

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

LANEY HARRIS and  
KEITH BURSEY

PLAINTIFF

V.

Civil No. 4:12-cv-4050

CITY OF TEXARKANA, ARKANSAS ET AL.

DEFENDANT

**ORDER**

Before the Court is the Report and Recommendation filed September 12, 2013, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 30). Judge Bryant recommends that Plaintiffs' Motion for Default Judgment Against Loyd Green and Loyd Green Wrecking Service, Inc., ("Green") be denied and Plaintiffs' Motion to Substitute the Estate of Loyd Green and Brenda Joyce Green, Executrix be granted. (ECF No. 25). On September 30, 2013, Plaintiffs filed objections to Judge Bryant's Report and Recommendation. (ECF No. 31). After reviewing the record *de novo*, the Court adopts Judge Bryant's Report and Recommendation as its own.

Plaintiffs only object to the denial of the motion for default judgment. Specifically, Plaintiffs argue that the Court should enter a default judgment against Green because Green failed to respond to Plaintiffs' complaint within 21 days following service as required Fed. R. Civ. P. 12. Green was served on May 4, 2012. Plaintiff informs the Court that Green died on September 9, 2012, and at the time of his death, Green had not responded.

Judge Bryant properly denied Plaintiff's motion for a default judgment against Green. Fed. R. Civ. P. 23(a) states that "if a party dies and the claim is not extinguished, the court may order substitution of the proper party." In this case, even though Green failed to respond after

service, he is now dead. Thus, the suit cannot proceed against him. However, the suit may proceed against his estate. Therefore, Judge Bryant properly granted Plaintiffs' motion to substitute.

For the reasons set forth above, the Court overrules Plaintiffs' objections and adopts Judge Bryant's Report and Recommendation. (ECF No. 30). Accordingly, Plaintiffs' Motion for Default Judgment is **DENIED**, and Plaintiffs' Motion to Substitute the Estate of Loyd Greed, Brenda Joyce Green, Executrix is **GRANTED**. (ECF No. 25)

**IT IS SO ORDERED**, this 16th day of April, 2014.

/s/ Susan O. Hickey  
Susan O. Hickey  
United States District Judge