

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

**RICKY McKLEMURRY as co-executor for the estate
of Louise McLemurry; RONALD McKLEMURRY
as co-executor for the estate of Louise McLemurry; and
PHILLIP McKLEMURRY as co-executor for the estate
of Louise McLemurry.**

PLAINTIFFS

vs.

CIVIL ACTION No.: 3:09-CV-181-HTW-LRA

**J. DEWAYNE THOMAS; MICHAEL G. POND; JOHN
GADOW; and JOHN DOES A-Z.**

DEFENDANTS

ORDER SUBSTITUTING PLAINTIFFS

BEFORE THIS COURT are the following motions: Motion for Settlement to be Paid into the Estate of Louise McKlemurry [**Docket no.175**]; Motion to Substitute Party [**Docket no. 178**]; Amended Motion to Substitute Party [**Docket no. 182**]; Plaintiffs' Motion to Enforce Settlement Agreement and Impose Sanctions [**Docket no. 183**]; and Motion to Withdraw [183] [**Docket no. 184**].

On October 10, 2018, this court set a hearing for Monday, October 29, 2018, at 1:30 p.m. on all outstanding motions. Counsel for the defendants appeared: Scott Murray; and Silas McCharen. Louise McKlemurry, the original plaintiff in this action, unfortunately died in September, 2011. [Docket no. 152]. After her death, Louise McKlemurry's sons hired Attorney Charles V. Homan, Jr., to represent them as they continued to pursue Louise McKlemurry's lawsuit. This court granted Ricky McKlemurry's motion to substitute plaintiff on May 21, 2012. [Docket no. 162]. Subsequently, the parties reached a settlement of all outstanding issues and, on March 12, 2013, this court dismissed this lawsuit without prejudice. [Docket no. 172].

Plaintiff Ricky McKlemurry filed his instant motions *pro se* seeking payment of the settlement funds into the estate of Louise McKlemurry.

During this court's hearing on Monday, October 29, 2018, counsel for the defendants appeared. The *pro se* plaintiff and his co-movants did not appear because they had not received notice of the hearing, which notice had been sent to Attorney Homan.¹ The court then attempted to contact Ricky McKlemurry through the only telephone number that it had and left a voicemail directing Ricky McKlemurry to contact the court. Vivian McKlemurry, Ricky McKlemurry's wife, called this court back and the court teleconferenced her into the hearing.

Counsel for the defendants informed the court that they had no opposition to plaintiff's Amended Motion to Substitute Party² [**Docket no. 182**], but that they opposed plaintiff's first Motion to Substitute Party³ [**Docket no. 178**]. Accordingly, this court granted Plaintiff's Amended Motion to Substitute Party [**Docket no. 182**] and denied plaintiff's first Motion to Substitute Party [**Docket no. 178**].

The court then directed the parties to discuss settlement and report the success of such no later than Friday, November 16, 2018.⁴ The parties are to report such in the following ways: defendants are to email the court with their report; and plaintiffs are to mail a letter to the court at 501 E. Court St., Ste. 6.750, Jackson, MS 39201. As a part of their response, Plaintiffs are hereby

¹ The court attempted to contact Attorney Homan, who has not filed a motion to withdraw in the instant litigation, and discovered that he has been suspended from the practice of law for a disciplinary reason that is unknown to this court.

² Plaintiffs' amended motion to substitute party asks this court to add the co-executors of Louise McKlemurry's estate as plaintiffs.

³ Plaintiffs' first motion to substitute party asks this court to add all the beneficiaries of Louise McKlemurry's estate as plaintiffs.

⁴ The court provided the contact information for Mr. Scott Murray as:

Carroll, Warren & Parker, PLLC
188 E. Capitol St.
Ste. 1200
Jackson, MS 39201
(601) 592-1010

The court also provided the contact information for Silas McCharen as:

Daniel, Coker, Horton & Bell - Jackson
4400 Old Canton Road, Suite 400
Jackson, MS 39211
(601) 969-7607

directed to provide telephone numbers and addresses at which this court may contact them in the future.

IT IS, THEREFORE, ORDERED that plaintiff's Amended Motion to Substitute Party [Docket no. 182] is hereby **GRANTED** and that Ronald McKlemurry and Phillip McKlemurry are hereby **ADDED** as plaintiffs to this matter.

IT IS FURTHER ORDERED that plaintiff's Motion to Substitute Party [Docket no. 178] is hereby **DENIED**.

IT IS FURTHER ORDERED that plaintiff's Motion to Withdraw [183] [Docket no. 184] is hereby **GRANTED** and that plaintiff's Plaintiffs' Motion to Enforce Settlement Agreement and Impose Sanctions [Docket no. 183] is hereby **WITHDRAWN**.

IT IS FINALLY ORDERED that plaintiff's Motion for Settlement to be Paid into the Estate of Louise McKlemurry [Docket no.175] is **HELD IN ABEYANCE** pending the outcome of the settlement negotiations of the parties. The parties are hereby ordered to report the status of settlement negotiations no later than November 30, 2018.

SO ORDERED this the 28th day of November, 2018.

/s/HENRY T. WINGATE
UNITED STATES DISTRICT COURT JUDGE