMORANDUM OPINION
(Dismissing Without Prejudice 42 U.S.C. § 1983 Action)**

Plaintiff, a Virginia prisoner proceeding *pro se*, filed this action for relief pursuant to 42 U.S.C. § 1983. By Memorandum Order entered on December 31, 2008, the Magistrate Judge denied Plaintiff’s motion to certify the present action as a class action. The Court noted that unless the prisoner can “fairly and adequately protect” the interests of the class, a *pro se* prisoner may not litigate the rights of others in a class action. Accordingly, the Court denied Plaintiff’s motion for class certification. *See Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975) (*quoting* Fed. R. Civ. P. 23(a)(4)).


Plaintiff now objects to the Magistrate Judge’s ruling, contending that the 2003 amendments to Federal Rule of Civil Procedure 23 permit him to act as a class representative. Plaintiff, however, is incorrect. *See Lescs v. Martinsburg Police Dep’t*, 138 F. App’x 562, 564 (4th Cir. 2005) (unpublished). Despite the 2003 amendments to Rule 23, it remains “plain error to certify a class when a *pro se* litigant seeks to represent the class.” *Id.* (*quoting Oxendine*, 509 F.2d at 1407). Accordingly, Plaintiff’s objection

to the December 31, 2008 Memorandum Order of the Magistrate Judge is OVERRULED.

The Magistrate Judge's December 31, 2008 Memorandum Order also noted that Plaintiff's complaint did not comply with Federal Rule of Civil Procedure 8(a)(2) and directed Plaintiff to file a particularized complaint within fifteen (15) days of the date of entry thereof. Plaintiff was warned that the failure to comply with the directives of the December 31, 2008 Memorandum Order would result in dismissal of the action without prejudice. *See* Fed. R. Civ. P. 41(b). Plaintiff, however, has not complied by submitting a particularized complaint. Accordingly, the action will be dismissed without prejudice.

An appropriate Order shall accompany this Memorandum Opinion.

Date: Feb 10, 2009
Richmond, Virginia


Henry E. Hudson
United States District Judge