

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7787

DENNIS EDWARD PHILLIPS,

Plaintiff - Appellant,

v.

MARJUSRI BASU, Nurse Supervisor; JEFF WALKER, Nurse; DR.
SELENE PAREKH; DR. VINCENT C. IGOEKWE,

Defendants - Appellees,

and

BRYAN JONES, Lawyer; SHERIFF JOHN MCDIVETT; A. B. SAUNDERS,
Nurse,

Defendants.

Appeal from the United States District Court for the Eastern
District of North Carolina, at Raleigh. James C. Dever III,
Chief District Judge. (5:10-ct-03069-D)

Submitted: March 26, 2013

Decided: April 9, 2013

Before MOTZ, GREGORY, and KEENAN, Circuit Judges.

Affirmed in part, vacated in part and remanded by unpublished
per curiam opinion.

Dennis Edward Phillips, Appellant Pro Se. Kelly Street Brown,
Elizabeth Pharr McCullough, YOUNG, MOORE & HENDERSON, PA,
Raleigh, North Carolina; Kari Russwurm Johnson, CRANFILL, SUMNER

& HARTZOG, LLP, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dennis Edward Phillips appeals the district court's order denying relief on his 42 U.S.C. § 1983 (2006) complaint. We have reviewed the record and, as to Defendants Basu, Saunders, Parekh, Igboekwe, McDevitt, and Jones, we find no reversible error. Accordingly, we affirm the judgment as to these parties for the reasons stated by the district court. Phillips v. Basu, No. 5:10-ct-03069-D (E.D.N.C. Feb. 1, 2011; Nov. 3, 2011; & Sept. 13, 2012).

As to Defendant Walker, however, we vacate the district court's order dismissing Phillips' claim against him, because the court failed to advise Phillips of its conversion of Walker's motion to dismiss to one for summary judgment. See Fed. R. Civ. P. 12(d); Davis v. Zahradnick, 600 F.2d 458, 460 (4th Cir. 1979) (stating requirements for converting Fed. R. Civ. P. 12(b)(6) motion to summary judgment motion). The court also failed to sufficiently apprise Phillips of his rights under Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975).

Accordingly, we vacate the district court's judgment in favor of Walker and remand for further proceedings.* We deny Phillips' motions to voluntarily dismiss Jones from the appeal,

* By this disposition, we indicate no view as to the outcome of the proceedings on remand.

to file an attachment to his informal brief, and for an emergency stay. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART,
VACATED IN PART,
AND REMANDED