

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

DONALD T. HILL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:13CV1827 CDP
	)	
INTOWN SUITES MANAGEMENT	)	
INC.,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

Donald Hill brought suit for personal injuries against defendant Intown Suites Management, Inc. A Suggestion of Death has now been filed indicating that Mr. Hill, has died in an unrelated automobile accident. A Motion for Substitution of Parties has also been filed on plaintiff’s behalf, seeking the substitution of plaintiff’s wife, Josephine Hill, as a plaintiff *ad litem*.

Under Missouri law, a cause of action for personal injuries not resulting in death does not abate by reason of the party’s death, but instead survives to the *personal representative* of the injured party. R.S. Mo. § 537.020.1(1); *State ex rel. Cunningham v. Wiggins*, 156 S.W.3d 473, 476 (Mo. Ct. App. 2005). “Personal representative,” as used in the statute, is that person to whom letters testamentary or letters of administration have been issued in a probate estate. *Cunningham*, 156 S.W.3d at 476 (citations omitted).

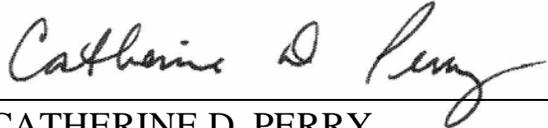
In contrast, Section 537.021.1(1) of the Missouri Revised Statutes authorizes an *ad litem* appointment to maintain a decedent's action instead of the personal representative, "but only for the purpose of pursuing a cause of action for lost chance of recovery or survival." *Cunningham*, 156 S.W.3d at 476.

Plaintiff's complaint includes no count for lost chance of recovery or survival. As such, substitution as a plaintiff *ad litem* is inappropriate, and if the case is to continue, plaintiff must have a personal representative appointed by the state court. Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for substitution of parties [# 33] is denied.

**IT IS FURTHER ORDERED** that the deadlines in the Case Management Order and the Order Referring Case to Alternative Dispute Resolution are vacated, pending further order of the court.

**IT IS FURTHER ORDERED** that plaintiff's counsel must file a proper motion to substitute, or a status report indicating when such a motion will be filed, no later than **July 15, 2014**. Once a proper party is substituted, the court will issue a new scheduling order.

  
\_\_\_\_\_  
CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 6th day of June, 2014.