

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

**NANCY ELLEN BRIAN, as  
Co-Personal Representative for the  
Estate of Mark Aaron Brian, Deceased**

**PLAINTIFF**

**V.**

**3:16CV00045**

**BNSF RAILWAY COMPANY**

**DEFENDANT**

**ORDER**

Defendant BNSF Railway Company moves the Court to dismiss the case brought by Nancy Ellen Brian, one of two personal representatives for the Estate of Mark Aaron Brian. BNSF claims that because Plaintiff has failed to join her co-personal representative for the Estate, Plaintiff lacks standing to bring the suit. The Court agrees.

In the alternative to dismissing the case, Plaintiff has requested leave to amend the Complaint to add her co-personal representative as a plaintiff. "A party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b), (e), or (f). . . ." Fed.R. Civ. P. 15(a)(1)(B). BSNF filed the motion to dismiss pursuant to Rule 12(b) on May 16, 2016. Plaintiff filed the response and request to amend on May 31, 2016, less than 21 days later. Pursuant to Rule 15(a)(1)(B), Plaintiff may amend the Complaint within 14 days of the date of the order. BSNF may re-file the motion to dismiss if Plaintiff fails to add the co-personal representative as a plaintiff.

The Defendant's Motion to Dismiss (ECF No. 6) is DENIED without prejudice.

IT IS SO ORDERED this 14<sup>th</sup> day of June, 2016.

  
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James M. Mbody Jr.  
United States District Judge