

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Morton v. County of San Diego

Morton · No. 21-cv-1428-RBM-DDL · Decided August 29, 2025

SUMMARY

The United States District Court for the Southern District of California granted Marilyn Morton's unopposed motion to substitute parties under Federal Rule of Civil Procedure 25. The court held that the motion was timely, Dean Morton's claims survived his death, and Marilyn Morton was the proper successor in interest under California and Wisconsin law. Marilyn Morton was permitted to proceed on behalf of Dean Morton.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	David D. Leshner
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 29, 2025
DOCKET	21-cv-1428-RBM-DDL
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 25 to substitute Marilyn Morton for the deceased plaintiff Dean Morton as successor in interest. The unopposed motion followed an earlier denied substitution motion and an order requiring renewed filing.
STANDARD OF REVIEW	The court applied Federal Rule of Civil Procedure 25(a), determining whether the motion was timely, whether the claims survived Dean Morton's death, whether Marilyn Morton was the proper successor or representative, and whether service requirements were satisfied.
PRECEDENTIAL VALUE	Unpublished district-court order; precedential status unknown
PARTIES	Marilyn Morton, Dean Morton v. County of San Diego, et al.

TOPICS

- civil procedure
- probate procedure
- estate litigation
- section 1983

PRACTICE AREAS

civil procedure

probate

civil rights

QUESTIONS PRESENTED

1. Whether Marilyn Morton could be substituted for the deceased plaintiff Dean Morton under Federal Rule of Civil Procedure 25.
2. Whether the substitution motion was timely under Rule 25(a)(1).
3. Whether Dean Morton's claims survived his death and whether Marilyn Morton was the proper successor in interest under applicable California and Wisconsin law.
4. Whether the required service under Rule 25(a)(3) was satisfied.

HOLDINGS

1. A motion to substitute is timely when filed within ninety days after service of a statement noting the party's death, and the renewed motion here was timely because it was filed pursuant to the court's order before the renewed deadline.
2. Dean Morton's claims were not extinguished by his death.
3. Marilyn Morton was the proper party to substitute for Dean Morton because she was his surviving spouse and, under both California and Wisconsin law, succeeded to the entirety of his estate and the cause of action.
4. The service requirement for substitution was satisfied because the motion was served on all parties and nonparties in accordance with Federal Rule of Civil Procedure 25.

KEY QUOTATIONS

“Marilyn Morton may substitute into this litigation to proceed on behalf of Dean Morton, as his Successor in Interest.” (at 4)

FACTUAL BACKGROUND

Joseph Earl Morton was arrested by the San Diego County Sheriff's Department on May 11, 2020 and died by suicide in his jail cell on May 17, 2020. His parents, Marilyn Morton and Dean Morton, filed claims arising from his death. Dean Morton later died in Wisconsin without a will, and the court determined that his surviving spouse, Marilyn Morton, was the proper successor in interest to proceed on his claims.

PROCEDURAL HISTORY

Joseph Morton's parents, Marilyn Morton and Dean Morton, filed this action asserting Fourteenth Amendment, negligence or malpractice, and wrongful-death or survival claims. After Dean Morton died, the court ordered a motion to substitute. An initial motion seeking to substitute Linnea Morton was denied because Marilyn Morton was the proper successor, and the court ordered a renewed motion. Marilyn then filed the present unopposed motion, which the court granted.

DISPOSITION

other

CASES CITED

- Oatridge v. Future Motion, Inc., No. 5:21-CV-09906-BLF, 2025 WL 41935, at *1 (N.D. Cal. Jan. 6, 2025)
- Casa Nido P'ship v. Kwon, No. 20-cv-07923, 2024 WL 1421259, at *2 (N.D. Cal. Apr. 2, 2024)
- In re Korean Air Lines Co., Ltd., 642 F.3d 685, 699 (9th Cir. 2011)

OPINION

Morton v. County of San Diego

PER CURIAM.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT

8

SOUTHERN DISTRICT OF CALIFORNIA

9 10 MARILYN MORTON, et al. Case No.: 21-cv-1428-RBM-DDL 11 Plaintiffs,

12 ORDER GRANTING PLAINTIFF

v. DEAN MORTON’S MOTION TO

13

SUBSTITUTE PARTIES PURSUANT

COUNTY OF SAN DIEGO, et al.,

14 TO FEDERAL RULE OF CIVIL

Defendants. PROCEDURE 25 15 16 [Dkt. No. 278] 17 18 19 Currently before the Court is Plaintiff’s August 10, 2025 Motion to Substitute 20 Parties Pursuant to Federal Rule of Civil Procedure 25. Dkt. No. 278-1 (“Mot.”). 21 For the reasons set forth below, Plaintiff’s motion is GRANTED.

22 BACKGROUND

23 On May 11, 2020, Joseph Earl Morton was arrested by the San Diego County 24 Sheriff’s Department. Dkt. No. 253 at 2. After numerous interactions with 25 members of the jail staff and medical departments, on May 17, 2020, Joseph 26 Morton committed suicide in his cell. Id. at 6. On August 9, 2021, Joseph’s 27 parents, Marilyn Morton, individually, and as Successor in Interest to Joseph 28 Morton, and Dean Morton, individually, initiated the instant action by filing a 1 complaint for violations of the Fourteenth Amendment, negligence/malpractice, 2 and wrongful death/survival. Dkt. No. 1. In 2024, the parties informed the Court 3 that Dean Morton had passed away. Dkt. No. 275 at 2 (citing Dkt. No. 253 at 10- 4 11). The Court then ordered counsel for Plaintiffs to file a motion to substitute 5 parties pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 25. Dkt. No. 6 253 at 67. 7 On March 12, 2025, Plaintiff filed a Motion to Substitute

Parties Pursuant to 8 Federal Rule of Civil Procedure 25(c). Dkt. No. 261. Plaintiff sought to substitute 9 Linnea Morton as successor in interest for purposes of the instant litigation after 10 the death of Dean Morton. Id. at 2. On July 2, 2025, District Judge Anello issued 11 an Order Requiring Plaintiff to File Supplemental Brief clarifying “whether 12 Wisconsin or California law governs whether Ms. Linnea Morton qualifies as a 13 ‘representative’ or ‘successor’ for purposes of Rule 25[.]” “[w]hether Dean Morton’s 14 estate was administered, and if so, in which state with a copy of the final order 15 showing the distribution of the decedent’s cause of action to the successor in 16 interest[, and] “[w]hether Ms. Linnea Morton, or any other person, has been 17 appointed as Dean Morton’s representative.” Dkt. No. 273 at 1-2. Plaintiff 18 supplemented the briefing on July 11, 2025. Dkt. No. 274. 19 On July 28, 2025, District Judge Anello issued an Order Denying Plaintiffs’ 20 Motion to Substitute as Successor in Interest to Dean Morton Under Fed. R. Civ. 21 P. 25 because Plaintiff sought to substitute in Linnea Morton, Dean Morton’s 22 daughter but “concede[d] that [t]he appropriate successor to Dean Morton’s 23 cause of action [wa]s not Linnea Morton, decedent’s daughter, but Marilyn Morton, 24 decedent’s wife.” Dkt. No. 275 at 4 (quoting Dkt. No. 274 at 4). Judge Anello 25 ordered that any claims asserted by Dean Motion would be dismissed if a renewed 26 motion to substitute an individual was not filed by August 11, 2025. Id. at 5. 27 On August 7, 2025, Judge Anello recused from the case and District Judge 28 Montenegro was assigned for all further proceedings. Dkt. No. 276. 1 On August 10, 2025, in accordance with Judge Anello’s Order, Plaintiff filed 2 a Motion to Substitute Parties Pursuant to Federal Rule of Civil Procedure 25. Mot. 3 The Motion is unopposed. Id. at 1-2.

4 LEGAL STANDARD

5 Substitution of parties is governed by Fed. R. Civ. P 25 which states: 6 (a) Death. 7

(1) Substitution if the Claim Is Not Extinguished. If a party dies and the

8 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 9 decedent's successor or representative. If the motion is not made 10 within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed. 11 12 (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 13 as provided in Rule 4. A statement noting death must be served in the 14 same manner. Service may be made in any judicial district. 15 Fed. R. Civ. P. 25(a).

16 DISCUSSION

17 Plaintiff requests that the Court substitute Marilyn Morton as a party in place 18 of her late husband, Dean Morton. Mot. at 2. Plaintiff argues that under both 19 California and Wisconsin law, Marilyn Morton, is the proper successor in interest 20 for Dean Morton, a former resident of Wisconsin who passed away in that state.

21 Id. at 1-2. Plaintiff also argues that the federal rules govern this issue and that

22 pursuant to Fed. R. Civ. P. 17(b)1, California state law “determines who can be 23 24 25 1 Fed. R. Civ. P. 17(b) states: (b) Capacity to Sue or Be Sued. Capacity to sue or be sued is determined as

follows: 26

(1) for an individual who is not acting in a representative capacity, by the law of the 27 individual's domicile; (2) for a corporation, by the law under which it was organized; and (3) for all other parties, by the law of the state where the court is located, 28 1 named as the appropriate party representing decedent Dean Morton's claim." Id. 2 at 3. Plaintiff explains that California state law "looks to the law of state that 3 governs intestate succession" which in this case is Wisconsin. Id. (citing California 4 Code of Civil Procedure section 377.102). Since Dean Morton died in Wisconsin 5 without a will, and all his surviving children were also the children of his surviving 6 spouse, Marilyn, pursuant to the laws of Wisconsin intestate succession, Dean 7 Morton's estate passes to Marilyn Morton and Marilyn "properly succeeds to Dean 8 Morton's interest in this action." Id. at 4 (citing Wisconsin statute section 852.013); 9 see also Dkt. No. 278-2, Declaration of Marilyn Morton. Plaintiff further argues that 10 the motion is timely, Dean Morton's claims are not extinguished, and each party 11 12 13 except that: (A) a partnership or other unincorporated association with no such 14 capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and 15 (B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a 16 United States court to sue or be sued in a United States court. 17 2 § 377.10. Beneficiary of the decedent's estate For the purposes of this chapter, "beneficiary of the decedent's estate" means:(a) If the decedent died leaving a will, 18 the sole beneficiary or all of the beneficiaries who succeed to a cause of action, or 19 to a particular item of property that is the subject of a cause of action, under the decedent's will.(b) If the decedent died without leaving a will, the sole person or all 20 of the persons who succeed to a cause of action, or to a particular item of property 21 that is the subject of a cause of action, under Sections 6401 and 6402 of the Probate Code or, if the law of a sister state or foreign nation governs succession 22 to the cause of action or particular item of property, under the law of the sister state 23 or foreign nation. California Code Civ. Proc., § 377.10. 24 3 852.01. Basic rules for intestate succession. (1) Who are heirs. Except as 25 modified by the decedent's will under s. 852.10 (1), any part of the net estate of a decedent that is not disposed of by will passes to the decedent's surviving heirs as 26 follows: (a) To the spouse or domestic partner: 1. If there are no surviving issue of 27 the decedent, or if the surviving issue are all issue of the surviving spouse or surviving domestic partner and the decedent, the entire estate. Wis. Stat. Ann. § 28 1 and non-party has been served in accordance with Fed. R. Civ. P. 5. Id. at 5-6; 2 see also Dkts. No. 278-3, Declaration of Linnea Morton, 278-4, Declaration of 3 Elizabeth Morton, and 278-5, Declaration of Brian Morton . 4 If a party dies, the Court may order substitution of the proper party if a motion 5 is made within ninety days after service of a notice of the death. Fed. R. Civ. P. 6 25(a)(1). The motion to substitute must be served on parties and non-parties in 7 accordance with Fed. R. Civ. P. 4 and 5. Id. at (a)(3). Here, Plaintiff filed a 8 Notification of Death on December 12, 2024 [see Dkt. No. 252] and filed a Motion 9 to Substitute ninety days later on March 12, 2025 [see Dkt. No. 261]. The Court 10 later

denied Plaintiff's motion and ordered that Plaintiff refile the motion by August 11, 2025. Dkt. No. 275 at 5. Plaintiff refiled the motion on August 10, 2025. Mot. 12 The Court therefore finds that Plaintiff's motion is timely. 13 The Court also finds that Dean Morton's claims are not extinguished. See 14 *Oatridge v. Future Motion, Inc.*, No. 5:21-CV-09906-BLF, 2025 WL 41935, at *1 15 (N.D. Cal., Jan. 6, 2025) (noting that since plaintiff's claims were originally filed in 16 this district, they are governed by California law and that "[g]enerally, state 17 substantive law governs whether a state law claim survives the death of party.") 18 (quoting *Casa Nido P'ship v. Kwon*, No. 20-cv-07923, 2024 WL 1421259, at *2 19 (N.D. Cal. Apr. 2, 2024)) (citing *In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 699 20 (9th Cir. 2011)); see also Cal. Civ. Proc. Code § 377.20(a) ("a cause of action for 21 or against a person is not lost by reason of the person's death, but survives subject 22 to the applicable limitations period"). Plaintiff has demonstrated that Marilyn 23 Morton is the proper party as she is substituting in a representative capacity and 24 under both California and Wisconsin law, the entirety of Dean Morton's estate 25 passes to her as Dean Morton's surviving spouse. See Fed. R. Civ. P. 17(b); see 26 also Cal. Civ. Proc. Code § § 377.10 and 377.11 and WI Stat § 852.01. The instant 27 motion has also been served on all parties and non-parties in accordance with Fed. 28 R. Civ. P. 25. Mot. at 6; see also Dkts. No. 278-3-5. Finally, the Motion is | }unopposed. See Docket. Accordingly, the Court GRANTS Plaintiffs Motion to 2 || Substitute Parties Pursuant to Federal Rule of Civil Procedure 25. Marilyn Morton 3 ||may substitute into this litigation to proceed on behalf of Dean Morton, as his 4 || Successor in Interest. 5 || IT IS SO ORDERED. 6 7 ||Dated: August 29, 2025 Tibor! Fala 10 Honorable David D. Leshner United States Magistrate Judge 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28