

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

JOYCE WISHART, *ET AL.*,

Plaintiffs,

v.

Civil Action No. 2:13-cv-13930

ETHICON, INC., *ET AL.*,

Defendants.

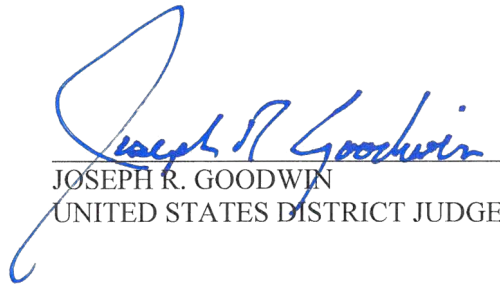
MEMORANDUM OPINION AND ORDER

Plaintiffs' counsel filed this civil action on June 10, 2013, on behalf of Joyce Wishart and her spouse, Michael Wishart. [ECF No. 1]. On August 22, 2019, plaintiffs' counsel filed a Suggestion of Death noting the death of Joyce Wishart on April 4, 2013. [ECF No. 14]. Because the plaintiff Joyce Wishart was deceased prior to the time this case was filed, she cannot bring a lawsuit in her own name. "[A] lawsuit filed in the name of a deceased individual is a nullity over which this Court has no jurisdiction." *In re Engle Cases*, No. 3:09-cv-1000-J-32JBT, 2013 WL 8115442, at *2 (M.D. Fla. Jan. 22, 2013). Accordingly, the court **ORDERS** that the plaintiff Joyce Wishart is **DISMISSED** without prejudice. Plaintiff Michael Wishart remains.

Turning to the remaining plaintiff, Michael Wishart, in response to Pretrial Order # 293, plaintiffs' counsel filed an election form in which "any applicable derivative plaintiffs" agreed to dismiss the case without prejudice subject to the waiver provisions of PTO # 293. [ECF No. 12]. Plaintiff Joyce Wishart's husband, Michael Wishart, is a derivative plaintiff who, unlike Joyce Wishart, was alive at the time the election form was filed. Accordingly, the court **ORDERS** that plaintiff Michael Wishart is **DISMISSED** without prejudice, and this case is dismissed and stricken from the docket. Any remaining pending motions are **DENIED** as moot.

The court **DIRECTS** the Clerk to file a copy of this Order and to send a copy of this Order to counsel and any unrepresented party.

ENTER: November 10, 2020



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE