STATE OF VERMONT
ORANGE COUNTY, SS.

ORANGE SUPERIOR COURT
DOCKET NO. 41-2-03 Oecv

LAURA DUCEY
Plaintiff

vs.

NISHAN GROUT
Defendant



**DECISION ON PETITION TO APPROVE MINOR'S SETTLEMENT**

This matter came on for hearing on July 22, 2004, on plaintiff's petition to approve the settlement of a claim involving a minor. The plaintiff, Laura Ducey ,was represented by Michael Green, Esq.. The defendant, Nishan Grout, was represented by Kaveh Shahi, Esq.

The purpose of plaintiff's petition is to obtain superior court approval of a settlement of a minor's claim for personal injury. The proposed terms of the settlement exceed $1500. The plaintiff, Laura Ducey, is the duly appointed guardian of her son, James Ducey, who was injured on September 2, 2001, when struck by an automobile driven by Grout, while rollerblading along Route 14 in Williamstown, Vermont. James Ducey was 13 years old at the time of the accident.

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 where that settlement exceeds $1500. This is an incorrect, although oft-employed, reading of that statute.

14 V.S.A. §2643 was enacted to provide a mechanism for the settlement of 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 some of the protection as would be provided by a guardianship procedure 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 short-cut 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 $1500 or less.

In any minor's claim, regardless of amount, a probate court appointed guardian is authorized to settle 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 provide the protections needed on behalf of 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 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 settlement sums may be in issue. 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 interests of his or her minor ward regarding the terms of a settlement.

That superior courts have often been asked to approve settlements exceeding $1500 is perhaps understandable, but of no consequence. The frequency of a practice is not to be confused with its propriety. Whitcomb v. Dancer, 140 Vt. 580 (1982) 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 it 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 minor's claims of $1500 or less is discretionary, but if done, eliminates the requirement of superior court approval for those claims.

Based upon the foregoing, the plaintiff's petition for approval of the settlement os DENIED.

Dated at Chelsea, Vermont this 22 day of July, 2004.

FILED
JUL 22 2004
ORANGE SUPERIOR COURT

Harold E. Eaton, Jr., Presiding Judge