

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Isaiah Williamston, a Minor : January Term 2005
 : No. 2553
v. :
 :
Interstate Collision & Towing Inc., :
a/k/a Interstate Towing a/k/a : Control No. 041184
Interstate Collision Experts, Inc.
Defendants

OPINION

Introduction

Presently pending is an appeal of this court's May 8, 2007 order denying a petition filed by Isaiah Williamston, a minor, to avoid a Pennsylvania Department of Public Welfare ("DPW") compromised lien in the amount of \$50,359.16¹ that was approved as part of the settlement of his minor's action by order dated July 17, 2006. In addition, the May 8, 2007 order approved DPW's request for payment of its total lien in the amount of \$83,931.94. For the reasons set forth below, the motion to avoid a lien was untimely since it essentially sought to open or set aside an order issued nine months previously. In addition, the motion is without merit.

This Opinion is filed in response to Isaiah Williamston's appeal and in support of the denial of his Petition to Avoid the DPW lien. In so doing, this court concludes that because the July 17, 2006 order approving the minor's compromise petition with a \$50,359.16 allocation to the DPW was a final order supported by parental consent to the petition's proposed distribution, it should have been left intact without any additional sums allocated to the Department of Welfare.

¹ Isaiah Williamston, a Minor v. Interstate Collision & Towing, January 2005, No. 2553, Petition for Leave to Settle a Minor's Compromise Petition, (hereinafter "Minor's Compromise Petition). According to a June 7, 2006 letter from the Department of Public Welfare attached as Exhibit E, the DPW's total lien was \$83,931.94, but it was willing to compromise that lien by 40% to accept a net payment of \$50,359.16.

Background

On June 15, 2006, Isaiah Williamston, through his parents as natural guardians, filed a petition pursuant to Pa.R.C.P. 2039 seeking approval of his minor's action with a total settlement of \$300,000. Attached to the petition was a report by Dr. William Murphy as to Isaiah's present condition. Paragraph 17 of the petition noted that the DPW has asserted a lien of \$50,359.16, and stated that "Counsel believes that this lien will only be enforceable to the extent of the premiums paid that are capitated." Nonetheless, the proposed order requested a distribution of \$50,359.16 to the DPW as did the final page of the petition in its "wherefore" clause. The proposed order also sought compensation for attorney costs of \$3,374.71 as well as \$120,000 in counsel fees. As a separate exhibit, the minor's mother, Tamara Brown, submitted her written consent to the settlement as follows:

I have reviewed the proposed distribution set forth in the petition for leave to Settle or Compromise Minor's Action and approve the distribution.²

By order dated July 17, 2006, this court approved the petition as presented except for a reduction in the requested attorney fees from \$120,000.00 to \$98,875.09 which resulted in an increased payment for the minor from the requested \$126,266.13 to \$147,391.04.

Nine months later, on April 17, 2007 plaintiff Isaiah Williamston, by his attorneys Shields & Hoppe, LLP, filed a Motion to Avoid the compromised \$50,359.16 DPW lien. In support of plaintiff's petition, he cited, inter alia, a United States Supreme Court opinion, Arkansas v. Ahlborn, 547 U.S. 268, 126 S.Ct. 1752 (2006), that had been issued May 1, 2006—more than a month before the petition for approval of his minor's

² Minor's Compromise Petition, Ex. B.

compromise was filed. In his petition to avoid the DPW lien, plaintiff asserts that “federal law prohibits states from imposing a lien on the personal property of a welfare recipient out of medical benefits correctly paid.”³ There is no averral that the settlement was based on fraud nor that the minor did not receive the funds allocated to him. In fact, as is standard, the July 17, 2006 order approving the settlement required that the \$147,391.04 allocated to Isaiah be deposited in a restricted account or savings certificate in the name of the minor, alone.

A response was filed by the Commonwealth of Pennsylvania, Department of Public Welfare asserting its authority under 62 P.S. § 1409(b)(7)(iii) and 55 Pa. Code § 259.1 to recover the actual value of services provided through the Medical Assistance program. In addition, the DPW denied that \$50,359.16 was the full value of the Medical Assistance Claim but that amount represented instead a compromised claim of the full value of the Medical Assistance claim which was \$83,931.94. DPW thus sought to recover that full amount to protect its own interest.

Analysis

Under these facts, there is no basis for granting plaintiff’s untimely motion, which seeks essentially to open or vacate the July 17, 2006 order. Pennsylvania courts recognize that “in *all* actions involving a minor, the best interests of that child are paramount and controlling importance to this court.” Klein v. Cissone, 297 Pa. Super. 207, 213, 443 A.2d 799, 802 (1982)(emphasis in original). To safeguard those interests, Pa.R.C.P. 2039 was enacted. It provides, inter alia, that “[n]o action to which a minor is a party shall be compromised, settled or discontinued except after approval by the court pursuant to a petition presented by the guardian of the minor.” Pa.R.C.P. 2039(a).

³ Plaintiff’s Petition to Avoid DPW Lien, ¶ 4.

Petitions to compromise minor's actions pursuant Pa.R.C.P. 2039, therefore, safeguard the interests of minors while affording a degree of security to parties entering into settlement agreements with them. Not surprisingly, therefore, settlement agreements with minors have withstood judicial scrutiny when appropriate. In Bollinger v. Randall, 184 Pa. Super. 644, 135 A.2d 802 (1957), for instance, the Superior court refused to vacate a minor's compromise where it was asserted that the minor's injuries were more serious than first thought. In explaining this refusal to open or set aside the minor's compromise, the Bollinger court stated that "[w]e agree with what the court below so well said: 'To hold otherwise would create a legal situation which would make it impossible, or at least inadvisable, to settle any suit.'" Id., 184 Pa.Super. at 650, 135 A.2d at 806. Similarly, in Klein v. Cissone, 297 Pa. Super. 207, 443 A.2d 799 (1982), the Superior court refused to revoke or set aside a minor's compromise where it was challenged due to the failure to file a written petition. While noting that a petition seeking to compromise a minor's action pursuant to Pa.R.C.P. 2039 should include all relevant facts, the court concluded based on the record that the oral petition sufficed. Finally, in Greer v. The Penn Central Transp. Co., 6 Phila. 253, 259 (Phila.C.P. 1981), a Philadelphia Common Pleas court refused to open or strike an order approving a minor's action where the petition challenging the settlement was filed more than a year after the settlement order. Although minor compromise orders have been opened in cases of fraud⁴ or where it is discovered that the minor was more seriously injured than first believed⁵ or where the minor receives no benefit from a settlement,⁶ no such averrals

⁴ Rebic v. Gulf Refining Co., 122 Pa. Super. 149, 186 A. 236 (1936)(court may revoke its approval of a minor's compromise procured by fraud where the guardian for the minor did not receive any funds).

⁵ Bixby v. The Franklin Institute, et al., 4 Phila. 35 (C.C.P. Phila. 1980)(the petition to vacate the minor's compromise filed within 54 days of that order).

were made in the instant case. The Order approving the settlement of Isaiah Williamston in the total amount of \$300,000 with a \$50,359.16 allocation to the DPW should therefore stand.

An analysis of the United States Supreme Court precedent cited by plaintiff in seeking to set aside the DPW lien also demonstrates why this untimely petition should be denied. In Arkansas Department of Health and Human Servs. v. Ahlborn, 547 U.S. 268, (2006), a unanimous court rejected the claim by the Arkansas Department of Health and Human Services (“ADHS”) that it was entitled to recover the total amount in medical assistance it had expended for a recipient’s care.⁷ Instead, it held that Federal Medicaid law did not authorize the Arkansas Department of Health and Services (“ADHS”) to assert a lien on the tort settlement of a Medicaid recipient in excess of that portion of the proceeds meant to compensate the plaintiff for medical costs. If the Medicaid costs exceed the portion of the settlement that represents medical costs, the lien may not be asserted against proceeds intended to compensate a plaintiff for damages other than medical costs such as pain and suffering or lost wages.

The nineteen year old plaintiff in Ahlborn, who was grievously injured in an automobile accident, filed suit to recover not only her past medical costs, but also for permanent physical injury, future medical expenses, past and future pain, suffering and mental anguish as well as past loss of earnings and future earnings. The action settled for \$550,000.

The ADHS thereafter asserted a lien of \$215,645.03 which reflected the total cost of payments it had made for the plaintiff’s medical care. The plaintiff filed a petition

⁶ Schmucker v. Nagle, 426 Pa. 203, 231 A.2d 121 (1967)(although settlement was not binding where minor received no benefits, his claim was nonetheless barred by the statute of limitations).

⁷ Id., 126 S.Ct. at 1757-58.

seeking a declaration that the claim of ADHS for compensation of the total costs it had expended for medical care violated federal Medicaid law to the extent that it would deplete recoveries for injuries other than past medical expenses. The parties stipulated that the entire claim was reasonably valued at \$3,040,708.12; that the actual settlement was 1/6th of that amount; and that under plaintiff's interpretation of federal law, ADHS would be entitled to \$35,581.47 (the percentage of medical costs as opposed to other damages encompassed within the settlement). ADHS, in contrast, claimed it was entitled to compensation for the total amount it expended on plaintiff's medical costs or \$215,645.30.⁸

Upon review of the facts and relevant precedent, the Supreme Court concluded that under federal law, ADHS was entitled only to that portion of the settlement that represents payments for medical care. This conclusion, however, has the practical effect of requiring a record that distinguishes between the various types of recovery sought whether it is for medical costs, pain and suffering or lost wages. In Ahlborn, for instance, the parties had stipulated that only \$35,581.47 of the plaintiff's settlement proceeds were for medical costs. The court then noted the various ways such a record might be created: "by obtaining the State's advance agreement to an allocation or, if necessary, by submitting the matter to a court for decision." Id., 126 S.Ct. at 1765. In the instant case, however, plaintiff failed to assert the issue of the DPW's proportionate share in the total settlement while the minor's compromise petition was pending and there was an opportunity to create the requisite record. Instead, he attached a proposed order to his petition that allocated \$50,359.16 to the DPW and then waited nine months after the settlement was approved to invoke Ahlborn and assert that "federal law prohibits states

⁸ Id.

from imposing a lien on the personal property of a welfare recipient arising out of medical benefits correctly paid.”⁹ Ahlborn, however, stands for no such thing. As the

Ahlborn court observed:

There is no question that the State can require an assignment of the right, or chose in action, to receive payments for medical care. So much is expressly provided by §§ 1396a(a)(25) and 1396k(a). And we assume, as do the parties, that the State can also demand as a condition of Medicaid eligibility that the recipient “assign” in advance any payments that may constitute reimbursement for medical costs....But that does not mean that the State can force an assignment of, or place a lien on, any other portion of Ahlborn’s property. As explained above, the exception carved out by §§ 1396a(a)(25) and 1396k(a) is limited to payments for medical care. Beyond that, the anti-lien provision applies. Id., 126 S.Ct. at 1763.

Plaintiff’s Motion to Avoid the DPW lien was therefore properly dismissed, and the terms of the July 17, 2006 order approving the minor’s compromise should remain in force.

Date: _____

BY THE COURT:

John W. Herron, J.

⁹ Plaintiff’s Motion to Avoid Lien, ¶ 4.

