

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 20-2249**

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ESTATE OF JERRY THEODORE MCCALLUP JR.; VERONICA MCCALLUP,  
DSC,

Plaintiffs - Appellants,

v.

ENVOY OF WILLIAMSBURG, and Affiliated Businesses; SCARLETT HUANG, Compliance Officer; BRIAN L. STEVENSON; ENVOY CORPORATE OFFICES; CITY OF WILLIAMSBURG DEPARTMENT OF HUMAN SERVICES; MARK R. HERRING, The State of Virginia Attorney General; ADAM KINSMAN, County Attorney for Williamsburg and James City County; COUNTY OF JAMES CITY COUNTY; COMMONWEALTH ATTORNEY AND BOARD OF SUPERVISORS; CONSULATE HEALTH CARE; CIERA; BRITANY MOORE; DEPARTMENT OF HUMAN SERVICES SOCIAL SERVICES DIVISION; ENVOY AFFILIATE CORPORATIONS; DEBORAH SHELTON AL-JARBOUA; JEREMY MCCALLUP; FAHAD AL-JARBOUA; JERRY THEO MCCALLUP; JUDGE WILLIAMSBURG; UNITED STATES ARMY FORT BRAGG; THE DOCTORS IN CHARGE OF CARE AND DOCTORS WHO CARED FOR MR. JERRY THEODORE MCCALLUP JR.; POLICE THAT TOOK MR. JERRY THEODORE MCCALLUP FROM HIS HOME; SHERIFFS JAMES CITY COUNTY GOVERNMENT CENTER; WILLIAMSBURG HUMAN SERVICES; WENDY EVANS; ANY AND ALL INSURANCE POLICIES OF PLAINTIFF JERRY THEODORE MCCALLUP JR.; JEREMY MCCALLUP'S WIFE; SENTARA HEALTHCARE; CITY OF WILLIAMSBURG,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. David J. Novak, District Judge. (3:20-cv-00753-DJN)

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Submitted: March 23, 2021

Decided: March 26, 2021

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Before THACKER, QUATTLEBAUM, and RUSHING, Circuit Judges.

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Affirmed as modified by unpublished per curiam opinion.

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Estate of Jerry Theodore McCallup Jr.; Veronica McCallup, Appellants Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Veronica McCallup appeals the district court's order dismissing with prejudice her civil action, in which she sought recovery for the alleged wrongful death of her brother. Although we discern no reversible error, we conclude that the district court lacked subject matter jurisdiction over this action. Specifically, because the court permitted McCallup to proceed only in her individual capacity, she lacked standing to recover for her brother's death. *See Johnston Mem'l Hosp. v. Bazemore*, 672 S.E.2d 858, 860 (Va. 2009) ("A wrongful death action is not an action personal to the personal representative." (internal quotation marks omitted)).

Accordingly, we grant leave to proceed in forma pauperis and affirm the district court's order as modified to reflect a dismissal without prejudice. *See S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013) ("A dismissal for . . . any . . . defect in subject matter jurisdiction . . . must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits."). In addition, we deny McCallup's motions for a transcript at government expense, for judicial notice, and for sanctions. 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*