

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

BILL FLATNESS, *et al.*

PLAINTIFFS

4:15-CV-00329-BRW

**GARY BURNETT, Individually and
in his Official Capacity as Sheriff of
Prairie County, Arkansas, *et al.***

DEFENDANTS

ORDER

Pending is Defendant's Motion for Summary Judgment (Doc. No. 75). Plaintiffs have responded.¹ Also pending are Plaintiffs' Motions for Extension of Time to Amend Complaint (Doc. No. 80, 84) and Motion to Amend Complaint with Substitution of Party (Doc. No. 81).

I. BACKGROUND

Plaintiff Bill Flatness died on February 27, 2017. On March 14, 2017, Defendant Bobby Derden filed a Notice of Suggestion of Death.² On June 29, 2017, Defendant Derden filed a Motion for Summary Judgment because a motion for substitution had not been made within 90 days.³

II. DISCUSSION

Federal Rule of Civil Procedure 25(a) provides that if a party dies and a motion for substitution is not made within 90 days after the notice of suggestion of death is served, "the action shall be dismissed as to the deceased party." Under the rule, Plaintiff had until Monday, June 12, 2017 to file the motion. Plaintiffs concede that they did not make the deadline but note

¹Doc. No. 83.

²Doc. No. 71.

³Doc. No. 76.

that it took “some time to find the proper person to be the Administratrix of the Estate of Bill Flatness, and file the probate petition.”⁴ Federal Rule of Civil Procedure 6(b) permits an extension of time – when made after the original deadline – if there is excusable neglect.

In this case, there was no neglect, but, rather a reasonable delay because of the probate process. Though the motions for extension of time should have been made before the June 12 deadline, the short delay does not prejudice Defendants. Additionally, Plaintiffs now know the appropriate party to substitute, which they would not have known by the deadline – the estate was opened on July 24, 2017 which named Bill Flatness’s sister, Angela Barnhill, as Administratrix.⁵ There is also no prejudice because there is another active plaintiff, so the case would not have been dismissed. Finally, Defendants counsel does not object to the Motions for Extension of Time.

CONCLUSION

Based on the findings of fact and conclusions of law above, Defendant’s Motion for Summary Judgment (Doc. No. 75) is DENIED. Plaintiffs’ Motions for Extension of Time to Amend Complaint (Doc. No. 80, 84) and Motion to Amend Complaint with Substitution of Party (Doc. No. 81) are GRANTED. Plaintiffs are directed to conventionally file the amended complaint, substituting the appropriate new party by 5 p.m., Thursday, August 3, 2017.

IT IS SO ORDERED this 27th day of July, 2017.

/s/ Billy Roy Wilson
UNITED STATES DISTRICT JUDGE

⁴Doc. No. 80.

⁵Doc. No. 82.