

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

**ORLANDO MATTHEWS ESTATE and
FLORENCE MATTHEWS, individually
and in her official capacity as
Administratrix of the estate**

PLAINTIFFS

v.

No. 2:09-cv-71-DPM

**CITY OF MARIANNA, ARKANSAS,
a municipal corporation; ROBERT
TAYLOR, Mayor of Marianna; JAMES
TUCKER, Marianna Chief of Police;
WILLIAM COLVIN, Corporal, Marianna
Police Department; SCOTT
MCCALL, Officer, Marianna Police
Department; and JOHN DOES 1-10,
in their individual and official capacities**

DEFENDANTS

ORDER

The outcome of this case turns on whether Matthews was the personal representative of her son Orlando's estate when she filed this lawsuit. *No* 62 *at* 4. The Arkansas courts have determined with finality that Matthews was not. *No* 53-1 *at* 9-10 & 63-1. This Court granted the Marianna Defendants' motion to reconsider summary judgment and invited further argument from Matthews. *No* 64. None has been made.

The Court grants Defendants' motion for summary judgment, *No* 28. No material facts are disputed. Matthews lacked standing to pursue § 1983 claims against the Marianna Defendants arising from her son's injuries and death because she was not then appointed personal representative. ARK. CODE ANN. § 16-62-101(a)(1) (survival actions must be brought by the personal representative); ARK. CODE ANN. § 16-62-102(b) & *Brewer v. Poole*, 362 Ark. 1, 16, 207 S.W.3d 458, 467 (2005) (wrongful-death actions must be brought by the personal representative or *all* heirs at law). For the reasons explained in the Court's earlier Order, *No* 62, the statutes of limitation expired without either claim being timely and properly asserted.

Motion for summary judgment, *No* 28, granted; complaint dismissed with prejudice.

So Ordered.



D.P. Marshall Jr.
United States District Judge

18 October 2013