

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**THOMAS M. DAVIS, JR. and
ROSE M. DAVIS**

PLAINTIFF

v.

No. 3:21-CV-097-SA-RP

YALOBUSHA COUNTY, MISSISSIPPI, ET AL.

DEFENDANT

ORDER GRANTING MOTION TO SUBSTITUTE PARTY

Before the court is plaintiffs' Amended Renewed Motion to Substitute Party. Docket 48. On August 16, 2021, counsel for Mark D. Fulco filed a suggestion of death stating that Fulco had passed away. The undersigned subsequently granted the plaintiffs' motion to substitute Fulco's successor in office as sheriff of Yalobusha County, Mississippi in place of Fulco on the claims against him in his official capacity. The Plaintiffs now request that the administrator of Fulco's estate be substituted in place of Fulco for the claims against him in his individual capacity. Attached to the plaintiffs' motion is proof that Michael Anthony Fulco, has been named as the administrator of Mark D. Fulco's estate. The court finds the motion is well taken and should be granted.

After the court set the motion for hearing, the plaintiffs, in accordance with Federal Rule of Civil Procedure 25(a), personally served Michael Anthony Fulco with notice of the motion and hearing on October 27, 2021. The undersigned held a hearing on the motion on November 18, 2021, at which hearing neither Michael Anthony Fulco nor counsel on his behalf appeared to oppose the motion. The court finds that one or more of the plaintiffs' claims against Mark D. Fulco in his individual capacity survived his death; that Michael Anthony Fulco, being the administrator of Mark D. Fulco's estate, is the proper person to be substituted for Mark D. Fulco on the claims against him in his individual capacity; that the motion to substitute and the notice of hearing thereon was properly served on Michael Anthony Fulco; and that the motion is unopposed.

Therefore, the plaintiffs' Amended Renewed Motion to Substitute Party is GRANTED.

Michael Anthony Fulco is substituted as the defendant in place of Mark D. Fulco on the claims against Mark D. Fulco in his individual capacity. The Clerk of Court is directed to note the substitution on the docket. The plaintiffs are directed to serve a copy of this order on Michael Anthony Fulco in the same manner in which they served the motion to substitute and to file their proof of service.

Michael Anthony Fulco will have fourteen (14) days from the date of service of this order upon him to retain counsel to represent him in this matter. Within that time period and no later, one of the following must occur: (1) counsel must enter an appearance on behalf of Michael Anthony Fulco; (2) Michael Anthony Fulco must file a notice with the clerk notifying the court of his intention to proceed without an attorney; or (3) Michael Anthony Fulco must file a notice with the clerk notifying the court that he does not intend to defend against this action. Any notice filed by Michael Anthony Fulco must include the style and cause number of this case, must include his mailing address and telephone number, and must be mailed for filing to:

Clerk of Court
911 Jackson Ave. East, Rm 369
Oxford, MS 38655

As the administrator of an estate, Michael Anthony Fulco may not appear in this case without counsel unless he is the sole beneficiary of the estate and the estate has no creditors. *Rodgers v. Lancaster Police & Fire Dept.*, 819 F.3d 205, 210-11 (5th Cir. 2016). Therefore, in connection with any notice notifying the court of his intention to proceed without an attorney, Michael Anthony Fulco must provide proof that he is the sole beneficiary of Mark D. Fulco's estate and that the estate has no creditors.

Michael Anthony Fulco is warned that failure to obey this order or other orders of the court will result in sanctions, **up to and including striking Mark D. Fulco's answer with respect to the claims against him in his individual capacity and entering default against Michael Anthony**

Fulco on said claims, as failure to obey this order or other orders may lead to the presumption that Michael Anthony Fulco does not wish to defend against the claims against him in this case.

SO ORDERED, this the 19th day of November, 2021.

/s/ Roy Percy
UNITED STATES MAGISTRATE JUDGE