

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**TRACY HOWARD BESSELAAR,
AIS 135043,**

Plaintiff,

vs.

REOSHA BUTLER, et al.,

Defendants.

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CIV. ACT. NO. 1:21-cv-325-TFM-MU

MEMORANDUM OPINION AND ORDER

On November 8, 2021, the Magistrate Judge entered a report and recommendation which recommends Plaintiff’s motion for a preliminary injunction be denied as moot. *See* Doc. 18. No objections were filed, though that was to be expected given that the Plaintiff is deceased.

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objections filed, the report and recommendation of the Magistrate Judge is **ADOPTED** as the opinion of this Court. It is **ORDERED** that Plaintiff’s motion for preliminary injunction (Doc. 5) is **DENIED as moot**. However, the issues of this case do not end there.

On September 8, 2021, Defendants filed a Suggestion of Death (Doc. 14) and in their response to the motion for preliminary injunction (Doc. 15) specifically noted that they were unable to find a next of kin. On November 12, 2021, Defendants reiterated the same inability to find the next of kin of Plaintiff Besselaar. *See* Docs. 19, 20, 21 (Certificates of Service).

On November 16, 2021, NBC15 News reported on the matter indicating that “The family of Tracy Besselaar is not satisfied with the answers it is getting from the Department of Corrections.” *See* <https://myNBC15.com/news/local/family-of-prisoner-at-fountain-correctional->

[facility-not-told-about-his-death](#) (last accessed on December 28, 2021); *see also* <https://eji.org/news/family-of-man-who-died-in-alabama-prison-not-informed-of-his-death/> (last accessed on December 28, 2021). The NBC15 article references that though the family learned of the death in September, “[c]orrections officials finally got in touch with the family on Wednesday.” The Wednesday referenced appears to reference the preceding Wednesday to the article which was November 10, 2021. Though relatively close in time to the filing of the suggestion of death and answer, it would appear that the certificates of service are inaccurate in that they were filed after the Department of Corrections was in communication with the family. Nor have they provided any supplement to the Court since those filings and it seems clear at this point the family / next of kin are easy to locate.

The Court previously stated it had “grave concerns regarding the allegations raised by the Plaintiff about the current status of the prison.” *See* Doc. 6. Those concerns have not been alleviated and the Court still has concerns about the handling of this matter by the Defendants and their counsel. Whether or not they perceive merit to the lawsuit, Defendants have failed to timely apprise the Court that the next of kin were located and in fact presumably filed an inaccurate certificate of service at least 2 days after the family was contacted. As such, it is further **ORDERED** as follows:

- (1) Counsel for the Defendants is **DIRECTED** to provide the Court the address for the next of kin on or before **January 18, 2022**.
- (2) Counsel for the Defendants is **DIRECTED** to send a copy of the entirety of the pleadings and orders filed to date (in sum the entire case file) to the next of kin on or before **January 18, 2022**.

(3) Counsel for the Defendants shall file a notice with the Court affirmatively indicating the above matters have been accomplished.

This case is **REFERRED BACK** to the Magistrate Judge for further proceedings.

DONE and **ORDERED** this 29th day of December, 2021.

/s/Terry F. Moorer
TERRY F. MOORER
UNITED STATES DISTRICT JUDGE