

July 9, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-31183  
Summary Calendar

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THOMAS J. SMITH, JR.,

Plaintiff-Appellant,

versus

JO ANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee,

versus

PRESTON L. SCARBROUGH, Reverend,

Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
No. 03-CV-1300-R  
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Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

Reverend Preston Scarbrough and Carolyn Scarbrough Smith, mother of Thomas J. Smith, Jr., a minor, appeal, on behalf of the minor, the dismissal of Scarbrough's petition seeking review of the denial of Supplemental Security Income benefits. See 42 U.S.C.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 405(g). The suit filed by Rev. Scarbrough did not toll the limitations period, because he lacked the capacity to represent the plaintiff. 42 U.S.C. § 405(g); 20 C.F.R. § 416.1481; 28 U.S.C. § 1654; FED. R. CIV. P. 11(a), 17(c); Gonzales v. Wyatt, 157 F.3d 1016, 1021-22 (5th Cir. 1998). Because the time for filing suit has expired, appellants cannot prevail. See § 405(g); § 416.1481; Gonzales, 157 F.3d at 1021-22.

AFFIRMED.