

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**DARRIEN MCKINNEY, as biological father
And Next Friend of KM,**

Plaintiff,

v.

KANSAS BEST PIZZA, INC.,

Defendant.

Case No. 17-2369-JAR-GLR

MEMORANDUM AND ORDER

Pending before the Court is the Motion for Appointment of Next Friend Pursuant to Rule 17(c) (ECF 3), filed by Darrien McKinney, the father of Plaintiff KM, a minor. In support of this request Darrien McKinney states that KM desires to assert certain claims in this matter and that, because KM is a minor, cannot do so on her own behalf. Thus, Darrien McKinney has consented to act as next friend of KM in order to pursue such claims on behalf of KM.

The Federal Rules of Civil Procedure provide for cases in which parties may sue by a “next friend” or guardian ad litem.¹ More specifically, Rule 17(c) states as follows:

(c) Minor or Incompetent Person.

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

- (A)** a general guardian;
- (B)** a committee;
- (C)** a conservator; or
- (D)** a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem--or issue another appropriate order--to protect a minor or incompetent person who is unrepresented in an action.²

¹Fed. R. Civ. P. 17(c).

²Id.

Applying the rule to the facts presented here, the Court finds that, as the natural father of KM, Darrien McKinney qualifies as a general guardian who may sue on behalf of a minor, without needing a formal court appointment.³ For these reasons, the Court finds the motion for appointment of next friend is moot.

IT IS THEREFORE ORDERED BY THE COURT that the Motion for Appointment of Next Friend Pursuant to Rule 17(c) (ECF 3) is **denied as moot**. The Court recognizes Darrien McKinney's status as a general guardian of KM, and in that capacity Mr. McKinney may sue on KM's behalf pursuant to Fed. R. Civ. P. 17(c)(1)(A).

Dated: June 29, 2017

s/Gerald L. Rushfelt
Gerald L. Rushfelt
U. S. Magistrate Judge

³*Meredith ex rel. Meredith v. Dusin*, No. 03-2532, 2003 WL 22844157, at *1 (D. Kan. Nov. 12, 2003) (citing *Burk v. Smith*, 252 F.3d 1260, 1264 (11th Cir. 2001); *Communities for Equity v. Mich. High Sch. Athletic Ass'n*, 26 F. Supp. 2d 1001, 1006 (D. Mich. 1998)).