

FILED: April 25, 2014

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-2546
(3:13-cv-00129-JAG)

DAVID ALAN CARMICHAEL

Plaintiff - Appellant

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary U.S. Dept. Health & Human Services; COMMONWEALTH OF VIRGINIA, and its officers named herein acting in their official capacity under the color of State Law; CAROLYN W. COLVIN, in her official capacity as Commissioner, Social Security Administration

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed as modified in part and affirmed in part.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

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Plaintiff - Appellant,

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary
U.S. Dept. Health & Human Services; COMMONWEALTH OF
VIRGINIA, and its officers named herein acting in their
official capacity under the color of State Law; CAROLYN W.
COLVIN, in her official capacity as Commissioner, Social
Security Administration,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond. John A. Gibney, Jr.,
District Judge. (3:13-cv-00129-JAG)

Submitted: April 22, 2014

Decided: April 25, 2014

Before SHEDD and THACKER, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Affirmed as modified in part; affirmed in part by unpublished
per curiam opinion.

David Alan Carmichael, Appellant Pro Se. Jonathan Holland
Hambrick, Assistant United States Attorney, John David Gilbody,
OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia,
for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Alan Carmichael appeals the district court's order dismissing his civil action challenging the requirements that he provide a social security number to apply for a Virginia diver's license and that his record with the Virginia Department of Motor Vehicles contain his social security number.

The district court properly determined that the Rooker-Feldman* doctrine barred counts II and VIII of the complaint and the portion of count V not alleging a violation of the Religious Freedom Restoration Act. A dismissal under the Rooker-Feldman doctrine is a dismissal for lack of subject matter jurisdiction, Adkins v. Rumsfeld, 464 F.3d 456, 463 (4th Cir. 2006), and thus should be without prejudice. S. Walk at Broadlands Homeowner's Assoc., Inc. v. OpenBand at Broadlands, LLC, 713 F.3d 175, 185 (4th Cir. 2013). We therefore modify the district court's order to reflect that the dismissal of these counts is without prejudice, and we affirm the dismissal as modified. See 28 U.S.C. § 2106 (2012); MM ex rel. DM v. Sch. Dist. of Greenville Cnty., 303 F.3d 523, 536 (4th Cir. 2002) ("[W]e are entitled to affirm the court's judgment on alternate grounds, if such grounds are apparent from the record.").

* D.C. Ct. App. v. Feldman, 460 U.S. 462 (1983); Rooker v. Fid. Trust Co., 263 U.S. 413 (1923).

With respect to the district court's dismissal of Carmichael's remaining counts for relief, we have reviewed the record and find no reversible error. Accordingly, as to those counts, we affirm for the reasons stated by the district court. Carmichael v. Sebelius, No. 3:13-cv-00129-JAG (E.D. Va. Oct. 23, 2013). We deny Carmichael's motion to schedule oral argument 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.

AFFIRMED AS MODIFIED IN PART;
AFFIRMED IN PART