

United States Court of Appeals
For the Eighth Circuit

No. 13-2550

Ronald Dee O'Neal

Plaintiff - Appellee

v.

Correctional Medical Services, Inc.; Roland Anderson, Dr., Correctional Medical Services

Defendants

Robert Scott, Dr., Correctional Medical Services; Rory Griffin, Administrator,
Correctional Medical Services; Estate of James Blackmon, (originally sued as Dr.
James Blackmon)

Defendants - Appellants

Wendy Kelley, Deputy Director, Arkansas Department of Correction

Defendant

Appeal from United States District Court
for the Eastern District of Arkansas - Pine Bluff

Submitted: April 7, 2014

Filed: May 8, 2014

[Unpublished]

Before MURPHY, COLLOTON, and BENTON, Circuit Judges.

PER CURIAM.

Defendants Dr. Robert Scott, Rory Griffin, and the Estate of James Blackmon appeal the district court's¹ orders denying their motions for summary judgment, and dismissing Ronald O'Neal's complaint without prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

The orders denying summary judgment are not appealable. *See Burke v. Ernest W. Hahn, Inc.*, 592 F.2d 542, 544, 546 (9th Cir. 1979) (in appeal from denial of motion for summary judgment and dismissal of action, holding that denial of summary judgment was not appealable, and dismissing that aspect of appeal); *Dutton v. Cities Serv. Def. Corp.*, 197 F.2d 458, 458-60 (8th Cir. 1952) (same); *see also Dieser v. Cont'l Cas. Co.*, 440 F.3d 920, 923 (8th Cir. 2006) (court will raise jurisdictional issues sua sponte when there is indication jurisdiction is lacking); *cf. Lopez v. Tyson Foods, Inc.*, 690 F.3d 869, 875 (8th Cir. 2012) (denial of summary judgment is not appealable after trial and final judgment, regardless whether issue is factual or purely legal).

Defendants make no argument challenging the district court's order dismissing the complaint without prejudice, thereby waiving the issue. *See Jenkins v. Winter*, 540 F.3d 742, 751 (8th Cir. 2008) (issues not raised in opening brief are deemed waived).

The appeal is dismissed.

¹The Honorable Brian S. Miller, Chief Judge, United States District Court for the Eastern District of Arkansas.