

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7172

RICCARDO DARRELL JONES,

Plaintiff - Appellant,

v.

SGT. RIGGS,

Defendant - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Russell A. Eliason, Magistrate Judge. (1:08-cv-00390-UA-RAE)

Submitted: December 18, 2008

Decided: January 9, 2009

Before NIEMEYER, MICHAEL, and GREGORY, Circuit Judges.

Dismissed and remanded by unpublished per curiam opinion.

Riccardo Darnell Jones, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Riccardo Darnell Jones appeals from the magistrate judge's order denying his motion for preliminary injunction. Because we find that the magistrate judge did not have authority to enter a final, appealable order in this matter, we dismiss the appeal without prejudice for lack of jurisdiction and remand to the district court for further proceedings.

Pursuant to 28 U.S.C. § 636(c) (2000), a magistrate judge may enter a final order directly appealable to the court of appeals upon consent of all parties. Otherwise, under § 636(b), a district court must initially review the magistrate judge's order or proposed findings under either a de novo or clearly erroneous standard of review depending upon the nature of the ruling appealed. Absent an express adoption, modification, or rejection of the magistrate judge's ruling by the district court, the ruling is generally not reviewable by the court of appeals. See Reynaga v. Cammisa, 971 F.2d 414, 416-18 (9th Cir. 1992). In this case, we find nothing in the record showing that the parties agreed to have the motion decided by the magistrate judge. As a result, the magistrate judge lacked the authority to enter a final dispositive order. See Gleason v. Sec'y of Health & Human Servs., 777 F.2d 1324, 1324 (8th Cir. 1985). Accordingly, we dismiss this appeal and remand to the district court for further proceedings. See

Massey v. City of Ferndale, 7 F.3d 506, 510-11 (6th Cir. 1993)

(dismissing appeal from unauthorized order issued by magistrate judge but remanding to district court for corrective action). We further deny Jones' motion for appointment of counsel and 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 AND REMANDED