

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:11-CT-3118-D

THOMAS HEYER and)	
ROBERT PAUL BOYD,)	
)	
Plaintiffs,)	
)	
v.)	
)	
UNITED STATES BUREAU)	
OF PRISONS, et al.,)	
)	
Defendants.)	

ORDER

On March 31, 2015, the court granted in part defendants’ motion for summary judgment, denied plaintiffs’ motion for partial summary judgment, and dismissed the remaining counts of plaintiffs’ complaint as moot. See Heyer v. U.S. Bureau of Prisons, No. 5:11-CT-3118-D, 2015 WL 1470877 (E.D.N.C. Mar. 31, 2015) (unpublished). On May 27, 2015, plaintiffs filed a notice of appeal [D.E. 144], which the United States Court of Appeals for the Fourth Circuit docketed on May 28, 2015 [D.E. 146]. The appeal remains pending.

On November 5, 2015, plaintiff Robert Boyd (“Boyd”) filed a notice “that he has some limited ability to hear and understand speech in certain contexts” and that he “intends to voluntarily dismiss his complaint in this Court and his appeal to the Fourth Circuit” along with a motion for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). See Notice [D.E. 147]; Mot. Vol. Dism. [D.E. 148].¹ Defendants contend that the court lacks jurisdiction over Boyd’s

¹ Boyd’s co-plaintiff, Thomas Heyer, “does not intend to dismiss his complaint in this Court or his appeal to the Fourth Circuit.” Notice [D.E. 147] 1. At least two circuits disfavor voluntary dismissal of appeals in such circumstances. See Noatex Corp. v. King Constr. of Hous., L.L.C., 732 F.3d 479, 487 (5th Cir. 2013); Twp. of Benton v. Cty. of Berrien, 570 F.2d 114, 118–19 (6th Cir. 1978).

motion for voluntary dismissal and seek an extension of time “to file a substantive response to Plaintiff Boyd’s motion for voluntary dismissal [D.E. 148], and other additional motions as may be appropriate, within 30 days following the mandate from the Fourth Circuit.” Mot. Extension [D.E. 150] 1; see Resp. Opp’n Mot. Vol. Dism. [D.E. 149].

“Once a court has dismissed a claim with prejudice, a party cannot, of course, voluntarily dismiss that same claim, without prejudice.” Wilson-Cook Med., Inc. v. Wilson, 942 F.2d 247, 252 (4th Cir. 1991). Moreover, this court lacks jurisdiction to entertain Boyd’s motion. “The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982); see Doe v. Pub. Citizen, 749 F.3d 246, 258 (4th Cir. 2014); Hancock v. Chi. Title Ins. Co., No. 3:07-CV-1441, 2010 WL 3766695, at *3–4 (N.D. Tex. Sept. 28, 2010) (unpublished). Thus, the court dismisses Boyd’s motion for lack of subject-matter jurisdiction. In light of the court’s disposition of Boyd’s motion, the court denies as moot defendants’ motion for an extension of time.

In sum, the court DISMISSES plaintiff Boyd’s motion for a voluntary dismissal [D.E. 148] and DENIES AS MOOT defendants’ motion for an extension of time [D.E. 150].

SO ORDERED. This 4 day of January 2016.


JAMES C. DEVER III
Chief United States District Judge