Mohler-Avery v. Doe et al Doc. 8

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JAY T. MOHLER-AVERY, Plaintiff,	:	
v.	:	Case No. 3:16cv2040 (MPS)
JOHN DOE 1-4, ET AL., Defendants.	:	

ORDER

The plaintiff, Jay T. Mohler-Avery, was incarcerated at the Cheshire Correctional Institution in Cheshire, Connecticut when he filed this action. On February 27, 2017, the Clerk entered a suggestion of death upon the record indicating that an employee from the Department of Correction Inmate Accounts Office had notified the Court on February 24, 2017, that the plaintiff was deceased. *See* Docket Entry, Suggestion of Death Upon the Record - Dated February 24, 2017. The Clerk has mailed a copy of the Suggestion of Death to the plaintiff at his address on file with the Court and to the only defendant identified by name, Warden Scott Erfee at Cheshire Correctional Institution. *See* Docket Entry, Staff Notes – Dated February 27, 2017.

Rule 25(a)(1), Fed. R. Civ. P., provides: "If a party dies and the claim is not extinguished, the court may order substitution of the proper party. . . . If the motion [for substitution] is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." There is no requirement that the notification of death of a party be filed by a party or the formal or appointed representative of the decedent's estate or that the

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statement identify the successor or legal representative of the decedent. *See Unicorn Tales, Inc. v. Banerjee*, 138 F.3d 467, 469-70 (2d Cir. 1998).

It is therefore ordered that the plaintiff's successor or representative file a motion to substitute an appropriate successor or estate representative within ninety (90) days of this order. If no such motion is filed within the time specified, the plaintiff's claims against the defendants will be dismissed pursuant to Rule 25(a)(1), without further notice from the Court. The Clerk shall send a copy of this order to the plaintiff at his address on file with the court and to Warden Erfee at Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410.

SO ORDERED at Hartford, Connecticut this 27th day of February, 2017.

/s/
MICHAEL P. SHEA
UNITED STATES DISTRICT JUDGE