

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 24-2192

DONNA MARIE CONNER,

Plaintiff - Appellant,

v.

XFINITY, United States General; ASSURANCE WIRELESS USA-LP; JASON S. MIYARES, Commonwealth of Virginia, Attorney General; JENNIFER L. MCCLELLAN, Senator for the Commonwealth of Virginia; MARK R. WARNER, Senator; TIM KAINE, Virginia Beach; PETERSBURG, VIRGINIA POLICE DEPARTMENT; COLONIAL HEIGHTS POLICE DEPARTMENT; YORK COUNTY VIRGINIA POLICE DEPARTMENT; RON MONTGOMERY, Sheriff; COMMONWEALTH OF VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS; MARK HERRING,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Patricia Tolliver Giles, District Judge. (1:23-cv-01222-PTG-LRV)

Submitted: April 1, 2025

Decided: June 17, 2025

Before WILKINSON and THACKER, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Donna Marie Conner, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Donna Marie Conner appeals the district court's orders dismissing her civil action under 28 U.S.C. § 1915(e)(2)(B)(i), (ii). The district court dismissed with prejudice all of Conner's claims except for her claim under the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227, and granted her leave to file an amended complaint on only that claim. Conner filed an amended complaint, and the district court again dismissed the TCPA claim. Conner appealed, and we dismissed the appeal because the district court had not resolved one of Conner's claims. *Conner v. Xfinity*, No. 24-1145, 2024 WL 2768349, at *1 (4th Cir. May 30, 2024). We remanded for the district court to resolve that claim. *Id.* On remand, the district court dismissed without prejudice the unresolved claim. Conner then noted this timely appeal, and we possess jurisdiction under 28 U.S.C. § 1291.¹ *See Britt v. DeJoy*, 45 F.4th 790, 796 (4th Cir. 2022) (en banc) ("[W]hen a district court dismisses a complaint or all claims without providing leave to amend, . . . the order dismissing the complaint is final and appealable.").

Having reviewed the record and Conner's many submissions on appeal, we discern no reversible error in the dismissal of Conner's complaint as frivolous and for failure to state a claim upon which relief may be granted.² *See* 28 U.S.C. § 1915(e)(2)(B)(i), (ii);

¹ Conner's notice of appeal designates the district court's order dismissing her complaint and the district court's order on remand dismissing her unresolved claim. Insofar as Conner might also seek review of the district court's order dismissing her amended complaint, she has demonstrated no reversible error in that order.

² Conner seeks to raise many new claims on appeal, but we decline to consider them in the first instance. *See Milla v. Brown*, 109 F.4th 222, 234 (4th Cir. 2024) ("Issues raised (Continued)

circumstances." for the first time on appeal are generally not considered absent exceptional

denial for abuse of discretion).

(4th Cir. 1987) (stating standard for appointment of counsel in civil case and reviewing Cir. 2007) (rejecting similar jury trial argument); Miller v. Simmons, 814 F.2d 962, 966 (4th Cir. 1987) (denial of recusal motion for abuse of discretion); Jones v. Porter, 488 F.3d 397, 403 (4th Cir. 2003) (reviewing itself. See Megaro v. McCollum, 66 F.4th 121, 163 (4th Cir. 2023) (reviewing counsel for her, that she was entitled to a jury trial, and that the district court should have We also reject Conner's arguments that the district court should have appointed

prejudice").

Congress intended a dismissal under § 1915(e)(2)(B)(i) . . . to operate as a dismissal with why amendment would be futile); Wagg, 376 F.3d at 228 ("We do not think . . . that be without prejudice if district court did not give plaintiff opportunity to amend nor discuss 206, 222 (4th Cir. 2016) (recognizing that dismissal of pro se complaint generally should amend, i.e., all of her claims save for her TCPA claim. See King v. Rubenstein, 822 F.3d without prejudice Conner's claims for which she was not provided an opportunity to based on frivolity). We observe, however, that the district court should have dismissed Bunker, 376 F.3d 222, 224-25 (4th Cir. 2004) (explaining standard of review for dismissal dismissal for failure to state a claim upon which relief may be granted); Wagg v. FMC Martin v. Duffy, 828 F.3d 239, 248 (4th Cir. 2017) (explaining standard of review for

Accordingly, we deny all of Conner's pending motions save for her motion to submit this case on the briefs (ECF No. 15), which we grant.³ We also affirm the district court's orders but modify the orders to reflect a dismissal without prejudice except as to Conner's TCPA claim. 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

³ To the extent that Conner's motion to submit this case on the briefs requests other relief, we grant only the relief of deciding this case on the briefs.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DONNA MARIE CONNER,

Plaintiff,

v.

XFINITY, et al.,

Defendants.

Civil Action No. 1:23-cv-1222 (PTG/LRV)

ORDER

This matter is before the Court on remand from the Fourth Circuit to consider *pro se* Plaintiff's unaddressed claim against Defendant Greyhound. Dkt. 24. After opening this civil action, Plaintiff filed an Application to Proceed in District Court Without Prepaying Fees or Costs. Dkt. 2. The Court then dismissed several of Plaintiff's claims pursuant to 28 U.S.C. § 1915(e)(2)(B), which requires the Court to dismiss any claim brought *in forma pauperis* if the Court determines that such claim is frivolous, malicious, or fails to state a claim, among other things. Dkt. 8. Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs remained pending while the Court permitted Plaintiff to amend her complaint, only as to her claim under 47 U.S.C. § 227. *Id.* at 5–6. Plaintiff amended her Complaint, and the Court then dismissed the Amended Complaint in its entirety pursuant to 28 U.S.C. § 1915(e)(2)(B) and denied Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs. Dkts. 10, 18. The Fourth Circuit remanded the case because this Court did not address Plaintiff's claim against Defendant Greyhound. Dkt. 24.

Under 28 U.S.C. § 1915(e)(2)(B), the Court shall dismiss an action filed *in forma pauperis* at any time if the court determines that the action is frivolous. A frivolous complaint

where does
it speak about
Xfinity

"lacks an arguable basis either in law or in fact." *Velitzke v. Williams*, 490 U.S. 319, 325 (1988). "[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

The Court can consider the value of a claim in determining whether a claim is frivolous under 28 U.S.C. § 1912. *Smith v. McWhirter*, No. 2:09-cv-452, 2010 WL 9474636, at *3-4 (E.D. Va. June 16, 2010) (citing *Nagy v. FMC Butter*, 376 F.3d 525, 527 (4th Cir. 2004)) (finding that the plaintiff's allegations were not "sufficient . . . to establish a non-frivolous claim" given that the filing fee would greatly exceed the value of any claim, "when the plaintiff's claim was" based upon an asserted property interest in [a liter of] vodka, "and "the monetary value of the vodka would be de minimis"); *Nagy*, 376 F.3d at 523 ("[T]he amount sought in an in forma pauperis suit is a permissible factor to consider when making a frivolity determination under § 1912(e)(3)(B)(i)."). Dismissal of a claim under 28 U.S.C. § 1912(e)(3)(B)(i) is without prejudice. *Nagy*, 376 F.3d at 528 ("We do not think . . . that Congress intended a dismissal under § 1912(e)(3)(B)(i) of the in forma pauperis statute to operate as a dismissal with prejudice.").

Here, the Court will dismiss Plaintiff's claim against Greyhound as frivolous. Plaintiff appears to assert a claim based on a property interest in Greyhound bus tickets for a trip she took from Petersburg, Virginia to New Hampshire and back to Richmond, Virginia between "July 7th–July 12th." Dec. 10 ("Amended Compl.") at 18. Plaintiff contends that she purchased tickets from Greyhound for a bus trip and experienced delays in her trip. 14. She contends that "Greyhound's website offer[s] money back if the delays of a trip [are] over two hours." 14. at 19. She asserts that Greyhound "should be held liable for even more than the reimbursement of [her] tickets," because "[w]hen refunding [her] money back for [her] July 7th–July 12th trip

through the website, the only way reimbursements are handled, Greyhound never responded.”

Id. She further contends that she “tried reaching out again and received the same, no response.”

Id.

The Court finds that these allegations are not sufficient to establish a non-frivolous claim against Greyhound, given that the monetary value of the Greyhound ticket would be de minimis. *Smith*, 2010 WL 9474636, at *3. Further, although Plaintiff alleges that “Greyhound singled [her] out, endangered [her], [and] discriminated against [her,] and this is why Greyhound ignored resolving the matters,” she does not allege any facts that show that any action Greyhound took against her was motivated by discrimination. Amended Compl. at 19.

Additionally, the Court notes that when Plaintiff initially filed this case, she alleged violations of federal law against other defendants. Given that those claims (1) have been dismissed and are unrelated to the claims against defendant Greyhound and (2) the amount of controversy at issue here against defendant Greyhound, it is unlikely that the Court would have subject matter jurisdiction over Plaintiff’s claims against defendant Greyhound. *See* 28 U.S.C. §§ 1331, 1332.

Accordingly, it is hereby

ORDERED that Plaintiff’s claim against Greyhound is **DISMISSED without prejudice**; it is further

ORDERED that Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs (Dkt. 2) continues to be **DENIED**; and it is further

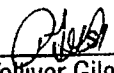
ORDERED that the pending motions in this action (Dkts. 26, 27, 28, 29, 32, 34, 37) are **DENIED** as moot.

To appeal this decision, Plaintiff must file a written notice of appeal with the Clerk of the

Court within thirty (30) days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order Plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives Plaintiffs right to appeal this decision.

The Clerk is **DIRECTED** to send a copy of this Order to Plaintiff, who is proceeding *pro se*, and to close this civil action.

Entered this 4th day of November, 2024
Alexandria, Virginia



Patricia Tolliver Giles
United States District Judge

FILED: July 9, 2025

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\ Defendants - Appellees

MANDATE

The judgment of this court, entered June 17, 2025, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anoyi, Clerk

FILED: June 17, 2025

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Plaintiff - Appellant

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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.

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

/s/ NWAMAKA ANOWI, CLERK

**Additional material
from this filing is
available in the
Clerk's Office.**