UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

STACEY L. SALTERS,
Plaintiff-Appellant,

v.

No. 98-2717

DECIPHER, INCORPORATED; STEVE
CARPER, Manager,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
Henry C. Morgan, Jr., District Judge.
(CA-97-1178-2)

Submitted: May 13, 1999

Decided: May 21, 1999

Before WIDENER and MOTZ, Circuit Judges, and
BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Stacey L. Salters, Appellant Pro Se. Robert Jon Barry, Lisa Elizabeth
Halleck, KAUFMAN & CANOLES, Norfolk, Virginia; David Nash
Payne, WILLIAMS, KELLY & GREER, Norfolk, Virginia, for
Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Salters appeals the district court's orders dismissing without prejudice Salters' claims against Defendant Carper and granting Defendant Decipher, Inc.'s motion for judgment as a matter of law in Salters' employment discrimination case.

The district court properly dismissed Salters' claims against Carper because Salters failed to exhaust his administrative remedies. See United Air Lines v. Evans, 431 U.S. 553, 558 (1977); Alvarado v. Board of Trustees of Montgomery Community College , 848 F.2d 457 (4th Cir. 1988). Therefore, we affirm the order of dismissal on the reasoning of the district court. Salters v. Decipher, Inc., No. CA-97-1178-2 (E.D. Va. Oct. 27, 1998).

The standard of review for the grant of a motion for judgment as a matter of law is whether the evidence is so substantial or conclusive that any contrary verdict would necessarily be based upon speculation or conjecture. See Gairola v. Virginia Dep't of Gen. Servs., 753 F.2d 1281, 1285 (4th Cir. 1985). We review de novo the grant or denial of a motion for judgment as a matter of law. See id. In considering such a motion, we construe the evidence in the light most favorable to the party against whom the motion was made. See Garraghty v. Jordon, 830 F.2d 1295, 1302 (4th Cir. 1987). We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Salters v. Decipher, Inc., No. CA-97-1178-2 (E.D. Va. Nov. 24, 1998). Although we conclude that the district court's grant of judgment as a matter of law was proper, we note that because trial proceedings were conducted before the court, the appropriate authority for granting the motion was Fed. R. Civ. P. 52(c), not Fed. R. Civ. P. 50(a), as stated in the court's order and opinion.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED