

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7858

RALPH SMITH,

Plaintiff - Appellant,

v.

PATRICIA T. WATSON, Commonwealth's Attorney,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, Magistrate Judge. (3:13-cv-00532-JRS)

Submitted: February 27, 2014

Decided: March 5, 2014

Before NIEMEYER, KING, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Ralph Smith, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ralph Smith seeks to appeal from the magistrate judge's order requiring him to pay a partial filing fee or state under penalty of perjury that he does not have sufficient assets to pay such a fee. Smith filed his notice of appeal prior to the entry of the district court's order on December 12, 2013, dismissing his action without prejudice for disregarding the magistrate judge's directives.

We may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545-47 (1949). When a notice of appeal is premature, the jurisdictional defect can be cured if the district court enters a final judgment prior to our consideration of the appeal under the doctrine of cumulative finality. Equip. Fin. Grp., Inc. v. Traverse Computer Brokers, 973 F.2d 345, 347-48 (4th Cir. 1992). Not all premature notices of appeal, however, are subject to the cumulative finality rule. Instead, this doctrine applies only if the appellant appeals from an order the district court could have certified for immediate appeal under Fed. R. Civ. P. 54(b). In re Bryson, 406 F.3d 284, 287-89 (4th Cir. 2005). Appeals from "clearly interlocutory decision[s]" cannot be saved under

cumulative finality. Id. at 288 (internal quotation marks omitted).

The magistrate judge's order is not a final order of the district court and is not appealable under the collateral order exception to the final judgment rule. The order also is not one of the orders subject to appeal under 28 U.S.C. § 1292. Further, because the district court could not have certified the order for immediate appeal under Rule 54(b), the cumulative finality rule cannot apply. Accordingly, we deny Smith's motion for a transcript at government expense and dismiss the appeal for lack of jurisdiction. 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.

DISMISSED