

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

NORM NEVINGER,)	
)	
Plaintiff,)	
)	
v.)	CIVIL NO. 4:11cv25
)	
TOWN OF GOODLAND, INDIANA, <i>et al.</i> ,)	
)	
Defendants.)	

OPINION AND ORDER

This matter is before the court on a motion to dismiss, filed by the defendants on July 5, 2012. The plaintiff, Norm Nevinger (“Nevinger”), has not filed a response.

In support of the motion to dismiss, the defendants inform the court that Nevinger died on or before April 2, 2012. On April 4, 2012 Defendants filed a “Suggestion of Death Upon the Record Under Rule 25(a)(1) as to the Plaintiff, Norm Nevinger.” (*See* Dkt. # 27). Federal Rule of Civil Procedure 25 governs the substitution of parties. Rule 25(a)(1), entitled “Substitution if the Claim is Not Extinguished,” provides in relevant portion:

A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent *must* be dismissed. FED. R. CIV. P 25(a)(1)(emphasis added).

The result of Rule 25(a)(1) is an “inflexible requirement that the action be dismissed” if the substitution is not carried out within a fixed time. (FED. R. CIV. P. advisory committee’s note, 1963 amendment.)

Where a proper motion for substitution is not made by the 90-day deadline and no “excusable neglect” exists, a court must dismiss the action filed by the deceased. *See Magee v.*

Housing Authority of South Bend, 2010 WL 2950449 (N.D.Ind. July 21, 2010). As Defendants filed a Suggestion of Death Upon the Record on April 4, 2012, the 90-day period expired on July 3, 2012. No motion for substitution or motion for extension of time was filed on or prior to July 3, 2012. Accordingly, the action by the decedent, Norm Nevinger, “must be dismissed” in accord with Federal Rule of Civil Procedure 25(a)(1).

Conclusion

On the basis of the foregoing, the defendants’ motion to dismiss [DE 31] is hereby GRANTED.

Entered: August 17, 2012.

s/ William C. Lee
William C. Lee, Judge
United States District Court