

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANGELA M. BARLOW, JOHN BARLOW,)
JR., wife and husband, and ANGELA M.) No. 468, 2012
BARLOW, as Next Friend of JOHN)
BARLOW, III, and DAWN LOCKE, as Next) Court Below: Superior Court
Friend of KIMBERLY FOTH, a minor,) of the State of Delaware, in
Plaintiffs Below,) and for New Castle County
Appellees as to Barlow,) C.A. No.: N11C-04-237
) (Consolidated)
v.)
)
MICHAEL P. FINEGAN, DANA M.)
FINEGAN, and MICHAEL P. FINEGAN,)
JR.,)
Defendants Below, Appellees,)

DAWN LOCKE, as Guardian Ad Litem of)
KIMBERLY FOTH,) C.A. No.: N11C-09-105
Plaintiff Below, Appellant,)
)
v.)
)
MICHAEL PATRICK FINEGAN and)
MICHAEL P. FINEGAN, JR.,)
Defendants Below, Appellees,)

TITAN INDEMNITY COMPANY,)
Plaintiff Below, Appellee,) C.A. No.: N12C-03-013
)
v.)
)
DAWN LOCKE, as Next Friend of)
KIMBERLY FOTH and ANGELA)
BARLOW, as Next Friend of JOHN)
BARLOW, III,)
Defendants Below,)
Appellants as to Foth.)

Submitted: March 20, 2013
Decided: May 6, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 6th day of May 2013, upon consideration of the parties' briefs, arguments, and the record on appeal, it appears to the Court that:

1. Dawn Locke, on behalf of minor Appellant Kimberly Foth, (collectively Foth) appeals the Superior Court's Order entering final judgment in favor of Foth and Appellee John Barlow III (John).¹

2. Appellee Angela Barlow (Angela) and minors Foth and John were injured in a car accident in 2009. Angela, John, and John Barlow Jr. filed suit against the alleged tortfeasors in Superior Court,² and Foth later filed a separate suit. The alleged tortfeasors'³ insurer, Appellee Titan Indemnity Co., filed an interpleader action and tendered \$30,000 to resolve all the plaintiffs' personal injury claims.

3. The parties agreed that Angela would receive \$15,000 for her injuries and that the remaining \$15,000 would be divided evenly between Foth and Barlow.

¹ Multiple parties have the surname Barlow, so this Order refers to them by their first names.

² Although the attorney who filed the first lawsuit also filed on behalf of Foth, he did not represent Foth and had no authority to file suit on Foth's behalf.

³ The alleged tortfeasors, Appellees Michael P. Finegan, Michael P. Finegan Jr., and Dana M. Finegan, joined in Angela, John, John Barlow Jr., and Titan Indemnity Co.'s Answering Brief.

After agreeing to the settlement, Foth’s counsel advised the other parties that his client would not approve the settlement until he had an opportunity to review John’s medical records to ensure the two minors had comparable injuries. In response, John filed a motion to enforce the settlement agreement, arguing that Foth’s counsel had authority to settle the lawsuit.

4. After argument on the motion to enforce the settlement, the Superior Court judge granted the motion, holding that “[i]t is presumed that a lawyer has authority to bind his client.”⁴ Although the trial judge stated he would refer the case to a judge for approval of a minor settlement,⁵ no hearing occurred. The trial judge later entered a Final Judgment in favor of Foth and Barlow, who each received \$7,500. Foth appeals, claiming that the trial judge erred by refusing to allow Foth to present evidence that his counsel lacked authority to settle the litigation and by issuing an Order entering final judgment without holding a minors’ settlement hearing.

5. We review legal questions *de novo*.⁶ Under Delaware law, no person dealing with the “receiver of a minor” can rely on the receiver’s authority to

⁴ App. to Opening Br. A31.

⁵ *Id.* The trial judge repeated his intention to refer the matter to a commissioner for consideration of the minor settlement in his April 27, 2012 Order denying Foth’s Motion for Reargument.

⁶ *Crumplar v. Superior Court ex rel. New Castle Cnty.*, 56 A.3d 1000, 1005 (Del. 2012) (citing *Plummer v. Sherman*, 861 A.2d 1238, 1242 (Del. 2004)).

release claims or settle tort claims without first seeking court approval.⁷ The Superior Court Civil Rules further provide that “[a] petition to authorize settlement of a tort claim for a disabled person shall be accompanied by medical reports or other evidence satisfactory to the [c]ourt and, in the absence of such evidence, the [c]ourt may require oral testimony.”⁸

6. The parties agree that no minors’ settlement hearing occurred. Under 12 *Del. C.* § 3926 and Superior Court Civil Rule 133(c), this court approval is required before the settlement can become final. Therefore, the trial judge erred by issuing an Order entering final judgment and this matter must be remanded for the purpose of holding a minors’ settlement hearing for Foth and John. The parties should present arguments concerning the proposed settlement’s relative fairness to the minors and evidence such as medical reports at the hearing. We do not reach Foth’s argument regarding his attorney’s authority to settle the matter because, absent the minors’ settlement hearing, no final settlement occurred.

⁷ 12 *Del. C.* § 3926.

⁸ Super. Ct. Civ. R. 133(c); *see also* Ct. Ch. R. 185(b) (describing parallel procedures for the settlement of an injured minor’s tort claim). While the Superior Court Civil Rules use the term “disabled person,” it is beyond dispute that minors are legally disabled. *See Ward v. Ward*, 537 A.2d 1063, 1070 (Del. Fam. 1987).

NOW, THEREFORE, IT IS ORDERED that the Superior Court's Order entering final judgment is VACATED and this matter is REMANDED for further proceedings in accordance with this Order.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice