

**UNPUBLISHED**

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

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**No. 18-2221**

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SUSAN NEAL MATOUSEK,

Plaintiff - Appellant,

v.

WAL-MART; WAL-MART MANAGER,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:18-cv-00445-RAJ-LRL)

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Submitted: April 4, 2019

Decided: April 8, 2019

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Before NIEMEYER and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

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Dismissed and remanded with instructions by unpublished per curiam opinion.

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Susan Neal Matousek, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Susan Neal Matousek seeks to appeal the district court's order dismissing her civil action without prejudice under 28 U.S.C. § 1915(e)(2) (2012) for failure to state a claim. 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 from which Matousek seeks to appeal does not “clearly preclude amendment,” she may be able to remedy the deficiencies identified by the district court by filing an amended complaint. Accordingly, the district court's dismissal order is neither a final order nor an appealable interlocutory or collateral order. *See Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623-24, 630 (4th Cir. 2015); *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, the district court already has afforded Matousek the opportunity to amend. Accordingly, we direct on remand that the district court, in its discretion, either afford Matousek another opportunity to file an amended complaint or dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable order. We deny Matousek's petition for initial hearing en banc and 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 WITH INSTRUCTIONS*