

In this 1998 case, Mr. Murray's widow, in her own right and in her alleged capacity as executrix of the Murray estate, and Mr. Murray's children, are suing Judge Silberstein and Ms. Zwaan for wrongful death, intentional infliction of emotional distress, and related claims. Both defendants have filed motions to dismiss.

The fundamental problem confronting these plaintiffs is that all of the claims they assert - the wrongful death and survival claims, and claims for violation of Mr. Murray's constitutional due-process rights - can be maintained only by the personal representative of Mr. Murray's estate, and none of the named plaintiffs qualifies as such. Notwithstanding the inexplicable assertion that Donna Murray is bringing the action "in her capacity as executrix of the Estate of Kevin Murray," Mrs. Murray is not the executrix of her late husband's estate. That honor belongs to one Sigmund Morawski, and he has not chosen to press these claims. None of the plaintiffs is a real party in interest, as required by Fed. R. Civ. P. 17.

When this action was originally filed, plaintiffs and their counsel must surely have known that Mrs. Murray was not the executrix of her husband's estate. The defect was brought to their attention by the pending motions to dismiss, and plaintiffs' response to these motions was filed on June 8, 1998, and acknowledges that plaintiffs are not the real parties in

interest. Plaintiffs have therefore had ample time in which to cure the defect, but have not done so. It is therefore appropriate to dismiss the complaint.

The Rule 17 problem is not the only obstacle to plaintiffs' success in this lawsuit. All of the claims asserted, except the wrongful death action, arose more than two years before the complaint was filed. The wrongful death action is apparently not time-barred, since the second anniversary of Mr. Murray's death fell on a Sunday, and the complaint was filed the next day. But the wrongs allegedly committed by the defendants cannot readily be viewed as a proximate cause of the decedent's death. Ms. Zwaan is charged with falsely accusing Mr. Murray of assaultive behavior in order to impede his investigation of her alleged financial wrongdoing. Judge Silberstein is charged with (wrongfully?) requiring Mr. Murray to investigate Ms. Zwaan's financial dealings, and, when the criminal accusations against Murray surfaced, with informing Mr. Murray that, if he were arrested, he would be suspended from his job, and that the costs of his criminal defense would have to be borne by Mr. Murray. Whether Mr. Murray's suicide can possibly be regarded as a foreseeable consequence of these actions is indeed problematic. But that issue need not be definitively resolved, since the complaint must be dismissed for other reasons.

To summarize, the complaint in its entirety will be

dismissed with prejudice, because none of the plaintiffs is a real party in interest. Alternatively, all of the claims asserted by plaintiffs except the wrongful death claim will be dismissed as time-barred. As to the defendant Silberstein, Counts II and III of the complaint are dismissed for failure to state a claim upon which relief can be granted.

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONNA MURRAY, in her capacity	:	CIVIL ACTION
as Executrix of the Estate of	:	
KEVIN MURRAY, et al.	:	
	:	
v.	:	
	:	
ALAN K. SILBERSTEIN and	:	
KATHLEEN ZWAAN	:	NO. 98-0417

ORDER

AND NOW, this day of July, 1998, upon consideration of the respective motions to dismiss filed on behalf of the defendants Silberstein and Zwaan, IT IS ORDERED:

1. Both Motions to Dismiss are GRANTED.
2. The complaint is DISMISSED WITH PREJUDICE.

John P. Fullam, Sr. J.