

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1490

MARCUS SMITH,

Plaintiff - Appellant,

v.

LOWES COMPANIES, INCORPORATED,

Defendant - Appellee,

and

ROXANNE TOBLETES, Head Cashier; MACK WIGGINS, ASM; ARTIE
BROOKER, ASM; BETH LNU,

Defendants.

Appeal from the United States District Court for the Western District of North Carolina, at
Charlotte. Robert J. Conrad, Jr., District Judge. (3:21-cv-00034-RJC-DSC)

Submitted: October 28, 2021

Decided: July 22, 2022

Before GREGORY, Chief Judge, RUSHING, Circuit Judge, and FLOYD, Senior Circuit
Judge.

Dismissed and remanded by unpublished per curiam opinion. Judge Rushing dissents.

Marcus Smith, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marcus Smith seeks to appeal the district court's order dismissing his amended complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). "Ordinarily, a district court order is not final until it has resolved *all* claims as to all parties." *Porter v. Zook*, 803 F.3d 694, 696 (4th Cir. 2015) (internal quotation marks omitted).

Our review of the record reveals that the district court did not adjudicate all of the claims raised in the amended complaint. *Id.* at 696-97. Specifically, although the district court recognized that Smith raised a claim of discriminatory failure to promote, the court did not specifically address that claim as a separate, freestanding claim distinct from Smith's claims of failure to accommodate a disability, unequal terms and conditions of employment, and retaliation. We conclude that the order Smith seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we dismiss the appeal for lack of jurisdiction and remand to the district court for consideration of the unresolved failure to promote claim. *Id.* at 699.

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