IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF B. H., a minor	: :	
P. H. and R. H., Petitioners	:	**C.M. No. 18697-N (VCS)**

REDACTED ORDER OVERRULING OBJECTIONS AND AFFIRMING MASTER'S FINAL REPORT

WHEREAS, Master Zurn considered a Petition filed by Petitioners, P. and R. H. ("Petitioners"), under Court of Chancery Rule 180 and 12 *Del. C.* § 3901, in which Petitioners requested that the Court establish a plenary guardianship on behalf of a minor following a settlement of a medical negligence personal injury claim;

WHEREAS, the Master issued her Draft Report on November 13, 2017, followed by a Final Report on November 16, 2017 (the "Final Report"), in which she recommended that the Petition be denied; and

WHEREAS, the Petitioners took timely exceptions to the Final Report;

NOW, THEREFORE, this 14th day of December, 2017, THE COURT FINDS AND ORDERS AS FOLLOWS:

1. The Court has conducted a *de novo* review of the factual and legal conclusions in the Final Report.[1] The Court has also reviewed the record, including

[1] *See DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999).

the Petition and all exhibits thereto, and has determined that it is possible to conduct a *de novo* review of this matter without conducting a further evidentiary hearing.[2] The exceptions do not turn on dispositive credibility determinations that would require the Court to view the witnesses.[3]

2. Pursuant to 12 *Del. C.* § 3901 and Court of Chancery Rule 180, the default rule is that a "limited guardianship" of the property will be established for the benefit of a minor who receives funds in settlement of a personal injury claim. That limited guardianship serves the purpose of ensuring that the settlement funds are placed in "an annuity or structured financial instrument for the benefit of the minor."[4] The court's supervision of the guardianship does not extend beyond that, meaning there are no regular reports (with supporting documents) to receive and review, and no applications (often serial) by the guardian to access the guardianship funds to adjudicate. Indeed, the limited guardianship terminates once the funds are secure in one of the prescribed investment vehicles.

3. Among the purposes of the limited guardianship is to reduce the number of plenary guardianships created and monitored by the Court of Chancery following

[2] *See id.*
[3] *See id.*; *accord Lynch v. City of Rehoboth Beach*, 2005 WL 2000774, at *1 (Del. Ch. Aug. 16, 2005) ("When the parties except to one or more of the Master's findings from the evidence in the case, the Court can read the record that is relevant to the exceptions raised and draw its own factual conclusions.").
[4] Del. Ct. Ch. R. 180(b)(1).

a minor's personal injury settlement (with associated burdens).[5] The statute (and attendant rules) accomplish this by providing that plenary guardianships should be established only where the court determines that a plenary guardianship is "necessary"[6] and "in the "best interests of the minor" in order "to protect the estate and maximize benefits available to the minor, including public benefits."[7] In the absence of the requisite showing, the statute and this Court's rules presume that "an annuity or structured financial instrument" will provide adequate protection of the minor's funds and appropriate long-term benefits.

4. Here, Petitioners maintain that a plenary guardianship should be created in this court so that they may create an investment fund on behalf of the minor that will yield better returns than an annuity or structured financial instrument and that will allow them to access those funds without penalty should the minor require future treatment. The minor's treating physician, R. E. W., PhD., M.D., has opined that the minor probably will require future treatment but he has not quantified the expected or even probable costs of the treatment(s).

5. The Master concluded that the Petitioners had not made the requisite showing under Rule 180(c)(1) or Section 3901(k)(1) to justify the creation of a plenary guardianship. I agree. The fact that a guardian believes that she can earn

[5] H.B. 227, 147th Gen. Assem. (2013), Summary.
[6] Del. Ct. Ch. R. 180(c)(1).
[7] 12 *Del. C.* § 3901(k)(2).

better returns for the minor in an investment vehicle other than "an annuity or structured financial instrument" is not, alone, a justification for a plenary guardianship under Delaware's revised minor's settlement/guardianship regime. If it were, then every guardian of a minor who settled for more than the $25,000 threshold established in the statute (and by extension the Court's rules) could circumvent the statute's preference for a limited guardianship by simply averring that she could do better for the minor in other investments than the minor would earn via an annuity or other structured financial instrument. The Court very quickly would find itself back in the business of plenary guardianships of the property for minor personal injury settlements. That is not what was intended by the General Assembly when it revised the minor's settlement regime.

6. Petitioners maintain that they will need access to the settlement proceeds during the course of the guardianship to pay for the minor's anticipated medical needs (and that such access will not be available if the settlement funds are structured). This, of course, is precisely the reason the statute and this Court's rules allow for the creation of a plenary guardianship as an exception to the default rule providing for a limited guardianship. But to invoke this exception, the guardian must do more than simply state (even with physician's support) that the minor will require future treatment. The statute and the rules contemplate that settlement funds can be placed in a plenary guardianship only to the extent "necessary … during the term of

minority" to attend to the needs of the minor such as future medical care.[8] Thus, to justify setting aside the settlement funds (or a portion thereof) in a plenary guardianship, Petitioners must identify, with appropriate supporting evidence, the funds that will likely be "necessary" to pay the cost(s) of the anticipated care.[9] Contrary to Petitioners' position here, this is not a fanciful exercise. Dr. W. has identified a range of medical treatments this minor will likely require "during the term of minority." These treatments/procedures have a cost and that cost can be calculated. Indeed, such calculations (probable estimates) of future medical care are presented in our courtrooms every day. No such evidence was presented in support of the Petition *sub judice*.

7. After carefully considering the Exceptions, *de novo*, I am satisfied that the Master correctly determined that the Petition failed to justify the creation of a plenary guardianship. "Believing the Master to have dealt with the issues in a proper manner and having articulated the reasons for her decision well, there is no need for me to repeat her analysis."[10]

8. The exceptions to the Final Report are overruled, and the Final Report is adopted and affirmed.

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[8] Del. Ct. Ch. R. 180(c)(1).

[9] This showing would need to demonstrate, *inter alia*, that the funds required for future care would exceed the $25,000 that may be placed in an UTMA account for such purposes pursuant to the statute and the Court's rules. *See* 12 *Del. C.* §§ 3901(c)(l)(a) & (l)(1)(b); Ct. Ch. R. 180(b).

[10] *In re Erdman*, 2011 WL 2191680, at *1 (Del. Ch. May 26, 2011).

9. Petitioners may refile their Petition if they provide the Court with specific information regarding the projected (probable) costs of future medical treatment along with competent supporting evidence.

IT IS SO ORDERED.

/s/ Joseph R. Slights III
Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF B. H., a minor P. H., and R. H., Petitioners	)))))	C. M. No. 18697-N

REDACTED MASTER'S REPORT

Final Report: November 16, 2017
Draft Report: November 13, 2017
Date Submitted: October 23, 2017

Bartholomew J. Dalton, Esquire, and Andrew C. Dalton, Esquire, of Dalton & Associates, P.A., Wilmington, Delaware; Attorneys for Petitioners.

ZURN, Master

In this guardianship case, parents of a minor child seek approval of settlement of a medical malpractice claim of a minor. P.H. and R.H. ("the Guardians") wish to be appointed plenary guardians of their daughter B.H.'s property, specifically a $1,834,401 settlement from a medical malpractice case. The Guardians wish to place these funds in an investment guardianship account.

A petition for plenary guardianship was filed on October 6, 2017. I denied that petition for failure to comply with Court of Chancery Rule 180 in a final report dated October 13, 2017. An amended petition was filed on October 23, 2017. I denied that petition in a draft report dated November 13, 2017. On November 14, 2017, the Guardians filed a "Notice of Exceptions to Draft Report" and confirmed to the Register in Chancery that they stood on that filing and did not desire to submit any additional briefing. This is my final report.

When minors or otherwise legally disabled persons are involved as litigants in settlement negotiations, the court's role is increased by statute, and its authority is paramount.[1] Title 12, Section 3926 of the Delaware Code states that no person dealing with the receiver of a minor shall be entitled to rely on the authority of such receiver to settle tort claims. Court approval is required to protect the minor's interests and to ensure that a settlement made in the minor's name is both equitable

[1] *Barlow v. Finegan*, 76 A.3d 803, 805 (Del. 2013).

and just.[2] In order to accomplish these goals, Delaware courts have adopted rules prescribing the process for obtaining court approval of settlements on behalf of minors.[3]

B.H.'s settlement is governed by Court of Chancery Rule 180, Superior Court Rule 133, and 12 *Del. C.* §§ 3901(k) and (l). These standards were amended in 2014 to reduce the number of petitions for approval involving smaller sums and allow judicial resources to be focused on cases with more at stake.[4] The bill summary for Section 3901's amendment explained:

> To preserve judicial resources while still providing appropriate protections for minors, this legislation modifies the current requirement to appoint a guardian in all cases involving minors who receive money or property through settlements, bequests, or other transfers. ***To protect the ultimate beneficiary, the funds must be deposited in certain approved financial instruments, as determined by court rule.*** This process also lowers the administrative costs for these smaller settlements, leaving more funds available to the minor beneficiary. Currently, court staff spends a large amount of time monitoring small minor guardianship cases for compliance, when such oversight often is not necessary, ***provided the funds are invested in proper financial instruments at the outset***. ***In special circumstances***, the legislation provides a mechanism to have the Court of Chancery directly involved ***upon a showing of good cause***. By not requiring the appointment of a guardian for matters below certain monetary thresholds, the number of minor guardianship cases will be substantially reduced, allowing Court of Chancery employees to devote limited judicial resources and staff to cases involving either adult disabled persons or minors who receive a large sum of money ***and whose needs require access to that money while the minor is***

[2] *Id.* at 806.
[3] *Id.*
[4] 79 Del. Laws 2014 ch. 226, § 1.

> ***under age.*** This will allow for more oversight in guardianships involving the most vulnerable Delawareans. The legislation gives the Court of Chancery and the Superior Court, acting together and with the approval of the Supreme Court, the discretion to set the dollar threshold below which a guardian of a minor's property need not be appointed. This flexibility will allow those courts to adjust the dollar threshold as necessary over time, or as required by changing circumstances once the legislation goes into effect.[5]

In other words: the framework for approving and supervising minors' settlements relies on restrictive financial instruments to protect the minors' funds and conserve judicial resources unless a minor requires access to her funds.

To achieve these stated goals, settlements totaling $25,000 or less are placed in Uniform Transfer to Minor Act ("UTMA") accounts.[6] For settlements in excess of $25,000, the first $25,000 may be placed in a UTMA account, but the remainder must be placed in an annuity or structured financial instrument that restricts access to the funds until the minor reaches majority.[7] In those circumstances, the guardian is appointed for the limited purpose of obtaining the funds and placing them in the prescribed protective financial instrument; the guardianship is referred to as a "limited guardianship."[8] The guardian is also appointed for a limited time: once funds are placed in the proper instrument, limited guardianships are closed, such that the Court of Chancery no longer oversees the case. A limited

[5] H.B. 227, 147th Gen. Assem. (2013), Summary (emphasis added).
[6] 12 *Del. C.* §§ 3901(k)(1)(a), (l)(1)(b); Ct. Ch. R. 180(b); Super. Ct. R. 133(a)(3).
[7] 12 *Del. C.* §§ 3901(k)(b)(2); Ct. Ch. R. 180(b).
[8] *Id.*

guardianship, with funds placed in an annuity or structured financial instrument, is the default.

There are two exceptions to that default for cases in excess of $25,000. Under either showing of good cause, guardianship may be "plenary" and settlement funds may be placed in a guardianship account from which funds may be withdrawn by Court order.[9] The Court of Chancery oversees plenary guardianships until the minor reaches the age of majority and the minor and Court are satisfied the guardian fulfilled her fiduciary duties.

The first exception permits plenary guardianship if it is "necessary" because "the guardian expects to need access to the minor's funds during the term of the minority."[10] The amended petition alleges B.H. will likely require future medical intervention because both a surgical error and a birth defect will continue to cause respiratory distress, bronchitis, and pneumonia. B.H.'s doctor affirmed she will likely need additional surgery.[11] The amended petition concluded that while some funds would likely be needed to pay for B.H.'s care needs, it was not possible to predict a specific amount of funds that would be needed.[12] Instead, the Guardians seek to place all of B.H.'s funds into an investment account.

[9] 12 *Del. C.* § 3901(l)(2); Ct. Ch. R. 180(c).
[10] Ct. Ch. R. 180(c)(1).
[11] Am. Pet. Ex. B.
[12] Am. Pet. ¶ 13.

I conclude that placing over $1 million of B.H.'s settlement in a guardianship account is unjustified when the Guardians have not specified an amount B.H. will "need" to access under Rule 180(c). The amended petition fails to demonstrate good cause for making all of B.H.'s funds accessible based on need. Indeed, the amended petition fails to specify any amount B.H. might need during the term of her minority. The legislative history behind Sections 3901(k) and (l) explains that these statutes accomplish their goal of protecting minors' assets by requiring the assets to be placed in restrictive instruments by default. I interpret Rule 180(c) to grant an exception to that default only to the extent a need is demonstrated; funds not needed during the term of minority should remain in the default protective instrument. In this case, the amended petition fails to demonstrate good cause for plenary guardianship and placement of all of B.H.'s funds in a guardianship account under Rule 180(c).[13]

[13] On exception from the draft report, the Guardians asserted that the inability to guess an amount of funds B.H. might need supports, rather than undermines, the petition for plenary guardianship. Rule 180(c) sets a high burden: the guardian must "expect[] to need access" to the funds. An expectation of need requires a greater showing than a guess; if the Guardians cannot guess an amount, they cannot expect to need it. The amended petition demonstrates B.H. will require future medical intervention, but stops short of alleging an expectation of need to access over $1 million to pay for it. The legislative history indicates I am to err on the side of limited guardianship; I therefore conclude the amended petition fails to meet Rule 180(c)'s high burden. In my view, the Guardians' focus on achieving higher investment returns, but not on identifying any amount of funds to which they need access, supports a conclusion that the petition for plenary guardianship is motivated by higher returns and not a need for funds.

The Guardians also argued on exception that if funds were needed but not available, B.H.'s structured settlement would have to be sold which would cause a significant reduction in value. But Rule 180(b) states that any structured financial instrument "shall prohibit the

The second exception from the default of limited guardianship permits plenary guardianship upon a showing of good cause if the Court determines a guardian "is necessary to protect the minor's estate and maximize benefits available to the minor, including public benefits."[14] The amended petition does not assert that any specific vehicle for B.H.'s funds is necessary for her to obtain public benefits, such as a special needs trust so that she can obtain Medicaid. Rather, the Guardians argue this language requires the Court to permit plenary guardianship to maximize the "benefit" of investment returns. The Guardians assert an investment account comprising a "conservative mix of stocks and bonds" is "the best yet safest" way to invest the settlement proceeds and maximizes "benefits" to B.H. in the form of investment returns and security.[15]

When interpreting statutory language, Delaware courts deploy well-established canons. Under the statutory construction canon of *ejusdem generis*, when general language is presented with a more specific example, "such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically

encumbrance, liquidation, sale, or other transfer of the policy" before the minor reaches the age of majority. The Guardians' exceptions are dismissed.

[14] 12 *Del. C.* § 3901(l)(2).

[15] Am. Pet. ¶ 10.

mentioned."[16] Another relevant canon is *noscitur a sociis*, which requires that words "be interpreted in the context of words surrounding them."[17]

The only specifically enumerated "benefits" in Section 3901(l)(2) are "public benefits," such as Medicaid or Social Security. Applying canons of statutory construction, I conclude the general term of "benefits" must also relate to money paid by a third party, like a parent's employer or insurance company, to a minor entitled to receive it. I conclude Section 3901(k)(2) permits plenary guardianship to permit the guardian to hold the funds in a manner that maximizes benefits such as Social Security or health insurance, to ensure the minor's tort settlement does not render a minor ineligible for income or insurance to which the minor was otherwise entitled.[18]

While greater investment returns would certainly benefit B.H., that is not the sort of benefit that justifies extraordinary plenary guardianship. As the legislative history makes clear, the entire guardianship schema is designed to protect the minors' funds. Promises of greater investment returns carry risks of unfulfilled promises, poor market performance, and misappropriation due to the account's

[16] *Agar v. Judy*, 151 A.3d 456, 473 (Del. Ch. 2017).
[17] *Id.*
[18] On exception, the Guardians argued the term "including" in the clause "benefits available to the minor, including public benefits" means the term "benefits" is broader than "public benefits" and comprises the maximization of settlement proceeds. Reading that clause in the full context of Section 3901 and its legislative history, I remain convinced that plenary guardianship is reserved for extraordinary circumstances such as when a creative structure for holding funds is necessary to preserve eligibility for benefits like Medicaid. This exception is dismissed.

looser security. The Court is ill-equipped to evaluate investment plans and prospectuses to determine whether a given investment account is in the minor's best interest. I appreciate that an annuity or structured settlement may provide lower returns than the requested investment account. But higher investment returns are not a "benefit" justifying the extraordinary relief of a plenary guardianship.

The amended petition also argues that consistent ("one-size-fits-all") application of Rule 180 and Section 3901 disadvantages minors in cases where guardians "possess the financial acumen and desire to actively maximize the minor's assets."[19] In other words, the amended petition asks the Court to disregard the plain language and legislative history of Rule 180 and Section 3901 in cases with smarter, more diligent, and more honest guardians. Even if the Court could reliably identify such guardians, doing so would deprive minor Delawareans of equal and consistent application of the law designed to protect their funds. One standard must apply to all guardians regardless of ability and resources. The General Assembly clearly and purposefully set a uniform standard that errs on the side of protecting the ultimate beneficiaries.

Finally, the amended petition argues that the General Assembly's use of the undefined term "structured financial instrument" in Section 3901 and Rule 180

[19] Am. Pet. ¶ 12.

permits the use of a financial vehicle distinct from an annuity or structured settlement even without a showing of good cause. But the legislative summary states the clear intent to focus judicial resources on cases in which minors need access to their funds by requiring restrictive and protective structured instruments when no access is needed. The undefined terminology implementing that clear legislative intent does not negate it.

Delaware law requires conservative investment vehicles and limited guardianships in all but "special circumstances," "to protect the ultimate beneficiaries" and to focus this Court's resources on minors "whose needs require access to that money while the minor is under age."[20] The amended petition provides B.H. does not need access to all her money while underage and does not predict an amount she does need. Court of Chancery Rule 180(b) permits implementation of a limited guardianship under which an amount under the $25,000 threshold may be placed in a UTMA account and the balance placed in a court approved annuity or structured financial instrument. In light of B.H.'s predicted medical needs, I conclude that is appropriate and equitable to place $25,000 of B.'s settlement amount in a UTMA account with the balance in an annuity or structured financial instrument.

[20] H.B. 227, 147th Gen. Assem. (2013), Summary.

The amended petition requests reimbursement to the petitioners for the minor's medical co-pays and the Guardians' travel expenses and lost wages due to the minor's medical problems. The amended petition also requests payments of attorneys' costs and fees. These issues are left for Superior Court to decide in approving the terms of the settlement.[21]

For the foregoing reasons, the amended petition for plenary guardianship is denied. The Guardians may serve as limited guardians, with $25,000 placed in a UTMA account and the remainder placed in an annuity or structured financial instrument. This is a final report pursuant to Court of Chancery Rule 144. If and when this report is adopted by the Court, counsel shall submit a conforming proposed order.

Respectfully,

/s/ Morgan T. Zurn

Master in Chancery

[21] Super. Ct. R. 133(a)(2).