

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

NANCY GILBERTI,

Plaintiff,

v.

Case No. 8:13-cv-821-T-30EAJ

NANCY WELLING and
DAVID WELLING,

Defendants.

ORDER

THIS CAUSE comes before the Court upon Joseph Gilberti's Motion for Substitution of Party (Dkt. #13) pursuant to Federal Rule of Civil Procedure 25(a)(1). The Motion requests that the Court substitute the deceased Plaintiff with Joseph Gilberti, the decedent's surviving spouse.

When confronted with a motion to substitute a party, a court must consider whether the motion is timely, whether the claim has been extinguished by death, and whether the movant proposes a proper party for substitution. *Natale v. Country Ford Ltd.*, 287 F.R.D. 135, 136 (E.D.N.Y. 2012). The timeliness of the motion and survivability of the claim in this case are not at issue so the Court turns its attention to whether Joseph Gilberti is a proper party. Proper parties for substitution include "either (1) a successor of the deceased party—a distributee of an estate if the estate of the deceased has been distributed at the time the motion for substitution has been made, or (2) a representative of the deceased

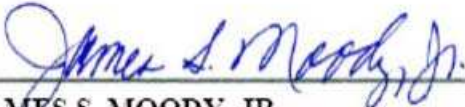
party—a person lawfully designated by state authority to represent the deceased's estate.”
Id. at 137.

The Movant in this case makes only a conclusory statement suggesting he is a proper party. The Court recognizes the Movant is the spouse of the deceased Plaintiff and may eventually become a proper party, but the Movant must prove this through appropriate methods. Appointment as the personal representative of the deceased's estate would make the Movant a proper party. *Metcalf v. Lee*, 952 So. 2d 624, 630 (Fla. 4th DCA 2007).

The Movant has not established that he is a proper party for substitution in this action. Therefore, this Motion for Substitution of Party should be denied.

It is therefore ORDERED AND ADJUDGED that the Motion to Substitute Party (Dkt. #13) is denied without prejudice.

DONE AND ORDERED in Tampa, Florida, on this 6th day of November, 2013.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record