UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

TAYLA GREENE	**CIVIL ACTION 3:20-CV-00578**
VERSUS	**JUDGE TERRY ALVIN DOUGHTY**
DAKOTA DEMOSS, ET AL.	**MAG. JUDGE KAREN L. HAYES**

HOLLINGSWORTH'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUBSTITUTION OF PARTY

MAY IT PLEASE THE COURT:

When a party to a lawsuit dies, the threshold consideration pursuant to Rule 25(a)(1) is whether the claim is extinguished. The substantive law applied to determine whether a claim is extinguished is not supplied by Rule 25. As the Supreme Court has noted, Rule 25 "does not resolve the question [of] what law of survival of actions should be applied.... [It] simply describes the manner in which parties are to be substituted in federal court once it is determined that the applicable substantive law allows the action to survive a party's death." *Robertson v. Wegmann*, 436 U.S. 584, 587 n. 3, 98 S.Ct. 1991, 56 L.Ed.2d 554 (1978).

The Supreme Court in *Robertson* noted that " 'the survival of civil rights of actions under § 1983 upon the death of either the plaintiff or defendant' " was an area not covered by federal law. *Id*. at 589, 98 S.Ct. 1991 (quoting *Moor v. County of Alameda*, 411 U.S. 693, 702 n. 14, 93 S.Ct. 1785, 36 L.Ed.2d 596 (1973)). In *Robertson*, the Supreme Court held that under 42 U.S.C. §1988, where federal law is deficient courts are to turn to the common law, as modified and changed by the constitution and statutes of the forum State, so long as these are "not inconsistent with the Constitution and laws of the United States." Id. at 588, 98 S.Ct. 1991 (quoting § 1988).

In *Robertson*, the Louisiana survival statute (in existence at the time) allowed pending

claims to survive only in favor of a spouse, children, parents or siblings. *Id*. at 587, 98 S.Ct. 1991. The Supreme Court held that "[d]espite the broad sweep of §1983, we can find nothing in the statute or its underlying policies to indicate that a state law causing abatement of a particular action should invariably be ignored in favor of a rule of absolute survivorship." *Id*. at 590–91, 98 S.Ct. 1991. The Supreme Court held that the "policies underlying §1983 include compensation of persons injured by deprivation of federal rights and prevention of abuses of power by those acting under color of state law" and that the Louisiana survivorship laws were not inconsistent with those policies. Id. at 591, 98 S.Ct. 1991.

At common law, as a general rule all actions *ex delicto* abate with the death of either party. *Caillouet v. Am. Sugar Ref. Co.*, 250 F. 639, 640 (E.D. La. 1917). Therefore, in the absence of a Louisiana statute to the contrary, the claims against Trooper Hollingsworth would abate upon his death.

Under Louisiana law, "an action does not abate on the death of a party, except for an action to enforce a right or obligation which is strictly personal." LSA-C.C.P. art. 428. "Actions to recover damages for wrongful death were characterized as "strictly personal" under the prior jurisprudence of Louisiana, but are now heritable under the amendment of Article 2315 of the Civil Code (which are encompassed in 2315.1 and 2315.2). LSA-C.C. art. 428, Revision Comment (c)). However, these amendments are only applicable when the victim is deceased, not when, as here, the alleged tortfeasor is deceased. Thus, under article 428, Greene's claims against Trooper Hollingsworth were strictly personal and abated upon his death. Therefore, the claims are extinguished, so Darby Hollingsworth cannot be substituted as a defendant.

Likewise, there is no evidence that Darby Hollingsworth accepted the succession of the deceased Trooper Hollingsworth. Under Louisiana law, "[a]n action to enforce an obligation, if

the obligor is dead, may be brought against the heirs, universal legatees, or general legatees, who have accepted his succession, except as otherwise provided by law." LSA-C.C. art. 427. In the absence of any evidence that Darby Hollingsworth (1) is an heir; (2) who accepted the succession, she is not a proper party to this action.

As in *Robertson*, supra, the law of Louisiana does not provide plaintiff with a viable basis to substitute Darby Hollingsworth. Either the claim against Trooper Hollingsworth has abated or, if not, plaintiff failed to present evidence to show acceptance of a succession. Accordingly, we respectfully pray that this Honorable Court deny plaintiff's motion to substitute.

Respectfully submitted,

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ATTORNEYS FOR HOLLINGSWORTH

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2020, a copy of the foregoing Defendant's Memorandum in Opposition to Plaintiff's Motion for Substitution of Party was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel by operation of the court's electronic filing system.

/s/ P. Scott Wolleson