

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-7185

THOMAS C. WILSON,

Plaintiff - Appellant,

v.

SALLY ANN CHICKERING,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Paige Jones Gossett, Magistrate Judge. (0:16-cv-01579-TMC)

Submitted: December 20, 2016

Decided: December 22, 2016

Before GREGORY, Chief Judge, and WYNN and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Thomas Clay Wilson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Clay Wilson seeks to appeal the magistrate judge's report recommending that the district court dismiss his civil action without prejudice for failure to state a claim. After Wilson filed his notice of appeal, the district court adopted the magistrate judge's recommendation and dismissed the action without prejudice. Wilson has not filed an amended notice of appeal.

This court 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, 545-46 (1949). When a notice of appeal is premature, the entry of final judgment can cure the resulting jurisdictional defect under the doctrine of cumulative finality, but only if the order appealed could have been certified for immediate appeal pursuant to Rule 54(b). In re Bryson, 406 F.3d 284, 287-89 (4th Cir. 2005); Equip. Fin. Grp. v. Traverse Computer Brokers, 973 F.2d 345, 347 (4th Cir. 1992).

The report and recommendation Wilson seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. See Haney v. Addison, 175 F.3d 1217, 1219 (10th Cir. 1999). Because the district court could not have certified the report and recommendation for immediate appeal

under Rule 54(b), the cumulative finality doctrine does not apply.

Accordingly, we 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