

**Romero v Quail**

2013 NY Slip Op 30071(U)

January 7, 2013

Supreme Court, Queens County

Docket Number: 28510/04

Judge: Howard G. Lane

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE HOWARD G. LANE**  
**Justice**

**IAS PART 6**

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HENRY ROMERO, et al.,

Index No. 28510/04

Plaintiffs,

-against-

KIMBERLY QUAIL,  
Defendant.

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The instant ex-parte application for the partial withdrawal of funds from an infant, Taylor Romero's account, by petitioner, Milagros Castro, guardian of infant Taylor Romero, in the amount of \$3,500.00 is hereby denied.

The record reflects that an Infant Compromise Order was signed in the Matter of Henry Romero et al. v. Kimberly Quail by Hon. Arnold N. Price on April 27, 2006, under Index No. 28510/04, whereby, inter alia, infant, Taylor Romero was paid the sum of \$3,400.00 defendant, Kimberly Quail after the deduction of attorney's fees which money was Ordered to "be held for the sole use and benefit of said infant, Taylor Romero jointly with an officer of the North Fork Bank located at 146-21 Jamaica Ave., Jamaica NY to be deposited in said bank either in Certificate of Deposit or Money Market Account, date of maturity not to exceed the infant's 18<sup>th</sup> birthday on April 29, 2021, in the name of said parent to the credit of said infant."

In support of this application, petitioner submits: a copy of the aforementioned Infant Compromise Order dated April 27, 2006, a Petition for the Partial Withdrawal of an Infant's Funds wherein petitioner avers inter alia that: the money shall be used to pay for the gas bill in the amount of \$5,493.00, to buy medications, to pay NYC tickets for Taylor Romero's father Henry Romero, and she additionally states that she has no health insurance at this time, a proposed Order for partial withdrawal of her son Taylor Romero's funds, a copy of a bank print-out from Capital One Bank, N.A., 146-21 Jamaica Avenue, Jamaica, NY 11435 for Taylor Romero indicating that there is a Certificate of

Deposit in the amount of \$3,803.13 which is set to mature on March 10, 2013 and which was opened on July 25, 2006 with an opening deposit of \$3,400.00, a copy of a bank print-out from Capital One Bank, N.A. for Brandon Romero indicating that there is a Certificate of Deposit in the amount of \$3,817.26 which is set to mature on March 10, 2013 and which was opened on July 25, 2006 with an opening deposit of \$3,400.00, an outstanding bill from Good Samaritan Hospital Medical Center for infant Brandon Romero in the amount of \$126.00 for service date August 9, 2012, a bill from Samaritan Medical Services P.C. for patient petitioner Milagros Malca in the amount of \$682.00, a LIPA Keyspan Service Suspension Notice indicating an amount due of \$5,493.13, a LIPA bill in the amount of \$1,375.55 dated October 9, 2012, a receipt from Grello Pediatrics P.C. dated October 24, 2012 for infant Brandon Romero, and a signed and notarized letter to the Court from petitioner herself dated October 23, 2012 whereby petitioner sets forth her reasons for wanting to withdraw funds from her son Taylor Romero's Certificate of Deposit wherein she states that: her health insurance has lapsed due to unpaid monthly premiums for each of her children, her son Brandon Romero has been sick for the last 3 months, she was denied Medicaid because of income ineligibility, she set up an appointment to fill out the Child Health Plus Program application, her son Taylor Romero has been sick for the last 3 weeks with an excessive cough, her youngest daughter has been sick for the last 3 weeks with an excessive cough, their gas service has been shut off since December 2011, and her children became very sick because they spent a winter without heat and hot water.

In the case of *Gilchrist v. Brookdale Hospital Medical Center*, 28 Misc3d 1230A [2010], the Supreme Court, King County held, in relevant part:

APPLICABLE LAW CPLR § 1211(a) provides as follows:

Allowance for infant's support. (a) Petition to supreme court, county court or surrogate's court; contents. A petition to the supreme court . . . for . . . the application of an infant's property or a portion thereof to the infant's support, maintenance or education shall set forth in detail:

1. the amount and nature of the infant's property, where it is situated and how invested, his income from such property or any other source and any claim against the infant;
2. whether or not the infant's parents are living and, if either of them is living, all

circumstances relative to their ability to support the infant, . . .and 3. the terms of any previous order made by any court within or without the state for similar relief and the disposition made of any property pursuant thereto.

The matters that should be considered when applications for withdrawals of infant funds are requested are fully set forth in DeMarco v. Seaman, 157 Misc. 390, 283 N.Y.S. 697, [NY Sup. 1934]). . . Justice Cuff set forth the underlying principles which courts have since applied when faced with like situations: It is the duty of the court to protect the child's fund until he reaches his majority; it is the duty of the parent to support the child until that event; it is the duty of the petitioner to submit detailed information which would justify the court's authorization to deplete the infant's funds for extraordinary expenses beneficial to the child and not affordable to the parents, and such approved expenditures should be disbursed directly to the creditor (Matter of Marmol, 168 Misc 2d 845, 640 N.Y.S.2d 969, [NY Sup. 1996] citing DeMarco v. Seaman, supra). The detailed information required to be joined with the petition for withdrawal of the infant's fund, as outlined in DeMarco, supra, was emphasized and enumerated in Matter of Stackpole, 9 Misc 2d 922, 168 N.Y.S.2d 495 [Mun Ct, Queens County 1957]) and codified in Uniform Rules for Trial Courts 22 NYCRR 202.67(f)

Pursuant to 22 NYCRR 202.67 - Infants' and incapacitated persons' claims and proceedings:

(f) A petition for the expenditure of the funds of an infant shall comply with CPLR article 12, and also shall set forth:

- (1) a full explanation of the purpose of the withdrawal;
- (2) a sworn statement of the reasonable cost of the proposed expenditure;

- (3) the infant's age;
  - (4) the date and amounts of the infant's and parents' recovery;
  - (5) the balance from such recovery;
  - (6) the nature of the infant's injuries and present condition;
  - (7) a statement that the family of the infant is financially unable to afford the proposed expenditures;
  - (8) a statement as to previous orders authorizing such expenditures; and
  - (9) any other facts material to the application.
- (g) No authorization will be granted to withdraw such funds, except for unusual circumstances, where the parents are financially able to support the infant and to provide for the infant's necessities, treatment and education.

As the Court further stated in Gilchrist v. Brookdale Hospital Medical Center, supra:

Withdrawals for "unusual circumstances"- those necessitated by the child's disability -need not be predicated upon the parents' inability to pay for them while those for "necessaries, treatment and education" must be supported by clear proof that the parents are too poor to provide them (Matter of Marmol, [\*\*\*3] supra). An application for either expenditure must comply with 202.67(f) in that sufficient facts must be submitted to enable the court to determine, without conjecturing, that support of the child is not within the financial means of the parents [\*\*5] ( *Id.*)

In the instant matter, petitioner has not presented sufficient facts which would allow the court to conclusively

determine that the support of the infant Taylor Romero is not within the financial means of his parents. Petitioner represents that her household's monthly income is \$4,200.00, that she owns her home, and that she was denied Medicaid due to income ineligibility. All of the applications for payment of medical bills are denied as such items constitute necessities, which parents are obliged to provide for their children (In the Matter of Marmol, 168 Misc2d 845 [Sup Ct, NY County 1996]). Furthermore, the request for the funds to be used to pay for the tickets of the infant Henry Romero's father so that his license is not suspended is denied as the infant's fund are to be used for the "hurt and injury sustained by the infant" and "are not community property for family use." (Gilchrist v. Brookdale Hospital Medical Center, supra).

Accordingly, the application is denied.

This constitutes the decision and order of the Court.

Dated: January 7, 2013

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**Howard G. Lane, J.S.C.**