

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1788

TRACY SMITH,

Plaintiff - Appellant,

v.

LAUREN SPEARS, Esquire; SARAH GAINEY; SAVE INC., a/k/a SAVEEAP,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Patrick Michael Duffy, Senior District Judge. (2:17-cv-03384-PMD)

Submitted: November 15, 2018

Decided: November 19, 2018

Before MOTZ and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed and remanded by unpublished per curiam opinion.

Tracy Smith, Appellant Pro Se. Jack Gordon Gresh, HALL BOOTH SMITH, PC, Mount Pleasant, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tracy Smith seeks to appeal the district court's order adopting the magistrate judge's recommendation to dismiss without prejudice his civil complaint against Defendants, and denying Smith's motion to amend his complaint. We dismiss the appeal as interlocutory and remand for further proceedings.

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, 545-47 (1949). Because the order Smith seeks to appeal “[does] not clearly preclude amendment,”* *Goode v. Cent. Va. Legal Aid Soc’y, Inc.*, 807 F.3d 619, 630 (4th Cir. 2015), Smith may be able to remedy the deficiencies identified by the district court by filing an amended complaint, *id.* at 623-24. Accordingly, the district court's dismissal order is neither a final order nor an appealable interlocutory or collateral order. *See id.*; *Domino Sugar Corp. v. Sugar Workers Local Union 392*, 10 F.3d 1064, 1066-67 (4th Cir. 1993).

We therefore dismiss this appeal for lack of jurisdiction. *Goode*, 807 F.3d at 630. In *Goode*, we remanded to the district court with instructions to allow amendment of the complaint. *Id.* Here, however, Smith previously, albeit unsuccessfully, attempted to amend his complaint. Accordingly, we direct on remand that the district court, in its

* Indeed, the district court expressly recognized that Smith “may have other causes of action[.]”

discretion, either afford Smith another opportunity to file an amended complaint or dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable 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.

DISMISSED AND REMANDED