

Johnson v New York City Health & Hosps. Corp.

2026 NY Slip Op 31680(U)

April 14, 2026

Supreme Court, New York County

Docket Number: Index No. 805268/2024

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO **PART** **65M**

Justice

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TANYA JOHNSON, BY SON PROPOSED GUARDIAN
TERRELL PATRICK ANTHONY SMITH AND TERRELL
PATRICK ANTHONY SMITH, INDIVIDUALLY,

Plaintiff,

- v -

THE NEW YORK CITY HEALTH & HOSPITALS
CORPORATION, HARLEM HOSPITAL

Defendant.

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INDEX NO. 805268/2024

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for ATTORNEY -
DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW.

Redmond Law Firm PLLC, counsel of record for plaintiffs, moves by order to show cause for leave to withdraw as counsel. Defendant The New York City Health & Hospitals Corporation and Harlem Hospital opposes that application in part and seeks dismissal of the action pursuant to CPLR § 1021 on the ground that no substitution has been made within a reasonable time following the death of plaintiff Tanya Johnson. Upon the foregoing papers, the motion to be relieved as counsel is denied, and the action is dismissed pursuant to CPLR § 1021.

The relief sought is straightforward, though its procedural posture is not. Plaintiff’s counsel seeks leave to withdraw on the stated ground that irreconcilable differences and fundamental disagreements concerning litigation strategy have produced a breakdown in the attorney-client relationship that renders continued representation untenable. Counsel further contends that withdrawal may be accomplished without material prejudice and requests, in substance, a period during which substitute counsel may be obtained. Defendant, while indicating that it would not oppose withdrawal were the stay in this action lifted, argues that the motion to be relieved cannot properly be entertained because it was made after the death of Tanya Johnson and before the substitution of any duly appointed representative of her estate. Defendant further maintains that dismissal is warranted under CPLR § 1021 because no substitution has been made within a reasonable time after the decedent’s death.

BACKGROUND AND PROCEDURAL HISTORY

The background and procedural history are largely undisputed. This action was commenced on or about September 26, 2024, by Tanya Johnson, by her son and proposed guardian

Terrell Patrick Anthony Smith, and by Terrell Patrick Anthony Smith individually, against The New York City Health & Hospitals Corporation and Harlem Hospital. According to defendant's affirmation, Tanya Johnson died on October 20, 2024. Thereafter, the matter was stayed after the court was advised of her death. Notwithstanding that circumstance, plaintiff thereafter made motion practice while no representative of the estate had yet been substituted. On February 26, 2026, Redmond Law Firm PLLC moved to be relieved as counsel, asserting generally that irreconcilable differences and privileged professional considerations made continued representation impossible. On March 2, 2026, this court issued an order directing the prospective estate representative of the deceased plaintiff to appear and show cause why the action should not be dismissed for failure to timely substitute an estate representative as a proper party pursuant to CPLR § 1021, and further directed counsel to serve that order upon any known prospective estate representative. No substitution has been made.

ARGUMENTS

As to the parties' arguments, counsel for plaintiffs contends that good cause exists for withdrawal because the attorney-client relationship has broken down irretrievably. Counsel states that the specific details of the disagreement cannot be disclosed publicly because they are privileged and confidential, but maintains that the disagreement concerns the direction and strategy of the litigation and has materially impaired counsel's ability to represent plaintiff's interests effectively. Counsel relies upon the settled principle that an attorney may terminate the attorney-client relationship for good and sufficient cause upon reasonable notice, and further represents that plaintiff was notified of the motion and would not oppose it.

Defendant does not meaningfully dispute that an attorney may, in an appropriate case, be relieved for good cause. Rather, defendant argues that this is not an ordinary case because Tanya Johnson's death triggered an automatic stay, divesting the court of jurisdiction to entertain further proceedings until a proper substitution is made. Defendant therefore argues that counsel's motion to withdraw, like any other step taken in the action in the absence of substitution, is a nullity. Defendant further contends that dismissal is warranted under CPLR § 1021 because the decedent died in October 2024, more than a year passed without substitution, and no adequate explanation has been offered for the failure to secure the appointment and substitution of a proper estate representative. Defendant also notes that this court has already afforded notice to interested persons through its March 2, 2026 order to show cause.

DISCUSSION

When a party dies and the claim is not thereby extinguished, the death of that party stays the action pending substitution of the proper parties pursuant to CPLR § 1015 (a). The effect of that death is jurisdictional. The Court of Appeals has made clear that substitution is the mechanism by which the court acquires jurisdiction over the successors in interest of the deceased party, and that it is not a mere technicality (*Matter of Einstoss*, 26 NY2d 181, 189-190 [1970]). The Appellate Division, First Department, has likewise held that the death of a party divests the court of jurisdiction to proceed until substitution is made, such that any step taken without substitution may be deemed void (*Nieves v 331 E. 109th St. Corp.*, 112 AD2d 59, 60 [1st Dept 1985]; *Silvagnoli v Consolidated Edison Empls. Mut. Aid Socy.*, 112 AD2d 819, 820 [1st Dept 1985]). The same

principle has repeatedly been reaffirmed in later cases (*see Perez v City of New York*, 95 AD3d 675, 676 [1st Dept 2012]; *Dugger v Conrad*, 189 AD3d 478, 478-480 [1st Dept 2020]).

That rule controls the motion to be relieved as counsel. To be sure, New York law recognizes that an attorney may terminate the attorney-client relationship for good and sufficient cause and upon reasonable notice (*Matter of Dunn (Brackett)*, 205 NY 398, 403 [1912]). But that principle presupposes the existence of a living client, or at minimum a duly substituted legal representative who stands in the decedent's stead and with respect to whom the court has jurisdiction to issue operative directives. Here, counsel moved to withdraw after Tanya Johnson's death and before any representative of her estate had been substituted. Under those circumstances, the action was stayed as a matter of law, and the court was without jurisdiction to grant affirmative relief altering the representation of the deceased plaintiff. Stated differently, even assuming counsel's generalized assertions of irreconcilable differences would otherwise amount to good cause, the court cannot entertain the application in the absence of substitution because no proper party is before the court on whose behalf or against whose interests such an order could operate. The motion to be relieved as counsel must therefore be denied.

The court reaches a different conclusion with respect to dismissal under CPLR § 1021. That statute provides that, if the event requiring substitution occurs before final judgment and substitution is not made within a reasonable time, the action may be dismissed as to the party for whom substitution should have been made. Where the event is death, the court must, before proceeding further, direct interested persons to show cause why the action should not be dismissed. CPLR § 1021 thus reflects both the law's preference for resolution on the merits and the judiciary's obligation to prevent an action from remaining indefinitely suspended without a party capable of prosecuting it. *Dugger* expressly reiterates both principles, observing that New York favors dispositions on the merits, but also recognizing that unreasonable delay after death may warrant dismissal (*Dugger*, 189 AD3d at 478-480; *see also Peters v City of N.Y. Health & Hosps. Corp.*, 48 AD3d 329, 329 [1st Dept 2008]).

Whether substitution has been sought within a reasonable time depends upon the circumstances of the case, including the diligence of the party seeking substitution, the prejudice to other parties, and whether the claim appears potentially meritorious. Although that formulation is frequently recited in more recent cases from other Departments, it is fully consistent with the approach taken by the Appellate Division, First Department, which has examined the length of the delay, the excuse offered, the existence or absence of prejudice, and whether adequate cause has been shown for permitting the action to continue (*see Peters*, 48 AD3d at 329; *Rose v Frankel*, 83 AD3d 607, 607-608 [1st Dept 2011]; *Washington v Min Chung Hwan*, 20 AD3d 303, 305 [1st Dept 2005]; *Palmer v Selpan Elec. Co.*, 5 AD3d 248, 248 [1st Dept 2004]).

Applying those standards here, dismissal is warranted. Tanya Johnson died on October 20, 2024. Yet, by March 2, 2026, when this court issued its CPLR § 1021 order to show cause, no substitution had been made, and the court expressly noted that no party had timely moved to substitute a representative of plaintiff's estate and that the court had not been advised of any efforts to appoint an estate representative. More than sixteen months thus elapsed following the decedent's death without substitution and without any competent showing of diligence in seeking

letters of administration or otherwise moving the matter forward through the orderly procedures contemplated by CPLR §§ 1015 and 1021. That delay is substantial.

Equally significant is the absence of any adequate excuse. Counsel's moving papers in support of withdrawal say nothing about efforts to secure the appointment of an estate representative, nothing about proceedings in the Surrogate's Court, and nothing about any impediment that prevented substitution from being sought in a timely fashion. Instead, counsel focuses solely on the asserted breakdown in the attorney-client relationship. That may bear upon counsel's desire to withdraw, but it does not supply a reasonable excuse for the estate's failure to secure substitution after the death of the plaintiff. The Appellate Division, First Department, has repeatedly held that where no reasonable explanation is offered for a lengthy delay in substitution, dismissal is appropriate (*see Washington*, 20 AD3d at 305; *Rose*, 83 AD3d at 608; *Perez*, 95 AD3d at 676).

Nor does the present record furnish a basis to decline dismissal in the exercise of discretion. In *Peters*, the Appellate Division, First Department, reversed a dismissal where the estate submitted an expert affidavit of merit and a reasonable explanation for delay, thereby showing adequate cause why a medical malpractice action should not have been dismissed. By contrast, in *Rose*, the Appellate Division, First Department, affirmed dismissal where plaintiffs failed to submit a physician's affirmation of merit and offered no justification other than law office failure for an almost five-year delay. Here, the record is even more deficient. No representative of the estate has appeared. No motion to substitute has been made. No excuse has been supplied. No evidentiary submission has been tendered by the estate demonstrating merit or explaining the delay. On this record, the factors that justified relief in *Peters* are wholly absent, while the considerations warranting dismissal in *Rose* and *Washington* are present in substantial measure.

The court has also considered the policy favoring resolution on the merits. That policy is real and important. But it is not a license to leave litigation in perpetual suspension after the death of a party. As *Dugger* illustrates, relatively short delays accompanied by documented efforts to identify a proper representative may justify affording additional time. Here, however, there has been no comparable showing. This is not a case in which counsel has demonstrated concrete and persistent efforts to locate distributees, petition for the appointment of a public administrator, or otherwise advance substitution despite practical obstacles. Rather, the record is marked by inaction. Under these circumstances, continued indulgence would undermine the orderly administration of justice and the purpose of CPLR § 1021.

Dismissal with prejudice is warranted on this record because the prolonged and unexplained failure to substitute a proper representative following the death of the plaintiff constitutes not merely a procedural lapse, but a sustained failure to prosecute the action that justifies termination of the litigation in its entirety. The record reflects that the plaintiff died on October 20, 2024, and that, despite the passage of well over a year and the issuance of a court-directed order to show cause pursuant to CPLR § 1021, no substitution was made and no adequate explanation for the delay was provided. Under controlling authority, such circumstances support dismissal with prejudice.

The Court of Appeals has long recognized that CPLR § 1021 vests courts with discretion to dismiss an action where substitution is not sought within a reasonable time, and that dismissal may be final where the delay is substantial and unexcused (*Matter of Einstoss*, 26 NY2d 181, 189-190 [1970]). The Appellate Division, First Department, has consistently affirmed dismissals with prejudice where a party fails to act diligently to secure substitution and offers no reasonable excuse for the delay. In *Washington v Min Chung Hwan*, the Appellate Division, First Department, held that dismissal was properly granted where plaintiffs failed to substitute a representative for more than one year after death and failed to demonstrate adequate cause for the delay (20 AD3d 303, 305 [1st Dept 2005]). Likewise, in *Rose v Frankel*, the Appellate Division, First Department, affirmed dismissal with prejudice where the delay in substitution was lengthy and unsupported by a sufficient explanation or showing of merit (83 AD3d 607, 608 [1st Dept 2011]). The Appellate Division, First Department, has reiterated that, although New York maintains a strong policy favoring resolution on the merits, that policy does not require courts to permit actions to languish indefinitely in the absence of diligence (*Perez v City of New York*, 95 AD3d 675, 676 [1st Dept 2012]; *Palmer v Selpan Elec. Co.*, 5 AD3d 248, 248 [1st Dept 2004]).

Here, the delay in substitution was substantial, the court afforded explicit notice and an opportunity to cure through the issuance of a CPLR § 1021 show-cause order, and the record contains no competent showing of diligence, no reasonable excuse, and no demonstration of potential merit by a proper party. Under these circumstances, the failure to act reflects a clear abandonment of the claims, and dismissal with prejudice is an appropriate exercise of the court’s discretion to ensure the orderly administration of justice and finality of litigation.

Accordingly, it is hereby

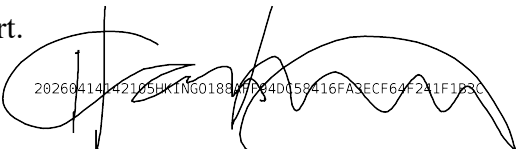
ORDERED that the motion of Redmond Law Firm PLLC for leave to withdraw as counsel is denied; and it is further

ORDERED that defendant’s request for dismissal pursuant to CPLR § 1021 is granted, with prejudice; and it is further

ORDERED that the complaint is dismissed as against defendants The New York City Health & Hospitals Corporation and Harlem Hospital, with prejudice; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.


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HASA A. KINGO, J.S.C.

4/14/2026
DATE

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE