

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-2036

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

Plaintiffs - Appellants,

v.

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

Defendants - Appellees.

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)

Submitted: December 17, 2013 Decided: December 19, 2013

Before KING, GREGORY, and WYNN, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

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

Unpublished opinions are not binding precedent in this circuit.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