

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

LINDA ROSE, et al.,

Case No. 01-CV-10337-BC
Hon. David M. Lawson

Plaintiffs,

v.

SAGINAW COUNTY, SAGINAW COUNTY
SHERIFF'S DEPARTMENT, MUNICIPAL
GOVERNMENTAL ENTITIES, CHARLES BROWN,
and OFFICERS JOHN DOE, and JANE DOE,
(in their individual capacity), jointly and severally,

Defendants.

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**DEFENDANTS' RESPONSE TO PLAINTIFFS'
MOTION FOR SUBSTITUTION OF PARTY**

NOW COME Defendants, **COUNTY OF SAGINAW, SAGINAW COUNTY
SHERIFF'S DEPARTMENT**, and **CHARLES BROWN ONLY**, by and through their attorneys,
O'CONNOR, DeGRAZIA, TAMM & O'CONNOR, P.C., and for their Response to Plaintiffs'
Motion for Substitution of Party, states as follows:

1. No contest.
2. Defendants neither admit nor deny the allegations contained within this paragraph and leave the Plaintiffs to their proof.
3. Defendants neither admit nor deny the allegations contained within this paragraph and leave the Plaintiffs to their proof.
4. Defendants admit that Fed. R.Civ.P. 25 provides the Court discretion to grant a motion for substitution of parties. For reasons set forth in the attached brief, Defendants request this Honorable Court decline to exercise its discretion to order a substitution of party.
5. Defendants neither admit nor deny the allegations contained within this paragraph as Fed. R.Civ.P. 25 speaks for itself.
6. Defendants neither admit nor deny the allegations contained within this paragraph and leave the Plaintiffs to their proof.
7. Defendants neither admit nor deny the allegations contained within this paragraph and leave the Plaintiffs to their proof.

WHEREFORE, for the reasons set forth in the attached brief, Defendants respectfully request that his Honorable Court DENY Plaintiffs' motion for substitution of party and dismiss the claims brought on behalf of Donna Quarles.

Respectfully submitted,

O'CONNOR, DeGRAZIA, TAMM & O'CONNOR, P.C.

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Dated: April 11, 2006

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**BRIEF IN SUPPORT OF
DEFENDANTS' RESPONSE TO PLAINTIFFS'
MOTION FOR SUBSTITUTION OF PARTY**

Factual Background

The initial complaint in this action was filed on or about October 9, 2001. On or about September 3, 2002, through the filing of Plaintiffs' Fourth Amended Complaint, Plaintiff Donna Lynn Quarles joined the action as a named Plaintiff. Because neither the complaint nor amended complaints provided a factual basis for the Plaintiffs' claims, on October 25, 2002, Ms. Quarles was deposed by Defendants to determine the basis for her claims as well as to establish any damages she may have suffered as a result of the allegations against the Defendants. (**Exh. A - Quarles Dep. Trsc.**).

During her deposition, Ms. Quarles was able to provide a limited description of the events that give rise to allegations against the Defendants and provided minimal, if any, testimony to support a claim for damages. (**See Exh. A**). She prepared no notes regarding her detention at the Saginaw County Jail and articulated no basis during her deposition upon which damages could be based. (**See Exh. A**). Ms. Quarles neither missed work as a result of her incarceration at the Jail nor sought medical or psychological treatment. (**See Exh. A, p. 26**). Specifically, Ms. Quarles testified as follows:

Q. Can you give me the names of any medical health care provider, medical care or mental health care provider you talked to relative to the - -

Mr. Fletcher: Did you talk to a psychiatrist or doctor about this incident, yes or no?

A. **Doctor, there was not a doctor. It was a counselor. No doctor.**

Mr. Fletcher: About this incident?

A. **About this incident? No.**
[**Exh. A, p. 15**].

Ms. Quarles did, however, admit that she was under the influence of alcohol at the time of her arrest and had a bodily alcohol level of 0.16. She further testified that she called the arresting officers names and refusing to obey Jail staff although she could not recall whether she was swearing at the corrections officers. (**Exh. A, pp. 18-22**). No additional discovery has been provided by Plaintiffs' counsel to support a claim for damages.

Donna Quarles subsequently passed away on September 17, 2003 and Defendants were advised that Ms. Quarles' claims would be dismissed. (**Exh. B - Correspondence Dated 1/9/06**). After advising that the claim would be dismissed, Plaintiffs filed a Motion for Substitution of Party almost 2-1/2 years after Ms. Quarles' passing. The motion was denied on the grounds that Plaintiffs failed to establish that the movant was a proper party.¹ Having subsequently been appointed personal representative of Ms. Quarles estate, Lizzie Quarles, once again moves for substitution. Defendants maintain that it is within the Court's discretion to grant the motion, and respectfully request this Honorable Court to DENY Plaintiffs' request for the reasons contained within this response.

LAW AND ARGUMENT

In support of their Motion, Plaintiffs rely exclusively upon Fed. R. Civ. P. 25. Rule 25 specifically provides:

(A) Death.

(1) If a party dies and the claim is not thereby extinguished, the Court *may* order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the Notice of Hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons and may be served in any judicial district. Unless the

¹ At the time of filing the original motion for substitution, Donna Quarles mother, Lizzie Quarles, had not been named a personal representative of her daughter's estate.

motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.
[Fed.R.Civ.P. 25] [Emphasis added].

The Court's discretion to allow substitution pursuant to Rule 25 requires first, that the claim not be extinguished upon death, and second, that the substitution be for a proper party. Rule 25 further requires that a Motion for Substitution be made not later than 90 days after the death is suggested upon the record.²

In the case at hand, Plaintiffs' surviving claims were brought pursuant to 42 U.S.C. §1983. Because §1983 does not contain a survival provision, the Court must look to the common law and the State of Michigan Survival Statute. *Robertson v. Wegmann*, 436 U.S. 584, 588 (1978). Under the Michigan Survival Statute, M.C.L. § 600.2921, "all actions and claims survive death." Consequently, Ms. Quarles claims were not automatically extinguished upon her death.

However, the allowance for substitution of parties contained within Rule 25 is not compulsory.³ The advisory committee note to the 1963 amendment states as follows:

"A motion to substitute made within the prescribed time will ordinarily be granted, but under the permissive language of the first sentence of the amended rule ("the court may order") it may be denied by the court in the exercise of a sound discretion if made long after the death— as can occur if the suggestion of death is not made or is delayed - and circumstances have arisen rendering it unfair to allow substitution. Cf. *Anderson v. Yungkau*, [329 U. S. 482, 486, 67 S. Ct. 428, 430, 431, 91 L.Ed. 436 (1947)], where it was noted under the present rule that settlement and distribution of the estate of a deceased

² Based upon a review of the Court's docket, the death of Plaintiff, Donna Quarles was not suggested upon the Court as required by Fed. R. Civ. P. 25(a)(1) prior to the filing of Plaintiffs' original motion for substitution.

³ A prior version of Rule 25 required the substitution of parties to be made within two (2) years of the parties death.

defendant might be so far advanced as to warrant denial of a motion for substitution even through made within the time limit prescribed by the rule. Accordingly, a party interested in securing substitution under the amended rule should not assume that he can rest indefinitely awaiting the suggestion of death before he makes his motion to substitute.”

In the present case, both the substance of the claims brought by Ms. Quarles as well as Plaintiffs’ delay in filing a motion to substitute party merit this court exercising its discretion to deny the motion.

It is undisputed that Donna Quarles passed away on or about September 17, 2003. It is presumed that Plaintiffs’ counsel was advised of Ms. Quarles passing shortly thereafter. Although Plaintiffs’ counsel did not indicate the specific date they were advised of Ms. Quarles’ passing, the information was likely relayed in 2003. It is further undisputed that more than two (2) years passed without an attempt to substitute a party for Ms. Quarles or to establish an estate on her behalf.

Following the denial of Plaintiffs’ Motion for Class Action status on November 21, 2005, Plaintiffs were aware or should have been aware of the need to proceed with resolving the only remaining issues in the case, damages. Despite several conferences with the Court and between the parties, Plaintiffs’ made no attempt to move for substitution of party with respect to Ms. Quarles until the filing of the initial motion on or about February 9, 2006. In fact, the motion came after the parties participated in a Court-ordered Settlement Conference on February 6, 2006, and after Plaintiffs advised that Ms. Quarles would be dismissed as a Plaintiff. (**See Exh. B**). Having failed to present any justification for the more than two (2) year delay in either opening an Estate or proceeding with a Motion for Substitution of Party, Plaintiffs’ Motion should be considered untimely and denied.

Finally, the nature of Ms. Quarles' claim for damages merits the Court exercising its discretion to deny Plaintiffs' motion. Based upon previous rulings, Plaintiffs are not entitled to punitive damages. Therefore, any award must be based on actual damages. Although her discovery deposition was taken, it provides little if no basis for an award of money damages. (See **Exh. A**). Consequently, because Plaintiffs have made no claims for economic losses and have no evidence of actual damages, any attempt to quantify the damages suffered by Ms. Quarles as a result of her brief detention in administrative segregation would be purely speculative without her presence.⁴

Wherefore, Defendants respectfully request this Honorable Court DENY Plaintiffs' Motion, and dismiss the claims brought by Plaintiff Donna Quarles.

Respectfully submitted,

O'CONNOR, DeGRAZIA, TAMM & O'CONNOR, P.C.

By: /S/ JAMES E. TAMM P 38154

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Attorney for Defendants

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Dated: April 11, 2006

PROOF OF SERVICE

The undersigned certifies that a copy of Defendants' Response to Plaintiffs' Motion for Substitution of Party was served upon the attorneys of record of all parties to the above cause by ELECTRONIC FILING same to them at the respective business addresses as disclosed by the pleadings of record herein on April 11, 2006. I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

/S/ Rebecca Richardson

⁴ Alternatively, should the court grant Plaintiffs' Motion, Defendants would request an opportunity to depose the Personal Representative to ascertain additional information regarding Plaintiffs' claim for damages with respect to Donna Quarles.