STATE OF VERMONT
CALEDONIA COUNTY, SS

In re C. St. H.	SUPERIOR COURT Docket No. 91-3-08 Cacv

DECISION ON STIPULATED MOTION FOR APPROVAL OF SETTLEMENT INVOLVING A MINOR

In an interesting pleading, the parties seek superior court approval of release of a minor's claim pursuant to 14 V.S.A. §2643(a). While reciting in their pleading the express language of 14 V.S.A. §2643(a) requiring superior court approval of a release executed by a parent in the settlement of any claim which does not exceed the sum of $1,500, the parties nonetheless seek approval of the settlement of a claim for $12,000. The pleading papers do not make clear whether the settlement involves only injuries to the minor or whether claims of the parents are included in the $12,000 figure. The minor's parents are included in the proffered release, presumably as protection against derivative claims, but it does not appear they suffered any direct injury. In any event, the Caledonia Probate Court has appointed one of the minor's parents as legal guardian.

Contrary to the language of the statute, the parties rely upon 14 V.S.A. §2643 for the proposition that approval by the superior court is required for the settlement of a minor's claim, even when that claim exceeds $1,500. This is a sort of strange reverse application of the legal maxim, *inclusio unis est exclusio alterius*, whereby the parties suggest the inclusion of one necessitates the inclusion of others. Although minor's settlements exceeding $1500 are frequently submitted to superior court for approval, this is an incorrect procedure under the minor's settlement statute.

14 V.S.A. §2643 was enacted to provide a mechanism for settling the nominal claims of minors by their parents without incurring the time and expense of the appointment of a guardian by the probate court. *Whitcomb v Dancer,* 140 Vt. 580 (1982). The requirement of approval by the superior court judge in nominal claims is to afford a measure of protection as would be provided by a guardianship procedure, but without the need of formal appointment of a guardian.

It does not follow that because superior court approval is required for the settlement of nominal claims, now $1500 or less, that superior court approval is required for claims which exceed that amount. Superior court approval of minor's claims which exceed $1500 is neither required nor authorized under Vermont law.

14 V.S.A. §2643(b) requires that a guardian be appointed for any claim of a minor which exceeds $1500. The fiduciary obligations of the guardianship procedure in probate court provide the protections necessary in the settlement of minor's claims exceeding $1500, without superior court review. The shortcut provided by 14 V.S.A. §2643(a) allows the superior judge to conduct an independent review of the appropriateness of a settlement of a minor's claim only when it is a claim for $1,500 or less. With a probate court appointed guardian in place, such review is unnecessary.

In any minor's claim, regardless of amount, a probate court appointed guardian is authorized to settle the claims of a minor pursuant to 14 V.S.A. §2658. If appointed, even in claims for $1500 or less, the guardian is empowered by virtue of the appointment as guardian to settle claims of the minor ward. Where the claim exceeds $1500, a probate court appointed guardian is required.

Once a guardian for the minor has been appointed by the appropriate probate court, it is within the powers of that guardian to settle claims on behalf of the minor. The appointment by the probate court, and the fiduciary responsibilities attendant thereto, protect the minor ward. This is precisely why a guardian ad litem is not empowered to settle claims for the minor. *Whitcomb v Dancer,* 140 Vt. 580 (1982).

The probate court exercises its authority and discretion in the appointment of proper guardians, being mindful of potential conflicts between parents and children. It may be that conflicts between parent and child exist, especially where they are both injured in the same accident and allocation of proffered settlements may be an issue. These are factors which the probate court considers in the appointment of a proper guardian. However, once a guardian is appointed, it is not for the superior court to second-guess the actions of the guardian in acting in the best interest of his or her minor ward regarding the terms of a settlement. The guardian is duty-bound to discharge his/her fiduciary obligations under the aegis of the probate court.

Because the statute is oddly-phrased, it is common that superior courts are asked to approve settlements exceeding $1,500 when 14 V.S.A. §2463 neither requires nor allows it. However, the frequency of a practice should not be confused with either its necessity or its propriety. Were the court to differ with the guardian's assessment, it could find no jurisdiction under §2463 to interfere. See *Estate of Tilton v. Lamoille Superior Court*, 148 Vt. 213 (1987) (superior court judge enjoined from asserting §2463 authority where wrongful death claim was not directly minor's to settle).

Whitcomb was decided at a time when 14 V.S.A. §2643 was being amended to specifically require the appointment of a court-appointed guardian for more serious claims of minors. The independent inquiry by the superior court discussed in that decision pertained only to cases where no guardian was appointed. The amendment to the statute made clear when such appointment is required. In any settlement of a minor's claim exceeding $1500 a guardian must be appointed, who will then be answerable to the probate court. The appointment of a guardian for a minor's claims of $1500 or less is

discretionary, but if done, eliminates the requirement of the superior court approval for a parent's release of those claims.

In the instant case, the proposed settlement exceeds the sum of $1,500; accordingly, superior court approval is neither required nor authorized by Vermont law. A guardian has been duly appointed by the Caledonia Probate Court and she may discharge her fiduciary obligations as she sees fit consistent with the terms of her appointment.

For the reasons stated herein this matter is **DISMISSED**.

Dated at St. Johnsbury this 21st day of March, 2008.

Harold E. Eaton, Jr.
Superior Court Judge