

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

TAYLA GREENE

CASE NO. 3:20-CV-00578

VERSUS

JUDGE TERRY A. DOUGHTY

DAKOTA DEMOSS, ET AL.

MAG. JUDGE KAREN L. HAYES

ORDER

Before the undersigned Magistrate Judge, on reference from the District Court, is a motion for substitution [doc. # 44] filed by plaintiff Tayla Greene. For reasons set forth below, the motion is DENIED, without prejudice.¹

Background

On May 6, 2020, plaintiff Tayla Greene filed the instant wrongful death and survival action pursuant to 42 U.S.C. § 1983 against various law enforcement personnel, including Chris Hollingsworth, and other entities to recover damages for the May 10, 2019, death of her father, Ronald Greene (hereinafter, “Greene”), following an attempted traffic stop that ended in tragedy. (Compl.). She asserted two counts against the officers under 42 U.S.C. § 1983 for excessive force and bystander liability, plus one state law count against them for battery. *Id.* Plaintiff requested an award of \$1 million for each count, plus punitive and exemplary damages under § 1983, attorney’s fees under 42 U.S.C. §§ 1983 and 1988, and interest. *Id.*²

On September 14, 2020, defendant, Christopher Hollingsworth (“Hollingsworth”), filed a

¹ As this motion is not excepted in 28 U.S.C. § 636(b)(1)(A), nor dispositive of any claim on the merits within the meaning of Rule 72 of the Federal Rules of Civil Procedure, this ruling is issued under the authority thereof, and in accordance with the standing order of this court. Any appeal must be made to the district judge in accordance with Rule 72(a) and L.R. 74.1(W).

² Plaintiff filed an amended complaint on October 5, 2020. (First Amend. Compl.).

motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, or alternatively for more definite statement [doc. # 23].

On October 26, 2020, however, Hollingsworth's former attorney filed a suggestion of death in the record, stating that Hollingsworth had passed away on September 22, 2020. (Suggestion of Death [doc. # 33]). The attorney later filed a certification of death on October 30, 2020. [doc. # 36].

On November 24, 2020, plaintiff filed the instant motion to substitute Hollingsworth's widow and alleged legal successor, Darby Hollingsworth ("Darby"), as defendant in this matter in lieu of her decedent. [doc. # 44]. On December 15, 2020, Hollingsworth's former attorney filed a memorandum in opposition to the motion for substitution wherein he argued that plaintiff's claims against Hollingsworth abated upon his death, and that, in any event, there was no evidence that Darby had accepted her husband's succession. ("Hollingsworth's" Opp. Memo. [doc. # 47]). On December 21, 2020, plaintiff filed a reply brief in which she argued that plaintiff's claim had not abated and that Darby was Hollingsworth's heir and presumptive universal legatee. (Pl. Reply [doc. # 48]).

On January 19, 2021, plaintiff filed a motion for extension of time to serve substituted party, Darby, because the Clerk of Court would not issue a summons for Darby until the court resolved plaintiff's pending motion for substitution. [doc. # 54]. On January 20, 2021, the court granted plaintiff's motion and accorded plaintiff 30 days from this court's ruling on plaintiff's motion for substitution in which to serve Darby Hollingsworth. [doc. # 55].

Analysis

Rule 25(a) of the Federal Rules of Civil Procedure provides that,

(1) Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) Continuation Among the Remaining Parties. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) Service. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

FED. R. CIV. P. 25(A).

Before proceeding further, the court observes that under Louisiana law, Hollingsworth's death terminated the client-attorney relationship by operation of law. *Succession of Wallace*, 574 So.2d 348, 359 (La.1991). Accordingly, Hollingsworth's former attorney was not authorized to file an opposition to plaintiff's motion for substitution on behalf of his former client. *Cheremie v. Orgeron*, 434 F.2d 721, 725 (5th Cir.1970) (authority of defense counsel to act for the decedent was terminated by the death); *Giles v. Campbell*, 698 F.3d 153, 158 (3d Cir.2012) (Government's representation of defendant ended when he died).³

In any event, "Hollingsworth's" objections lack merit. For civil rights actions brought under 42 U.S.C. § 1983, statutory law in the state where the action arose provides the principal reference point for determining survival of the suit upon the death of a party – so long as the state law is not "inconsistent with the Constitution and laws of the United States." *Robertson v.*

³ Nonetheless, in an unpublished decision, the Fifth Circuit permitted an attorney for a deceased defendant to file a suggestion of death on behalf of his/her former client. *Ray v. Koester*, 85 Fed. Appx. 983, 984 (5th Cir.2004). Furthermore, according to the court, Rule 25 did not require the suggestion of death to identify the successor party. *Id.* (citation omitted).

Wegmann, 436 U.S. 584, 589–90; 98 S.Ct. 1991, 1995 (1978); *Smith v. Dooley*, 591 F. Supp. 1157, 1166 (W.D. La.1984), *aff'd*, 778 F.2d 788 (5th Cir.1985) (in § 1983 actions, state law controls on the issue of the survival of the cause of action); *Graham v. Henderson*, 224 F.R.D. 59 (N.D.N.Y. 2004) (citations omitted) (“In determining whether a claim brought under 42 U.S.C. § 1983 survives the death of a defendant, the court must consider the law of the state in which the action arose”).

Louisiana has a survivorship statute, as contemplated by § 1988,⁴ which explicitly provides that an action does not abate upon the death of a party – *provided* the action is not to enforce a right or obligation which is strictly personal. LA. CODE CIV. PRO. ART. 428; *Smith, supra*; *Collins v. Stalder*, No. 06-0163, 2010 WL 11618397, at *2 (M.D. La. July 16, 2010), *R&R adopted*, 2011 WL 13290461 (M.D. La. Jan. 11, 2011). The Supreme Court has characterized § 1983 claims as personal injury actions. *Wilson v. Garcia*, 471 U.S. 261, 280; 105 S.Ct. 1938, 1949 (1985). Under Louisiana law, personal injury actions are heritable, and not strictly personal. *In re Pembo*, 32 F.3d 566 (5th Cir.1994); *Guidry v. Theriot*, 377 So.2d 319, 324 (La.1979) (victim’s action for recovery of tortious damages is not strictly personal because it is a right to recover money damages that result in a benefit for the victim's heirs); *see also* LA CIV. CODE ARTS. 2315.1 AND 2315.2. Furthermore, “a tortfeasor’s obligation to pay money to repair the damage he caused is not strictly personal as to the obligee-victim . . . and is no more exclusively for the personal gratification of the victim than any other money obligation.” *J. Wilton Jones Co. v. Liberty Mut. Ins. Co.*, 248 So.2d 878, 890 (La. App. 4th Cir. 1970).⁵ In fact,

⁴ *Robertson, supra* at n.5.

⁵ *See also* LA CIV. CODE ARTS. 1765 AND 1766 (discussing heritable obligations and strictly

Louisiana historically has recognized that “[a]n indebtedness incurred for an offense or *quasi* offense is transmissible to the heirs of the offender.” *Dirmeyer v. O’Hern*, 39 La. Ann. 961; 3 So. 132 (La. 1887). Finally, the comments to Article 427 of the Louisiana Code of Civil Procedure confirm that the heirs or legatees are liable for the obligations of the decedent arising *ex delicto* or *quasi ex delicto*. COMMENT (B) TO LA. CODE CIV. PRO. ART. 427. Plainly, a § 1983 suit does not abate upon the death of a party-defendant and may be adjudged against his estate. *Smith, supra; Collins, supra*.

Having determined that the cause of action against Hollingsworth survives his death, the question becomes who should be substituted in his stead. If an obligor dies before suit is filed, then “[a]n action to enforce an obligation . . . may be brought against the heirs, universal legatees, or general legatees, who have accepted his succession, except as otherwise provided by law . . . LA. CODE CIV. P. ART. 427. However, when a party dies during the pendency of an action which is not extinguished by his death, then “[o]n ex parte written motion of any other party, supported by an affidavit of the truth of the facts alleged, the court may order the issuance of a summons to the **legal successor** to appear and substitute himself for the deceased party . . .” LA. CODE CIV. PRO. ARTS. 801-802 (emphasis added).

The “legal successor” is the “succession representative of the deceased appointed by a court of this state, if the succession is under administration therein; or the heirs and legatees of the deceased, if the deceased’s succession is not under administration therein.” LA. CODE CIV. PRO. ART. 801(2). A “[s]uccession representative’ includes an administrator, provisional administrator, administrator of a vacant succession, executor, and dative testamentary executor.”

personal obligations).

LA. CODE CIV. P. ART. 2826(3). Alternatively, “[p]rior to the qualification of a succession representative only a universal successor may represent the decedent with respect to the heritable rights and obligations of the decedent.” LA. CIV. CODE ART. 935. A “universal successor” includes “the heir, the universal legatee, and the general legatee . . .” LA. CIV. CODE ART. 3506(28).⁶

Here, plaintiff represented that “[a] search of Ouachita Parish (where Hollingsworth reside[d]) and Caddo Parish (where Hollingsworth died) records has revealed that there are no active probate matters related to Hollingsworth’s estate.” (Pl. Reply, pg. 1). In other words, plaintiff suggests that there is no succession representative for Hollingsworth’s succession. In lieu of petitioning a state court to open Hollingsworth’s succession and appoint a provisional administrator, Louisiana Code of Civil Procedure Article 3111, or an administrator of a vacant succession, Louisiana Code of Civil Procedure Article 3121,⁷ plaintiff has opted to substitute the decedent’s spouse as his “heir and presumptive universal legatee.” However, there is no evidence that Hollingsworth died testate, or, if so, that his spouse was his legatee.

Plaintiff alternatively contends that “where a deceased spouse is survived by a descendant, the surviving spouse has a usufruct over the decedent’s share of the community property to the extent that the decedent has not disposed of it by testament.” (Pl. Reply Brief,

⁶ Testate successors are called legatees; intestate successors are called heirs. LA. CIV. CODE ART. 876. Also, “[t]he universal successor represents the person of the deceased, and succeeds to all his rights and charges.” *Id.*

⁷ Louisiana also has a provision to appoint an attorney to represent a defendant if he is deceased and no succession representative has been appointed. LA. CODE CIV. P. ART. 5091(A)(1)(C). The attorney is entitled to a reasonable fee for his or her services, which shall be paid by the plaintiff, but taxed as costs of the court. LA. CODE CIV. P. ART. 5096.

pgs. 2-3). However, as plaintiff recognized, the usufruct in favor of the surviving spouse presupposes that the decedent was survived by a descendant(s). LA. CIV. CODE ART. 890. Plaintiff, however, has not established that Hollingsworth had a surviving descendant. Moreover, if he did, then the surviving descendant would be the proper heir. *See* discussion, *infra*.⁸ Further, the usufructuary ordinarily is not liable for estate debts. LA. CIV. CODE ART. 587.

In any event, an intentional tort, such as the one at issue here, constitutes a separate obligation of the decedent. *See* LA. CIV. CODE ART. 2363 (“[a]n obligation resulting from an intentional wrong . . . is likewise a separate obligation to the extent that it does not benefit both spouses, the family, or the other spouse.”). If Hollingsworth died intestate, then his surviving spouse, not judicially separated from him, will inherit his separate property only if he left “neither descendants, nor parents, nor brothers, sisters, or descendants from them . . .” LA. CIV. CODE ART. 894. Clearly, plaintiff has not made that showing here.

In sum, plaintiff has not demonstrated that Darby Hollingsworth is the appropriate legal successor to be substituted for the decedent. The court observes that in her reply brief, plaintiff alternatively requested permission to conduct limited discovery to discover Hollingsworth’s heirs. The court finds that, insofar as plaintiff is not inclined to petition the state court to appoint a succession representative or to have this court appoint a curator, then limited discovery for the purpose of determining the decedent’s heirs or legatees is appropriate and warranted.⁹

⁸ *See Dirmeyer v. O’Hern*, 39 La. Ann. 961, 966; 3 So. 132, 136 (1887) (allegation of widowhood, coupled with the allegation of the existence of lawful heirs, excludes absolutely the possibility in law of her being an heir).

⁹ Plaintiff also will need to re-confirm that no succession has been opened and that the

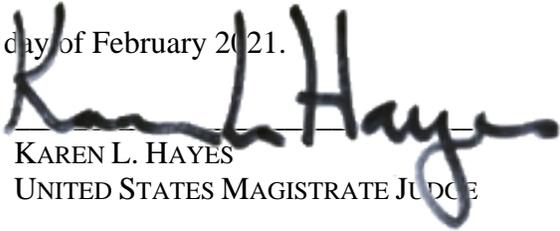
Accordingly, plaintiff is granted leave of court to take Darby Hollingsworth's deposition by oral examination or by written questions. *See* FED.R.CIV.P. 30 AND 31.¹⁰ In the interim, the court will deny plaintiff's motion for substitution, without prejudice, and accord plaintiff until March 17, 2021, in which to re-file her motion for substitution with appropriate supporting evidence. *See* FED.R.CIV.P. 6(B) (court may extend a deadline for good cause).¹¹ Also, because Hollingsworth is no longer represented by counsel, and his legal successor remains unknown, the undersigned, by separate instrument, will recommend denial of his motion to dismiss, without prejudice.

Conclusion

For the reasons detailed above,

IT IS ORDERED that the motion for substitution [doc. # 44] filed by plaintiff Tayla Greene is DENIED, without prejudice. Plaintiff is granted until **March 17, 2021**, in which to file another motion for substitution, in compliance with this order and Rule 25 of the Federal Rules of Civil Procedure.

In Chambers, at Monroe, Louisiana, this 4th day of February 2021.


KAREN L. HAYES
UNITED STATES MAGISTRATE JUDGE

decendent's heirs have not been placed in possession.

¹⁰ Plaintiff shall comply with the other procedural requirements with Rules 30 and 31, as appropriate.

¹¹ If Hollingsworth's former counsel intends to represent the decedent's legal successor, then he may facilitate matters by filing a motion for substitution on behalf of the decedent's successor, or by otherwise providing pertinent details of the succession to plaintiff's counsel.