

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DANIEL KUNDERT,

Plaintiff,

v.

OPINION AND ORDER

21-cv-489-wmc

WELLPATH, JANE DOE 1,  
JANE DOE 2, JOHN DOE 1,  
JOHN DOE 2, and DANE  
COUNTY,

Defendants.

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*Pro se* plaintiff Daniel Kundert was proceeding in this case on claims that he contracted COVID-19 while incarcerated at the Dane County Jail after staff moved an inmate sick with the virus into Kundert's housing unit. Kundert passed away in August of 2022. The court will now dismiss this case.

Federal Rule of Civil Procedure 25(a)(1) provides that if a party to a claim dies, the action by or against the decedent must be dismissed unless substitution is made within 90 days after service of a statement noting the death. Defendant Dane County and the Doe defendants filed a suggestion of death upon the record and proof of service on Kundert's successor or representative dated October 10, 2022. (Dkt. #47.) Upon receiving proof of service, the court indicated that it would dismiss this case under Rule 25(a) if a motion for substitution was not filed by January 9, 2023, and mailed a copy of the order to the individual identified as Kundert's successor or representative. (Dkt. #49.) That deadline has passed, but no motion for substitution has been filed, and the court has not heard from

anyone expressing interest in assuming Kundert's interest in this lawsuit. This lawsuit will therefore be dismissed.

ORDER

IT IS ORDERED that:

- 1) This case is DISMISSED under Federal Rule of Civil Procedure 25(a)(1).
- 2) Defendants' joint motion to enforce a court order (dkt. #51) is DENIED as moot.
- 3) The clerk of court is directed to close this case and to send a copy of this order to the individual identified as Kundert's successor or representative at the address provided at dkt. #46.

Entered this 18th day of January, 2023.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge