

Matter of Karnati

2017 NY Slip Op 31643(U)

June 30, 2017

Surrogate's Court, Nassau County

Docket Number: 2013-373306/A

Judge: Margaret C. Reilly

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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**In the Matter of the Application of Paul Raj Karnati,
as Administrator of the Estate of**

DECISION

LEEMA ROSE KARNATI,

**File No. 2013-373306/A
Dec. No. 33054**

Deceased,

**for leave to distribute the settlement proceeds from a
certain cause of action arising from the decedent’s
wrongful death and for judicial settlement of the account.**

PRESENT: HON. MARGARET C. REILLY

The following papers were considered in the preparation of this decision:

| | |
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| Petition with Exhibits. | 1 |
| Waivers and Consents (2). | 2 |
| Attorney’s Affirmation. | 3 |
| Account. | 4 |
| Initial Report of Guardian Ad Litem. | 5 |
| Final Report of Guardian Ad Litem. | 6 |
| February 21, 2017 Stipulation. | 7 |

In this proceeding for allocation of the net proceeds of a wrongful death recovery, the adequacy of the settlement against the defendants and allocation of the recovery entirely to the cause of action for wrongful death was approved by order of the Supreme Court, Nassau County, Hon. Angela G. Iannacci, dated January 29, 2015 which also approved attorneys’ fees and disbursements, leaving the net sum of \$258,351.14 to be distributed pursuant to the order of this court (EPTL §5-4.6).

In the proceeding now before this court, the petitioner seeks a decree: (1) removing the limitation contained in his letters of administration to permit the administrator to effectuate the settlement; (2) dispensing with the necessity of the filing of a bond; (3) allowing reimbursement to counsel for the filing fee for this proceeding; (4) distributing the net proceeds pursuant to the formula established in *Matter of Kaiser*; and (5) judicially settling the administrator's account.

The decedent Leema Rose Karnati was survived by her husband and two infant children, a son and a daughter; her son has since attained the age of majority. The petition proposes to allocate the entire recovery to the cause of action for wrongful death and to distribute the net proceeds in accordance with the formula established by *Matter of Kaiser* (198 Misc 582 [Sur Ct, Kings County 1950]), and to use the infant daughter's share to purchase annuities for her benefit, or alternatively, to deposit her share in an interest bearing account with the guardian of her property, subject to joint control of the court. The guardian ad litem appointed to represent the interests of the decedent's infant daughter filed an initial report wherein he indicated that his only objection to the relief sought was as to the *Kaiser* calculation for his ward. After several conferences, the parties have entered into a written stipulation adopting the guardian ad litem's calculation of his ward's share. The guardian ad litem has now filed a final report approving the proposed compromise as modified by the written settlement agreement. The decedent's adult son filed a waiver and consent and has executed the written stipulation. The petition also alleges that the funeral bill has been paid in full and that no reimbursement therefor is sought and that the administrator has waived his

right to statutory commissions.

Accordingly, the petition as modified by the February 21, 2017 Stipulation is granted. Counsel are entitled to be reimbursed the sum of \$625.00 for the filing fee for this proceeding. The petitioner's share of the recovery is fixed in the sum of \$160,898.43, less the fee of the guardian ad litem; the share of the decedent's son Thomas Karnati is fixed in the sum of \$13,971.21; and the share of the infant child Theresa Karnati is fixed in the sum of \$82,910.50. The share of the infant beneficiary shall be made payable to the petitioner in his capacity as guardian of the child's property.

The court has reviewed the affirmation of legal services submitted by the guardian ad litem. The court notes that the guardian ad litem filed two thorough reports and that his efforts have clearly been beneficial to his ward and that he has expended approximately 13 hours on this proceeding. "The Surrogate's Court bears the ultimate responsibility for deciding what constitutes a reasonable attorney's fee, and the evaluation of what constitutes a reasonable attorney's fee is a matter within the sound discretion of the court. In evaluating what constitutes a reasonable attorney's fee, factors to be considered include the time and labor expended, the difficulty of the questions involved and the required skill to handle the problems presented, the attorney's experience, ability, and reputation, the amount involved, the customary fee charged for such services, and the results obtained" (*Matter of Goliger*, 58 AD3d 732, 732 [2d Dept 2008] [internal quotation marks and citations omitted]; *accord Matter of Freeman*, 34 NY2d 1, 9 [1974]; *Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]). These factors

apply equally to an attorney retained by a fiduciary or to a court-appointed guardian ad litem (*Matter of Burk*, 6 AD2d 429 [1st Dept 1958]; *Matter of Reisman*, NYLJ, May 18, 2000, at 35, col 4 [Sur Ct, Nassau County]). Considering the foregoing, the court fixes the fee of the guardian ad litem in the sum of \$4,550.00, which, pursuant to the February 21, 2017 Stipulation, shall be paid from the share of the surviving spouse.

Settle decree.

Dated: June 30, 2017
Mineola, New York

E N T E R:

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

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