

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1746

ELBERT JOHN BENJAMIN RUTHERFORD,

Plaintiff - Appellant,

versus

UNITED STATES DRUG ENFORCEMENT ADMINISTRATION,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., District Judge. (6:07-cv-01871-HMH)

Submitted: December 13, 2007

Decided: December 17, 2007

Before NIEMEYER, MOTZ, and SHEDD, Circuit Judges.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

Elbert John Benjamin Rutherford, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Elbert Rutherford seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing his civil action without prejudice. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2000); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545-46 (1949). Because the deficiencies identified by the district court may be remedied by the filing of a complaint that names individual defendants, we conclude that this portion of the order Rutherford seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. See Domino Sugar Corp. v. Sugar Worker's Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993) (a dismissal without prejudice is generally not appealable). A dismissal without prejudice, however, could be final if no amendment to the complaint would cure the defect in the plaintiff's case. Id. at 1066-67. Therefore the portion of the order appealed stating defects in this case that could not be cured by amendment to the complaint is appealable and this court has jurisdiction. Those claims are affirmed on the reasoning stated by the district court. Rutherford v. Drug Enforcement Admin, No. 6:07-cv-01871-MHM (D.S.C. July 27, 2007).

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 IN PART;
AFFIRMED IN PART