

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
LAFAYETTE DIVISION**

LARRY POTTS,)	
)	
Plaintiff,)	
)	
vs.)	NO. 4:16-CV-45
)	
DOLLAR TREE STORES, INC.,)	
)	
Defendant.)	

ORDER

This matter is before the Court on "Dollar Tree Stores, Inc.'s Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 41(b)," filed by the defendant, Dollar Tree Stores, Inc., on November 30, 2017. (DE #26.) For the reasons set forth below, the complaint in this action is **DISMISSED**, and the Clerk is **DIRECTED** to close this case.

On May 9, 2016, the plaintiff, Larry Potts ("Plaintiff"), filed a complaint for negligence against the defendant, Dollar Tree Stores, Inc. ("Defendant"), arising out of a fall alleged to have occurred on February 18, 2016, at one of Defendant's store locations. (DE #6.) Defendants removed the complaint to this Court on June 10, 2016. (DE #1.) Plaintiff passed away in March of 2017, with no known Personal Representative; subsequently, his attorney was granted leave to withdraw from the case, and Larry Potts, Jr. and Jeanie Collins were added as contacts. (See DE #22.) On November 30, 2017, a status conference was conducted by Magistrate Paul R. Cherry with Jeannie

Collins, the mother of Larry Potts, Jr., and Defendant's counsel for the purpose of conducting an inquiry on the issue of attorney representation and the position of the case in general. (DE #25.) During this status conference, it was determined that no estate had been opened for Plaintiff, nor had any personal representative been appointed. (*Id.*) Furthermore, Ms. Collins advised that neither she nor Larry Potts, Jr. wish to proceed with this case. (*Id.*)

The last action Plaintiff took to prosecute this case was a deposition conducted on July 27, 2017. (See DE #26.) Since that time, Plaintiff has not prosecuted the claim, and as noted above, nothing has been done to open an estate or appoint a personal representative. (DE #25.) Furthermore, no one has responded to Defendant's motion to dismiss, and the time within which to do so has passed.

After due consideration of the foregoing along with Defendant's motion itself, the Court finds that it is appropriate to dismiss Plaintiff's claims pursuant to Federal Rule of Civil Procedure 41(b). Thus, Defendant's motion to dismiss (DE #26) is **GRANTED**, and the Clerk is **DIRECTED** to close this case.

DATED: January 9, 2018

/s/RUDY LOZANO, Judge
United States District Court

