

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

MICHAEL COLLIER, et al. : CIVIL ACTION  
:   
v. :   
:   
OFFICER, MICHAEL DAILEY, et al. : NO. 98-3261

**MEMORANDUM AND ORDER**

HUTTON, J.

September , 1998

Presently before the Court is the plaintiffs' Petition for Leave to Compromise Minor's Action. For the following reasons the Petition is **DENIED** without prejudice. The plaintiff may renew the petition in accordance with this memorandum.

**I. DISCUSSION**

Pennsylvania Rule of Civil Procedure 2039 allows a compromise of a minor's action only upon approval of the court. The purpose of Rule 2039 is to protect the interests of the minor. Wilson v. Bensalem Township. Sch. Dist., 367 A.2d 397, 398 (1976). Thus, in reviewing the settlement agreement, the court must hold that the best interests of the child are paramount and of controlling importance.

The petition must provide the court with sufficient information on which to base its determination. To assure that the child's interests are protected, the "petition should include all relevant facts and the reasons why the guardian of the minor

believes that a settlement is desirable and in the minor's best interest to discontinue, compromise, or settle the action." Klein v. Cissone, 443 A.2d 799, 802 (Pa. Super. Ct. 1982). "Relevant facts" include evidence of the need for future medical care and future expenses, description of the minor's current physical and mental condition, and evidence of the extent and duration of the injuries. Roghanchi v. Rorick, 1991 WL 275626 at \*3 (E.D. Pa. Dec. 23, 1991). The court must then independently evaluate the settlement. While "the parties and counsel are typically in the best position to evaluate the settlement . . . [and] . . . their judgments are entitled to considerable weight," Chambers v. Hiller, 1988 WL 130679 at \*2 (E.D. Pa. Dec. 2, 1988) (citing Armstrong v. Board of Sch. Directors of Milwaukee, 616 F.2d 305, 325 (7th Cir. 1980); Sherin v. Gould, 679 F. Supp. 473, 475 (E.D. Pa. 1987)), the court must determine independently whether the settlement amount represents a fair value for the lawsuit. "The court must be prepared to substitute its judgment in the best interest of the minor for that of the plaintiff's counsel, the guardian, or even the minor himself." Roghanchi, 1991 WL 275626 at \*2.

In reviewing this proposed compromise settlement this Court must determine, in light of the strength of the Plaintiff's case, whether the settlement amount represents a fair value for the lawsuit. The Court should look, inter alia, to the proof available and the causation elements to determine this value. Moreover, the

Plaintiff's counsel should be questioned regarding the appropriateness of the settlement offered to determine the merits of the action. It is also important to establish a record indicating that the court considered the extent and duration of the injuries to the minor. The goal in this phase is to determine whether the Plaintiff is getting a fair deal from the Defendants or settling for some lesser amount. It is at this stage that the Court must look to the evidence of future expenses to see whether there will be any need for future medical care. The Court must be prepared to substitute its judgment in the best interest of the minor for that of the Plaintiff's counsel, the guardian, or even the minor himself.

In a separate analysis, the court must review the distribution. See Gilmore v. Dondero, 582 A.2d 1106 (Pa. Super. Ct. 1990). The court must strike a balance between being a "passive pro forma rubber stamp," id. at 1109, and being too intrusive in its consideration of the fairness of counsel's fees. The court will consider a number of factors, including, among other things, the amount of work performed, the ability of the client to pay for the services, and the amount of money or the value of the property in question. Roghanchi, 1991 WL 275626 at \*2.

These factors were elucidated in the Gilmore case. There the Superior Court reviewed an order by the Court of Common Pleas of Chester County which reduced the amount of counsel fees payable

out of the proceeds of a compromise of a minor's claim. The Superior Court looked to the standard of review which the Chester County court had applied. The Chester County court described its policy as follows:

Preliminarily, we are mindful that counsel have a right to be compensated for their services. But at the same time, when that compensation becomes so handsome as to constitute a patent windfall for a lawyer, to the unfair detriment of the minor, discretion is best exercised by decreasing that fee. Generally, this court is reluctant to poke its judicial nose into contracts between clients and counsel, and even with the situation involving the rights of a minor, we are reluctant to be too intrusive, too assertive. But under our Rule 2039 mandate, we have an affirmative duty to be more than a passive, pro forma rubber stamp. The line must be drawn somewhere.... the Board of Judges of this county has considered the question, and we conclude that an appropriate presumptive lodestar for such cases, for suit having been filed, as at bar, should be 25% of the gross amount obtained.

Gilmore, 582 A.2d at 1109 (quoting Edwards v. Downingtown Area School District, 34 Ches.Co.Rep. 346 (1986)). The Superior Court went on to note that the approach used by the Chester County court indicates the seriousness with which the court viewed its

responsibilities under Rule 2039. Id. This Court views its responsibilities towards the minor, Mynisha Collier, just as seriously. In that regard the Court finds the current petition deficient in two areas:

**1. Statement by Guardian**

Philadelphia Rule of Civil Procedure 165 and the Superior Court decision in Klein, require a statement by the guardians that they understand the settlement and that they approve the settlement. This requirement has been satisfied. The Rule also requires, however, a statement from the guardians regarding the current physical and mental condition of the Plaintiff.

**2. Attorney's Fees**

The Petitioner should set forth which County's local rules, Philadelphia or Delaware, govern the appropriate contingent fee in the minor's case. Counsel should demonstrate which county's rules apply and whether the requested fee is reasonable in light of that rule.

Counsel may renew the petition when the petitioner is able to address the Court's concerns. Rule 2039 places a serious burden on the Court to protect the interests of Mynisha Collier today and in the future. The petition does not allow the Court to satisfy concerns about future payments and attorney's fees. The deficiencies do not permit the Court to fulfill the

responsibilities Rule 2039 places upon the Court. Accordingly, the petition is DENIED with leave to renew.

An appropriate Order follows.

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O R D E R

AND NOW, this                    day of September, 1998, upon  
consideration of Plaintiffs Michael Collier and Mynisha Collier's  
Petition to Compromise Minor's Action, IT IS HEREBY ORDERED that  
the Plaintiffs' Petition is **DENIED**, without prejudice, with leave  
to renew in accordance with the Court's Memorandum of this date.

BY THE COURT:

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HERBERT J. HUTTON, J.