

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6118

JAMES PRICE,

Plaintiff - Appellant,

v.

GAYLEN SANDERS, in official and private capacity; SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH, for declaratory judgment and injunctive relief; FREDERICK PAUER; JOHN DOE; JANE DOE,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Cameron McGowan Currie, District Judge. (3:07-cv-03924-CMC-PJG)

Submitted: July 7, 2009

Decided: July 20, 2009

Before WILKINSON, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James Price, Appellant Pro Se. James E. Parham, Jr., Irmo, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Price appeals the district court's order dismissing his 42 U.S.C. § 1983 (2006) complaint in part and granting summary judgment to the defendants in part. We have reviewed the record and find no reversible error.

Price argues the district court erred by dismissing the case against John and Jane Doe without first ordering the defendants to identify them. Federal Rule of Civil Procedure 4(m) requires dismissal if the "defendant is not served within 120 days after a complaint is filed," unless the court grants an extension for good cause. Price did not serve the summons and amended complaint upon the unknown defendants within 120 days after filing the amended complaint or move the district court to extend the 120-day period. Consequently, the district court properly dismissed John and Jane Doe from the suit.

Price alleges, for the first time on appeal, that the overcrowded living conditions are dangerous because the rooms are designed for only a single occupant. This court generally declines to address claims raised for the first time on appeal, unless such a refusal would result in a fundamental miscarriage of justice. United States Dep't of Labor v. Wolf Run Mining Co., 452 F.3d 275, 283 (4th Cir. 2006). Price has not advanced any reason why he did not present this argument below, nor has he argued that any exceptional circumstances justify departing

from the general rule. Based upon our review of the record, there are no exceptional circumstances warranting such a departure.

Finally, Price argues that the district court erred by deciding whether he could prove he was assaulted and by relying on defendants' evidence where there were material factual issues in dispute. Price misinterprets the district court opinion, because the district court did not make any finding on whether Price could prove the assault, nor did it rely on defendants' evidence to resolve a material factual issue. Thus, these issues are without merit.

Accordingly, we affirm the judgment of the district court. 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.

AFFIRMED