

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-1637

FRANCIS O. NDIKA,

Plaintiff - Appellant,

v.

MRS. MARANON, Soc. Sec. Supervisor,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:17-cv-00027-JCC-JFA)

Submitted: October 31, 2017

Decided: November 7, 2017

Before KING, DIAZ, and HARRIS, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Francis O. Ndika, Appellant Pro Se. Dennis Carl Barghaan, Jr., Rebecca Sara Levenson, Assistant United States Attorneys, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Francis O. Ndika appeals the district court's order granting defendant's motion to dismiss his complaint for lack of subject matter jurisdiction. We have reviewed the record and Ndika's claims and find no reversible error. The court's dismissal, however, should have been without prejudice. *See S. Walk at Broadlands Homeowner's Assoc., Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013). We therefore grant leave to proceed in forma pauperis, modify the district court's order to reflect that the dismissal of Ndika's complaint for lack of subject matter jurisdiction is without prejudice, and affirm the dismissal as modified. *See* 28 U.S.C. § 2106 (2012); *MM ex rel. DM v. Sch. Dist. Of Greenville Cty.*, 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