

Orellana v Roosevelt Union Free School Dist.

2009 NY Slip Op 32815(U)

November 20, 2009

Supreme Court, Nassau County

Docket Number: 10572/04

Judge: Antonio I. Brandveen

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

EVELYN ORELLANA, an infant under the age
of 18 years, by her F/N/G, CALIXO R.
ORELLANA, and CALIXO R. ORELLANA
Individually,
Plaintiffs,

TRIAL / IAS PART 31
NASSAU COUNTY

Index No. 10572/04

Motion Sequence No. 002

- against -

ROOSEVELT UNION FREE SCHOOL
DISTRICT and WASHINGTON ROSE
ELEMENTARY SCHOOL,
Defendant.

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1</u>
Answering Affidavits	<u>2</u>
Replying Affidavits	<u>3</u>
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

Jodee GrandWilliams, a board certified acupuncturist, who rendered treatment to the injured infant plaintiff, moves to open the underlying infant compromise proceeding, approve GrandWilliams' \$13,300.00 medical bills for treatment rendered from December 8, 2003 to January 13, 2005, to the injured infant plaintiff, and issue an amended infant compromise order to include payment to GrandWilliams for such services. The motion is supported by GrandWilliams' affidavit dated July 20, 2009. GrandWilliams claims records concerning treatment provided to the infant plaintiff never reached the Court to

form part of the special damages submitted in consideration of the infant compromise proceeding. GrandWilliams asserts no portion of the outstanding bill has been paid by the infant patient, her parents nor any third party notwithstanding the fact the plaintiff mother and plaintiff infant were aware of the treatment rendered from December 8, 2003 to January 13, 2005, to the injured infant plaintiff. The attorney for GrandWilliams points out, in a supporting affirmation dated July 20, 2009, there is another action pending concerning this matter in the Nassau County District for the \$13,300.00 medical bills for treatment rendered from December 8, 2003 to January 13, 2005, to the injured infant plaintiff.

The plaintiffs oppose this nonparty motion. The plaintiffs' attorney points out, in an affirmation dated August 26, 2009, the underlying matter was settled on July 20, 2007, for \$90,000.00 against the defendants, and provides a breakdown of the distributions from that settlement amount. The plaintiffs' attorney asserts plaintiff's counsel was unaware of any lien claimed by GrandWilliams prior to or at the time of the submission of the proposed infant compromise order. The plaintiffs' attorney requests the Court invoke the doctrine of laches against GrandWilliams for the over two year delay which is prejudicial to the plaintiffs.

The defendants respond the record is devoid of any evidence the defendants were on notice of this outstanding professional services bill for treatment. The defendants assert they have no further responsibility to GrandWilliams nor the plaintiffs in the

discontinued action.

GrandWilliams states, in a reply affidavit dated August 31, 2009, the settlement funds have been paid to other health care providers, and the infant plaintiff's portion of the proceeds, to wit \$50,659.83 plus interest is still held in trust at a bank in Nassau County until the infant plaintiff reaches majority on or after February 6, 2010.

GrandWilliams asserts the law firm of the plaintiffs' attorney was aware of these services rendered to the injured infant plaintiff since December 2003. GrandWilliams contends the doctrine of law does not apply here because the delay is attributable to the plaintiffs' attorney. GrandWilliams points out there is no sworn statement from the infant plaintiff nor the plaintiffs which refutes the service rendered by GrandWilliams. GrandWilliams reiterates nonpayment, and maintains an entitlement to bring a separate lawsuit against the plaintiff individually, but a preference for resolution of this matter by the Court since the records and treatment were part of this lawsuit.

This Court has carefully reviewed and considered all of the papers submitted by the nonparty movant and the parties with respect to this motion. CPLR 1206 [c] provides:

Except as provided in EPTL 7-4.9, any property to which an infant, a person judicially declared to be incompetent or a conservatee is entitled, after deducting any expenses allowed by the court, shall be distributed to the guardian of his property, the committee of his property or conservator to be held for the use and benefit of such infant, incompetent, or conservatee except that: the court may order that money constituting any part of the property be deposited in one or more specified insured banks or trust companies or savings banks or insured state or federal credit unions or be invested in one or more specified accounts in insured savings and loan associations, or it may order that a structured settlement agreement be

executed, which shall include any settlement whose terms contain provisions for the payment of funds on an installment basis, provided that with respect to future installment payments, the court may order that each party liable for such payments shall fund such payments, in an amount necessary to assure the future payments, in the form of an annuity contract executed by a qualified insurer and approved by the superintendent of insurance pursuant to articles fifty-A and fifty-B of this chapter. The court may elect that the money be deposited in a high interest yield account such as an insured "savings certificate" or an insured "money market" account. The court may further elect to invest the money in one or more insured or guaranteed United States treasury or municipal bills, notes or bonds. This money is subject to withdrawal only upon order of the court, except that no court order shall be required to pay over to the infant who has attained the age of eighteen years all moneys so held unless the depository is in receipt of an order from a court of competent jurisdiction directing it to withhold such payment beyond the infant's eighteenth birthday. Notwithstanding the preceding sentence, the ability of an infant who has attained the age of eighteen years to accelerate the receipt of future installment payments pursuant to a structured settlement agreement shall be governed by the terms of such agreement. The reference to the age of twenty-one years in any order made pursuant to this subdivision or its predecessor, prior to September first, nineteen hundred seventy-four, directing payment to the infant without further court order when he reaches the age of twenty-one years, shall be deemed to designate the age of eighteen years

CPLR 1207 provides:

Upon motion of a guardian of the property or guardian ad litem of an infant or, if there is no such guardian, then of a parent having legal custody of an infant, or if there is no such parent, by another person having legal custody, or if the infant is married, by an adult spouse residing with the infant, or of the committee of the property of a person judicially declared to be incompetent, or of the conservator of the property of a conservatee, the court may order settlement of any action commenced by or on behalf of the infant, incompetent or conservatee. If no action has been commenced, a special proceeding may be commenced upon petition of such a representative for settlement of any claim by the infant, incompetent or conservatee in any court where an action for the amount of the proposed settlement could have been commenced. Unless otherwise provided by rule of the chief administrator of the courts, if no motion term is being held and


there is no justice of the supreme court available in a county where the action or an action on the claim is triable, such a motion may be made, or special proceeding may be commenced, in a county court and the county judge shall act with the same power as a justice of the supreme court even though the amount of the settlement may exceed the jurisdictional limits of the county court. Notice of the motion or petition shall be given as directed by the court. An order on such a motion shall have the effect of a judgment. Such order, or the judgment in a special proceeding, shall be entered without costs and shall approve the fee for the infant's, incompetent's or conservatee's attorney, if any.

While the contention GrandWilliams, a nonparty, is guilty of laches and unreasonable delay may be without merit here (*see generally Columbus Trust Co. v. Campolo*, 110 A.D.2d 616, 487 N.Y.S.2d 105 [2nd Dept., 1985]), nevertheless the underlying personal injury action was settled under the provisions of CPLR over two years ago with respect to the parties. There is another action pending between the nonparty movant and the plaintiffs in the Nassau County District, to wit seeking payment of the provision of health care services to the infant plaintiff.

Accordingly, this motion is denied.

So ordered.

Dated: **November 20, 2009**

ENTER: 

J. S. **ENTERED**

FINAL DISPOSITION XXX

NON FINAL DISPOSITION

**NOV 24 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE**