

October 3, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60071
Summary Calendar

ERIC JONES,

Plaintiff-Appellant,

versus

DIANE PARKER, Executrix of the Estate of Barry Parker, deceased,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:96-CV-1-P-A

Before: BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Eric Jones, Mississippi prisoner # 45265, appeals from the dismissal of his 42 U.S.C. § 1983 action on the basis that the estate of Barry Parker has been closed and lacks assets from which Jones may recover damages. The ability of a plaintiff to recover under state law does not determine whether the plaintiff's action may proceed in federal court. *Ransom v. Brennan*, 437 F.2d 513, 520 (5th Cir. 1971). Moreover, it is

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

unclear whether Jones is precluded from reopening the estate and recovering damages should he prevail on his substantive claims. See *Smith v. Estate of King*, 501 So. 2d 1120, 1122-23 (Miss. 1987); *Powell v. Buchanan*, 147 So.2d 110, 111-12 (Miss. 1962).

VACATED AND REMANDED.