

September 17, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-60712
Summary Calendar

JONATHAN P. NEW; ROBERT E. STROUPE, II;
MICHAEL P. TROUARD; SCOTT M. WALLE;
BROCK L. WHITSON,

Plaintiffs-Appellees,

versus

HORACE FLEMING, ET AL,

Defendants,

RANDY JOHNSON, In His Official
and Individual Capacities,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 00-CV-94

Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Randy Johnson appeals the denial of his motion for summary judgment in this action under 42 U.S.C. § 1983 and Mississippi state law brought by the plaintiffs Jonathan P. New, Robert E. Stroupe, Michael P. Trouard, Scott M. Walle, and Brock L.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Whitson. He argues that the district court erred by denying his summary judgment motion on the merits of his qualified immunity defense.

We must determine the basis of our jurisdiction, on our own motion, if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). "[O]rders denying qualified immunity are immediately appealable only if they are predicated on conclusions of law, and not if a genuine issue of material fact precludes summary judgment on the question of qualified immunity." Palmer v. Johnson, 193 F.3d 346, 351 (5th Cir. 1999). Because genuine issues of material fact are disputed, precluding a determination that the appellant should enjoy qualified immunity, we lack jurisdiction to consider the instant appeal. The appeal is DISMISSED.