Silva v. St. Jude Enterprises, Inc. (Case No. 24CV05697)

Hearing Date: July 28, 2026
Nature of Proceeding: Minor's Comp.

Attorneys:

For plaintiff Quirk Law Firm by Leonidas Nicol Esq.

For defendant Manning & Kass Ellrod, Ramirez, Trester LLP by David V. Roth and Hannah Ellenhorn

Tentative Ruling:

Appearances required. (CRC 7.952.)

The court intends to set a review hearing, in consultation with counsel, to review proof that the annuity has been purchased. If such proof has been received prior to that hearing, no appearance will be required.

Background:

Plaintiff Gabriel Silva through his guardian ad litem, Heather Silva, filed a complaint for an injury sustained while using the playground at a local McDonald's. A settlement has been reported. Heather Silva now moves for approval of a settlement for $100,000.

Analysis:

1. Reasonableness of Settlement Amount

The court's primary concern when approving a minor's compromise is "whether the compromise is sufficient to provide for the minor's injuries, care and treatment" (*Goldberg v. Superior Court* (1994) 23 Cal.App.4th 1378, 1382.) The petition must contain "a full disclosure of all relevant information bearing upon the reasonableness of the compromise." (Calif. Rules Court, rule 7.950; *Espericueta v. Shewry* (2008) 164 Cal.App.4th 615, 626.) Courts evaluate reasonableness from the perspective of the total settlement and the minor's best interests (*Tapia v. Pohlmann* (1998) 68 Cal.App.4th 1126, 1132, fn. 9.) Information about the minor's injuries, liability analysis, and whether the settlement adequately compensates the minor for damages are critical considerations (See *Espericueta v. Shewry*, *supra*, at 626.) The court must be informed of all facts that could affect whether the settlement amount is reasonable, including any disputes over liens that might reduce the minor's net recovery (*Id.*)

On April 1, 2023, Gabriel Silva was playing in the play area at the McDonalds located at 1407 S. Bradley Road, Santa Maria, CA 93454 when he slipped and fell on some liquid causing him to fracture his left leg. Gabriel Silva suffered a displaced left femoral shaft fracture. On April 2, 2023, Gabriel had surgery on his left leg. A closed reduction of the left femur with hardware installed. On June 21, 2023, Gabriel underwent a second surgery and had the hardware removed. As of March 26, 2024, he has no restrictions, can weight-bear as tolerated, and can participate in sports and other activities. It does not appear any ongoing medical issues are anticipated.

Defendant St. Jude's Enterprises Inc. has offered $100,000 in settlement.

Plaintiff's medical expenses of $24,670.41 were paid by private health insurance. No reductions were agreed to. The plan expected to be reimbursed in full.

2. Attorney Fees and Expenses

In any case in which a trial court approves a settlement involving the payment of funds to a minor, the court must make an order for the payment of reasonable attorney fees. (See Prob. Code, §§ 3600-3601.) Rule 7.955 of the California Rules of Court establishes the procedure the court must follow and factors it may consider in determining whether an attorney's proposed fee is reasonable.

California Rules of Court, rule 7.955(a) provides that, in the absence of a fee agreement *previously approved by the court*, "the court must use a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor." (Cal. Rules of Court, rule 7.955(a)(1).) In determining whether a proposed fee is reasonable, "[t]he court must give consideration to the terms of any representation agreement made between the attorney and the representative of the minor ... and must evaluate the agreement based on the facts and circumstances existing at the time the agreement was made." (Cal. Rules of Court, rule 7.955(a)(2).)

Rule 7.955(b) provides a "nonexclusive" list of factors the court may consider in determining a reasonable attorney's fee.[1] "California Rules of Court, rule 7.955

[1] The first of these factors is "[t]he fact that a minor ... is involved and the circumstances of that minor." (Cal. Rules of Court, rule 7.955(b)(1).) The remaining factors pertain mostly to the nature of the legal work involved. Thus, a court may consider "[t]he amount of the fee in proportion to the value of the services performed" (Cal. Rules of Court, rule 7.955(b)(2)), "[t]he novelty and difficulty of the questions involved and the skill required to perform the legal services properly" (Cal. Rules of Court, rule 7.955(b)(3)), and "[t]he amount involved and the results obtained" (Cal. Rules of Court, rule 7.955(b)(4)). Other factors pertain to other aspects of the representation, including "[t]he time limitations or constraints imposed by the representative of the minor ... or by the circumstances" (Cal. Rules of Court, rule 7.955(b)(5)); "[t]he nature and length of the professional relationship

does not dictate a presumptively reasonable percentage or mathematical method of determining the appropriate attorney fees under a contingency agreement. Indeed, in adopting the rule, the Judicial Council explicitly preempted local rules regarding attorney fees for minors, many of which had established a baseline recovery of 25 percent. The parties do not provide any argument to suggest that any particular percentage is appropriate for all cases. We acknowledge that what is reasonable in applying the factors in California Rules of Court, rule 7.955 in any particular case may comprise a range of percentages." (*Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175—overruling court award of 10% of the settlement amount because it was not reasonable under the facts of the case.) The *Schulz* court went on to observe: "Although the trial court would be acting within its discretion to award less than 31 percent [the requested fee amount], we note that 31 percent is not out of line with awards in class actions, which, like this case, involve attorney fees to be paid by a protected class and that require court approval." (*Id.*) The *Schulz* court ultimately criticized the court for giving "too little consideration to California Rules of Court, rule 7.955(a)(2), which required it to take into account the terms of [the attorney's] representation agreement with [the client] from the perspective of when the agreement was signed. In addition, the court did not acknowledge the factors listed in California Rules of Court, rule 7.955(b). Although these factors are not mandatory, they provide a guide to the considerations relevant to determining whether a fee protects the interests of a minor while allowing an attorney to obtain a fair recovery. Instead of balancing the relevant factors, the court gave overwhelming weight to a single concern, the expense of the children's extensive medical needs." (*Id.* at 1176.)

Attorney Nicol requests fees in the amount of $25,000, which is 25% of the gross settlement. This is reduced from the contractual contingency rate of 45% of the gross settlement if obtained after a trial date had been set. A declaration that satisfactorily addresses the factors identified by rule 7.955 has been submitted. Although the litigation does not appear to have been complicated, counsel has attested to the practical difficulties in negotiating a settlement with insurers and it appears the fee has been appropriately reduced.

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between the attorney and the representative of the minor" (Cal. Rules of Court, rule 7.955(b)(6)); "[t]he experience, reputation, and ability of the attorney or attorneys performing the legal services" (Cal. Rules of Court, rule 7.955(b)(7)); and "[t]he time and labor required" (Cal. Rules of Court, rule 7.955(b)(8)). In addition, the court may consider factors relating to the minor's representative, including "[t]he informed consent of the representative of the minor" (Cal. Rules of Court, rule 7.955(b)(9)); "[t]he relative sophistication of the attorney and the representative of the minor" (Cal. Rules of Court, rule 7.955(b)(10)); and "[t]he likelihood, if apparent to the representative of the minor ... when the representation agreement was made, that the attorney's acceptance of the particular employment would preclude other employment" (Cal. Rules of Court, rule 7.955(b)(11)). The court may also consider "[w]hether the fee is fixed, hourly, or contingent" (Cal. Rules of Court, rule 7.955(b)(12)) and, if contingent, the court may consider "(A) [t]he risk of loss borne by the attorney; [¶] (B) [t]he amount of costs advanced by the attorney; and [¶] (C) [t]he delay in payment of fees and reimbursement of costs paid by the attorney" (Cal. Rules of Court, rule 7.955(b)(13)(A)-(C)). Finally, the court may consider "[s]tatutory requirements for representation agreements applicable to particular cases or claims." (Cal. Rules of Court, rule 7.955(b)(14).)

Reimbursement of $3,849.20 in costs has been requested. The costs are adequately documented and are reasonable.

3. Disposition of Balance

After medical expenses are reimbursed, and fees and costs paid, the balance to be distributed is $46,480.44. This will be used to purchase an annuity from the Prudential Insurance Company of America. The annuity will be structed as follows:

- Guaranteed Lump Sum - $15,000.00 paid as a lump sum on 01/27/2038 (at age 18), guaranteed.
- Guaranteed Lump Sum - $25,000.00 paid as a lump sum on 01/27/2041 (at age 21), guaranteed.
- Guaranteed Lump Sum - $60,049.38 paid as a lump sum on 01/27/2045 (at age 25), guaranteed.

The total amount of all guaranteed future Periodic Payments is $100,049.38.

Summary

The court finds the settlement to be reasonable and grants the petition.