

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

ANTHONY FONTENOT

CASE NO. 2:16-CV-00395

VERSUS

JUDGE JAMES D. CAIN, JR.

JOSEPH WILLIS, ET AL.

MAGISTRATE JUDGE KAY

MEMORANDUM RULING

Before the court is a statement filed by defense counsel on February 12, 2019, and notifying the court that defendant William Coleman died on September 16, 2018, during the pendency of this action. Doc. 62. Neither plaintiff nor any other party has filed a response to the statement.

Under Federal Rule of Civil Procedure 25, “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party.” If, however, no motion to substitute is made within 90 days of service of the statement noting the death, claims by or against the decedent must be dismissed. Fed. R. Civ. P. 25(a)(1); *see, e.g., Sampson v. ASC Indus.*, 780 F.3d 679, 681 (5th Cir. 2015). “[I]f the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties.” *Id.* at 25(a)(2).

Having received no response within the 90 day timeframe, the court notes Coleman’s death for the record and will dismiss all claims against him with prejudice. Plaintiff’s civil rights claims against the remaining defendants survive this dismissal; accordingly, these claims will proceed.

THUS DONE in Chambers on this 19 day of July, 2019.



JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE