

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

DERRICK WHEATT, <i>et al.</i> ,	:	CASE NOS. 1:17-CV-377 &
	:	1:17-CV-611 (consolidated)
Plaintiffs,	:	
	:	
vs.	:	OPINION & ORDER
	:	[Resolving Doc. 396]
CITY OF EAST CLEVELAND, <i>et al.</i> ,	:	
	:	
Defendants.	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On November 15, 2018, Plaintiffs Derrick Wheatt, Laurese Glover, and Eugene Johnson won a jury verdict against Defendants Vincent Johnstone and Michael Perry.¹

Defendant Michael Perry later died on December 9, 2018.²

Plaintiffs now move to substitute Karen Perry, as Executor of Michael Perry's Estate, in place of Michael Perry.³ Defendant City of East Cleveland opposes;⁴ Plaintiffs reply.⁵

The Court grants Plaintiffs' motion because the requested substitution complies with the relevant Federal Rule of Civil Procedure requirements.

I. Legal Standard

If a party dies and the claim is not extinguished, the Court may order substitution of the proper party.⁶ After the filing and service of a death notice, any party or the decedent's successor or representative may move for substitution.⁷ If the motion is not made within

¹ Doc. 359.

² Doc. 393.

³ Doc. 396.

⁴ Doc. 398; Doc. 401.

⁵ Doc. 399.

⁶ Fed. R. Civ. P. 25(a)(1).

⁷ Fed. R. Civ. P. 25(a).

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90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.⁸

Rule 25(a) requires two affirmative steps to trigger the running of the 90-day deadline for the substitution motion.⁹ First, a death notice must be made upon the record.¹⁰ Second, the death notice must be served upon the parties, as provided in Rule 5, and upon nonparties, as provided in Rule 4.¹¹

II. Analysis

Plaintiffs' motion complies with the Rule 25(a) procedural requirements. Plaintiffs filed the death notice on July 9, 2019.¹² Plaintiffs served the notice on all Parties in accordance with Rule 5 and on nonparty Karen Perry in accordance with Rule 4.¹³ Within 90 days of filing and serving the notice, Plaintiffs moved for substitution.¹⁴

Defendant East Cleveland argues that Plaintiffs' motion to substitute should be denied as untimely. It contends that the 90-day deadline commenced December 19, 2018, when East Cleveland referenced Perry's death in a court filing.¹⁵

Defendant's argument is unpersuasive. As described above, Rule 25 gives the 90-day deadline triggering requirements. A notice must be (1) filed with the court and (2) served on all parties in accordance with Rule 5 and on all nonparties in accordance

⁸ *Id.*

⁹ *Lawson v. Cty. of Wayne*, No. 11-11163, 2012 WL 5258216, at *4-5 (E.D. Mich. Oct. 23, 2012).

¹⁰ Fed. R. Civ. P. 25(a)(3); *Golden Gate Nat'l Senior Care, LLC v. Slaven*, No. CV 5:17-161-KKC, 2018 WL 1474072, at *4 (E.D. Ky. Mar. 26, 2018).

¹¹ Fed. R. Civ. P. 25(a)(3); *Golden Gate Nat'l Senior Care*, 2018 WL 1474072, at *4.

¹² Doc. 393.

¹³ *See id.*

¹⁴ Doc. 396.

¹⁵ Doc. 401 (citing Doc. 374 at 2).

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with Rule 4.¹⁶ Defendant's December 2018 reference to Michael Perry's death did not satisfy the service requirement and therefore did not trigger the 90-day deadline.

III. Order

The Court **GRANTS** Plaintiffs' motion to substitute Karen Perry, as Executor of Michael Perry's Estate, as the Defendant in place of Michael Perry.

IT IS SO ORDERED.

Dated: October 22, 2019

s/ James S. Gwin

JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

¹⁶ Fed. R. Civ. P. 25(a)(3); *Golden Gate Nat'l Senior Care*, 2018 WL 1474072, at *4.