

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH  
CIVIL ACTION NO. 5:18-CV-113-TBR

IN THE MATTER OF THE COMPLAINT OF SMITHLAND  
TOWING & CONSTRUCTION, LLC, AS TITLE OWNER,  
AND WRBM, LLC D/B/A WESTERN RIVERS BOAT  
MANAGEMENT, INC. AS OPERATOR AND OWNER  
PRO HAC VICE OF THE WILLIAM E. STRAIT, OFFICIAL NO. 270550,  
FOR EXONERATION FROM OR LIMITATION OF LIABILITY

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) by Limitation Plaintiffs, Smithland Towing and Construction, LLC, WRBM, LLC d/b/a/ Western Rivers Boat Management, Inc., and third party defendant, First Marine, LLC (hereinafter, collectively “Movants”). [R. 105.] Claimant, Nakeetha Savoy, as foreign guardian of her daughter, K.S., responded. [R. 124.] Movants replied. [R. 128.] Fully briefed, this matter is ripe for adjudication. For the reasons stated herein, Movants’ Motion to Dismiss, [R. 105], is **DENIED**.

Also, Savoy filed contemporaneously with her Response a Motion for Leave to File Amended Claims, [R. 122], and a Motion for Leave to File Amended Answer, [R. 123]. No response to either motion was filed. For the reasons stated herein, Savoy’s Motion for Leave to File Amended Claims, [R. 122], is **GRANTED** and Savoy’s Motion for Leave to File Amended Answer, [R. 123], is **GRANTED**.

In their Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), Movants argue that Savoy lacks the procedural capacity to bring a wrongful death suit as she is not the personal representative of the deceased. [R. 105-1 at 3.] In her Response, Savoy clarifies that she does not bring a wrongful death claim but an action for loss of consortium on behalf of her

daughter. [R. 124 at 3.] Savoy cites Kentucky case law in support of the assertion that “Kentucky recognizes the right of foreign (non-resident) guardian to bring actions on behalf of non-resident minor children in Kentucky.” [*Id.* at 4.] Furthermore, in order to ensure her ability to file K.S.’s claim for loss of consortium and her answer, Savoy moves to amend her claim and answer “to include her status as the authorized foreign guardian of the minor child K.S.” [*Id.* at 5.] On May 2, 2019, the Marshall County District Court authorized Savoy as the foreign guardian of K.S. [R. 124-1.] In their Reply, Movants do not dispute Savoy’s ability to file an action for loss of consortium rather than a wrongful death claim. [R. 128.] Also, no response has been filed disputing Savoy’s motions to amend her claim and answer. Therefore, Movants’ Motion to Dismiss, [R. 105], is **DENIED**. Furthermore, Savoy’s Motion for Leave to File Amended Claims, [R. 122], is **GRANTED** and Savoy’s Motion for Leave to File Amended Answer, [R. 123], is **GRANTED**.

#### CONCLUSION

For the foregoing reasons, **IT IS ORDERED**:

- 1) Movants’ Motion to Dismiss, [R. 105], is **DENIED**;
- 2) Savoy’s Motion for Leave to File Amended Claims, [R. 122], is **GRANTED**; and
- 3) Savoy’s Motion for Leave to File Amended Answer, [R. 123], is **GRANTED**.

**IT IS SO ORDERED.**

The image shows a handwritten signature in black ink that reads "Thomas B. Russell". The signature is written in a cursive style and is positioned over a circular seal of the United States District Court for the Marshall County, Kentucky. The seal features an eagle with wings spread, perched on a shield, with the words "UNITED STATES DISTRICT COURT" and "MARSHALL COUNTY, KENTUCKY" around the perimeter.

**Thomas B. Russell, Senior Judge  
United States District Court**

June 17, 2019

cc: Counsel of Record