

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL KHEIBARI,

Plaintiff,

v.

Case No. 14-11496

Honorable Linda V. Parker

RITE AID CORPORATION,

Defendant.

**OPINION AND ORDER GRANTING INTERVENOR'S MOTION TO
SUBSTITUTE IN AS PROPER PARTY-PLAINTIFF**

On April 14, 2014, Plaintiff, Michael Kheibari, without the assistance of counsel, initiated this lawsuit against Defendant alleging employment discrimination. Plaintiff has since retained counsel to represent him in this matter. (ECF No. 10.) On June 16, 2017, the Court received notice that Plaintiff died on or about May 31, 2017. (ECF No. 71.)

Pursuant to Federal Rule of Civil Procedure 25(a)(1)¹, on June 21, 2017, this Court issued an Order to place Plaintiff's death on the record and to alert Plaintiff's

¹ Federal Rule of Civil Procedure 25(a) sets forth the procedure to be followed when a party dies during the proceedings:

a) Death.

(1) Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

successor or representative, if any, of the need to file a motion for substitution within ninety (90) days of the Order if he or she desired to continue² this litigation. (ECF No. 74.) On September 15, 2017, Rosita Amini, Michael Kheibari's daughter, filed a motion to substitute indicating that she has been appointed the Personal Representative of the Estate of Michael Kheibari as of August 29, 2017. (ECF No. 75 at Pg ID 1594; ECF No. 75-1 at Pg ID 1596.)

On September 19, 2017, Defendant's counsel indicated to the Court that the motion to substitute is uncontested.

Accordingly,

IT IS ORDERED that Intervenor's motion for substitution (ECF No. 75) is **GRANTED**.

IT IS FURTHER ORDERED that Rosita Amini, the Personal Representative of the Estate of Michael Kheibari, shall be substituted as the proper party-Plaintiff for the decedent, Michael Kheibari.

IT IS FURTHER ORDERED that Rosita Amini, the Personal Representative of the Estate of Michael Kheibari, shall be entitled to recover any relief as to which

² The question of whether a federal civil rights claim survives the plaintiff's death is a question of state law. *See Robertson v. Wegmann*, 436 U.S. 584, 588-89 (1978). Under Michigan law, "[a]ll actions and claims survive death" of the injured person during the pendency of the action. *See Mich. Comp. Laws § 600.2921*.

Michael Kheibari would have been entitled to recover.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: September 26, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, September 26, 2017, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager