

2015 WL 2358287 (Del.Ch.) (Trial Motion, Memorandum and Affidavit)
Chancery Court of Delaware.

Lexie S. MCFASSEL, Esquire, Public guardian, State of Delaware, Petitioner,

v.

Kimberly R. JOHNSON, Eleanor Hamm, Curtis Hamm, Sr., and Curtis Hamm, Jr., Respondents.

No. 7425-VCN.
May 13, 2015.

**Motion to Substitute Party Pursuant to Chancery Court Rule 25 (a) and Rule 19 (a), Title 10
Delaware Code Section 3701, et seq. and the Delaware Constitution of 1897, Article IV, Section 23**

Street & Ellis, P.A., [Gerald I. Street](#) (Delaware Bar No. 340), 426 South State Street, Dover, DE 19901, (302) 735-8400 (telephone), (302) 735-8417 (facsimile), for Lexie S. McFassel, Esquire, Movant.

COMES NOW the Petitioner, by and through her attorney, Gerald I. Street, Esquire, in the above-captioned action, who Moves this Court to allow a Substitution of Party for the following reason:

1. On April 26, 2010, an Emergency Petition for the Appointment of an Interim and Permanent Guardian of the Person and Property was filed by the Office of the Public Guardian (hereinafter "Pub.G."), asking to be appointed as Guardian over the person and property of one Gladys M. Snell, an **elderly** and disabled person (hereinafter "Dis.P.").

2. a. Sometime after the Pub.G.'s confirmation of appointment, it came to the Pub.G.'s attention that the Dis.P. may have been the subject of **financial abuse**.

b. After investigation, the Pub.G. deemed it appropriate to initiate a cause of action on behalf of Dis.P. to recover such funds as the Court deemed were wrongfully taken from Dis.P. That suit was filed on April 13, 2012 in the Court of Chancery, and is identified as transaction number 43663201.

c. The above-captioned cause of action (hereinafter "**financial abuse** suit") was filed, which action claimed violations of Fiduciary duties, violation of Delaware's Personal Power of Attorney Statute, Conversion, and other claims.

3. All Respondents have been served, and Melissa L. Dill, Esquire, 46 The Green, Dover, DE 19901, has entered her appearance on behalf of all Respondents.

4. a. Respondent Kimberly R. Johnson (hereinafter "the decedent") died on February 13, 2015. A copy of Ms. Johnson's death certificate is attached hereto and made a part hereof as "Exhibit A".

b. The decedent's estate is, therefore, a person needed for a just adjudication as contemplated by [Chancery Court Rule 19 \(a\)](#).

c. The **financial abuse** suit is a cause of action permitted by statute and the Delaware Constitution to survive and proceed. [10 Del.C. §3701, et. seq.](#) and the [Del. Const. art. IV, §23](#).

d. This Motion is filed timely by filing same within 90 days after death was suggested on the record as permitted by [Chancery Court Rule 25 \(a\)](#).

5. The **financial abuse** suit was contested by all four (4) Respondents. Their attorney, Melissa Dill, has been made aware of plans to file this Motion, however her position on this Motion is unknown, despite asking for same on May 1, 2015.

6. An estate of the decedent was opened in the Kent County Register of Wills on May 11, 2015. Personal representative of the estate is Mitchell W. May, Esquire, an attorney licensed in Delaware and in good standing. A copy of the Register of Wills' Short Certificate confirming this authority is attached hereto and made a part hereof as Exhibit "B".

WHEREFORE, the Movant asks this Court:

A. to Substitute the estate as a party needed for just adjudication;

B. to recognize the authority of the Mitchell W. May, Esquire, to act on behalf of the estate; and

C. to allow the original underlying cause of action being C.A. 7425-VCN to continue until such time as the Court makes a final determination of the claims;

D. for such other and further relief as this court deems appropriate.

Dated: 5/13/15

STREET & ELLIS, P.A.

<<signature>>

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