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Summary of Haley v. Dist. Ct., 128 Nev. Adv. Op. No. 16

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MEDICAL MALPRACTICE – SETTLEMENT MODIFICATIONS

Summary

The Court considered a petition for writ of mandamus or prohibition challenging a district court order approving compromise of a minor's medical practice claim, but directing a different settlement distribution than agreed to by the parties.

Disposition/Outcome

The Court denied the writ petition in part because NRS 41.200² authorized the district court to adjust the allocation of settlement fees and costs in the minor's best interest. However, the court granted the petition in part because the district court did not explain its allocation of fees between the minor's attorney and guardian ad litem.

Factual and Procedural History

As a result of an emergency delivery procedure at the University Medical Center of Southern Nevada (UMC) in June 2005, Warren West's pregnant wife died and his daughter Ashley was born with severe brain damage. Petitioner attorney Christopher Gellner brought wrongful death and personal injury claims against Dr. Joel Orevillo and Stewart Pulmonary Associates, Ltd. (SPA). When Ashley was subsequently adopted, Petitioner Dale Haley was appointed as her guardian ad litem.

The parties reached a \$283,000 settlement in July 2010. The parties submitted a proposed compromise to the district court to approve allocation of \$109,187.26 to Gellner, \$20,100 to Haley, \$79,333.33 to Medicaid, and the remaining \$29,379.41 to Ashley. The district court refused to approve the compromise because the attorney allocation exceeded the amount for the minor. After reviewing Haley's statement of hours and Gellner's retainer agreement, the district court allotted \$95,200 to Ashley and \$63,466.67 as fees and costs to Gellner and Haley combined.

Gellner and Haley sought the Court's intervention by extraordinary writ, asserting the district court lacked the statutory authority to unilaterally alter the distribution, and even if it had such authority, the district court abused its discretion in making the alteration.

Discussion

Justice Parraguirre wrote for the unanimous three justice panel,³ noting that writ relief was appropriate because the petitioners had no right of appeal as neither was an aggrieved party.

¹ By Amanda Ireland.

² NEV. REV. STAT. 41.200 (2007)(governing compromise of a minor's claim).

³ Justice Parraguirre was joined by Justices Douglas and Hardesty.

Further, the petition presented an issue of first impression whether a district court has authority to unilaterally alter distribution of a settlement when approving compromise of a minor's claim.

Petitioners argued that NRS 41.200 merely afforded the district court narrow authority to approve a compromise in its entirety, and not to determine the amount a minor would receive. The Court disagreed, finding that NRS 41.200 granted broad authority to approve the proposed compromise of a minor's claim because the approval process expressly encompassed review of the proposed apportionment of proceeds, including the proposed allocation of attorney fees and other expenses.⁴ Further, NRCP 17(c) allowed the district court to issue any order it deemed proper to protect a minor, a rule almost identical to FRCP 17(c) charging the court with a "special duty . . . to safeguard the interests of litigants who are minors."⁵

The Court was guided by the Fourth Circuit, which concluded that "ascertaining whether attorney fee agreements involving minors . . . are reasonable" was integral to the protective judicial role.⁶ Such review necessarily entailed authority to review each portion of the proposed compromise for reasonableness and to adjust the terms of the settlement accordingly, including the fees and costs to be taken from the minor's recovery.⁷

Next, the Court considered Ashley's proposed compromise and reallocation of fees, applying a "fair and reasonable" approach to review a settlement involving minors. The Court concluded the district court acted within its broad discretion in finding the proposed allocation to Gellner to be unreasonable. The district court had appropriately applied the *Brunzell* factors to calculate the reasonableness of attorney fees.⁸ This analysis noted Gellner's limited experience as a medical malpractice attorney and highlighted his role in complicating the case with many amended motions, dismissals and time-barred complaints due to attorney oversight. Finally, the district court had balanced Ashley's lifelong special needs and potential for a multimillion dollar judgment against the proposed payment. Writ relief was therefore denied on this part.

However, the Court found the reallocation was problematic when it combined Gellner's and Haley's recovery, instead of separating out the fees for the guardian ad litem, who was statutorily entitled to reasonable compensation.⁹ The Court granted mandamus relief in this respect, with the district court instructed to provide a distribution of the \$63,466.67 that reasonably accounted for the duties performed by Gellner as attorney and Haley ad guardian ad litem.

Conclusion

NRS 41.200 authorized the district court to modify the proposed compromise in the minor's best interest, so redistribution of the settlement proceeds was proper. However, the

⁴ NEV. REV. STAT. 41.200(2)(f).

⁵ See *Robidoux v. Rosengren*, 638 F.3d 1177, 1181-82 (9th Cir. 2011).

⁶ *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 243 (4th Cir. 2010).

⁷ *Id.* at 244.

⁸ *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) ("(1) the qualities of the attorney; (2) the character of the work to be done; (3) the actual work performed by the attorney; and (4) the case's result.")

⁹ NEV. REV. STAT. 159.0455(1).

district court should have provided an explanation as to the allocation of fees between the attorney and guardian ad litem.