

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-2036**

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ELIJAH SMITH, III; KELLY SMITH; SANDRA SMITH; GARY SMITH,

Plaintiffs - Appellants,

v.

BETSY JOHNSON REGIONAL HOSPITAL, INC.; DUKE REGIONAL  
HOSPITAL; WAKEMED, Hospital,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern  
District of North Carolina, at Raleigh. James C. Fox, Senior  
District Judge. (5:13-cv-00493-F)

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Submitted: December 17, 2013

Decided: December 19, 2013

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Before KING, GREGORY, and WYNN, Circuit Judges.

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Affirmed as modified by unpublished per curiam opinion.

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Elijah Smith, III, Kelly Smith, Sandra Smith, and Gary Smith,  
Appellants Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Plaintiffs appeal the district court's order dismissing their action after a review under 28 U.S.C. § 1915 (2006). We have reviewed the record and agree that the district court lacked subject matter jurisdiction over Plaintiffs' action. See Smith v. Betsy Johnson Reg'l Hosp., Inc., No. 5:13-cv-00493-F (E.D.N.C. Aug. 9, 2013). However, since the dismissal of an action for lack of subject matter jurisdiction is not a decision on the merits, such dismissal should be without prejudice. S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC, 713 F.3d 175, 185 (4th Cir. 2013). We therefore modify the district court's dismissal order to reflect that the dismissal is without prejudice, and we affirm the dismissal as modified. 28 U.S.C. § 2106 (2006); MM ex rel. DM v. Sch. Dist. of Greenville Cnty., 303 F.3d 523, 536 (4th Cir. 2002) ("[W]e are entitled to affirm the court's judgment on alternate grounds, if such grounds are apparent from the record.").

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 AS MODIFIED