

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-2454

RUDOLPH CLINE-THOMAS,

Plaintiff - Appellant,

v.

ALVIN KEELS, JR.; GLOBAL MANAGEMENT GROUP, LLC,

Defendants - Appellees,

and

CORPORATE ATHLETIC MANAGEMENT, INC.,

Defendant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk.
Arenda L. Wright Allen, District Judge. (2:13-cv-00204-AWA-LRL)

Submitted: September 28, 2018

Decided: November 20, 2018

Before AGEE, KEENAN, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion. Judge Agee dissents.

Riley H. Ross III, ROSS LEGAL PRACTICE, Philadelphia, Pennsylvania, for Appellant.
Alvin Keels, Jr., Appellee Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rudolph Cline-Thomas appeals the district court's order dismissing his case against Alvin Keels, Jr., for failure to prosecute. *See* Fed. R. Civ. P. 41(b). He contends that, in considering the relevant four-factor test, *see Hillig v. Comm'r*, 916 F.2d 171, 174 (4th Cir. 1990), the court abused its discretion in doing so. We affirm.

We review for an abuse of discretion a district court's dismissal for failure to prosecute. *Ballard v. Carlson*, 882 F.2d 93, 96 (4th Cir. 1989). "A district court abuses its discretion when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises, or commits an error of law." *United States v. Dillard*, 891 F.3d 151, 158 (4th Cir. 2018) (internal quotation marks omitted). "Under the abuse of discretion standard, [we] may not substitute [our] judgment for that of the district court; rather, [we] must determine whether the [district] court's exercise of discretion, considering the law and the facts, was arbitrary or capricious." *United States v. Vidacak*, 553 F.3d 344, 348 (4th Cir. 2009) (internal quotation marks omitted).

After reviewing the parties' briefs and the record on appeal, we conclude that, based on the *Hillig* factors, the district court did not abuse its discretion in dismissing Cline-Thomas' case against Keels for failure to prosecute. Accordingly, we affirm the district court's order. 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

AGEE, Circuit Judge, dissenting:

I conclude that the district court abused its discretion in dismissing the case pursuant to Rule 41(b). Accordingly, I would vacate the district court's order and remand for further proceedings.