

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-60507  
Summary Calendar

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CARLTON WESLEY DUNCAN, Amy Duncan,  
a minor; Lindy Duncan, a minor;  
Estate of Anthony Wesley Duncan, Deceased,

Plaintiff-Appellant,

versus

JOHN CLARK LOVE, Individually and as  
Chancellor Neshoba County Mississippi;  
DAVIS MOORE, Individually and as County  
Attorney and Youth Court Prosecutor for  
Neshoba County, Mississippi; PAM McCAAN,  
Individually and in her capacity as a  
case worker for the Neshoba County  
Department of Human Services;  
ED WILLIAMSON, Individually and as  
Guardian Ad Litem, Neshoba County Youth  
Court; FRED STRICKLAND, Individually and  
as Guardian Ad Litem, Neshoba County  
Youth Court; EDWARD PRISOCK, Individually  
and as Chancellor Neshoba County,  
Mississippi and Acting in his capacity as  
Youth Court Judge, Neshoba County,  
Mississippi; JAMES MARS; KIM GAMBLIN MARS,  
Individually and in her capacity as  
Mental Health Therapist, Weems Community  
Mental Health Center; LYNN KATHERINE  
HORTON HENLEY; ALAN HENLEY; ALL DEFENDANTS,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Southern District of Mississippi  
(4:94-CV-118-LN)

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July 1, 1997

Before KING, JOLLY, and DENNIS, Circuit Judges.

PER CURIAM:\*

Carlton Wesley Duncan appeals the district court's decision granting the defendants' motion to dismiss for failure to state a claim upon which relief can be granted. We dismiss the appeal for lack of jurisdiction.

Duncan filed suit under 42 U.S.C. § 1983 and § 1985, naming himself and his children as plaintiffs, claiming that the defendants had committed a variety of constitutional violations during the course of their involvement in a family controversy involving the alleged abuse of the Duncan children. The district court dismissed the suit with respect to several defendants on the grounds that they were not state actors, and with respect to the other defendants on the grounds that the complaint failed to state a valid federal constitutional claim.

Duncan's appeal challenges the district court's decision only with respect to (1) his son's claim of unconstitutional denial of access to the courts, and (2) his daughters' claims of denial of the right to privacy. Duncan does not appeal the district court's dismissal of any claim of his own against the various defendants.

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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.

In Susan R.M. v. Northeast Independent School Dist., 818 F.2d 455, 458 (5th Cir. 1987) we held that “[n]othing in the federal rules . . . authorizes the parent of a child for whom a legal representative has been appointed to file an action without obtaining court authority to do so.” It is similarly true that such a parent lacks the authority to appeal an otherwise represented child’s claim.

After Duncan filed his initial complaint, the district court properly appointed a guardian *ad litem* to represent the interests of Duncan’s minor daughters, pursuant to Fed. R. Civ. P. 17(c). It is the guardian *ad litem*, and not Duncan, who is authorized to appeal the daughters’ claims. Although the guardian *ad litem* filed a brief in opposition to the motion to dismiss, the guardian *ad litem* did not join Duncan’s appeal. Additionally, there is no indication in the record that Duncan, a non-custodial parent, is the legal representative of his son’s estate.

Accordingly, we conclude that Duncan does not have standing to appeal the dismissal of his children’s claims. This court therefore lacks jurisdiction to hear the appeal. Nevares v. San Marcos Consolidated Indep. Sch. Dist., 111 F.3d 25, 26 (5th Cir. 1997) (“Federal courts have no jurisdiction under Article III, § 2, of the Constitution unless a case or controversy is presented by a party with standing to litigate”). Because Duncan lacks the

standing necessary to invoke the jurisdiction of this court, we  
DISMISS his appeal.

APPEAL DISMISSED.