

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

KEELY DUNHAM, by and through her)
Next Friend TAMMY TURNER,)
)
Plaintiff,)
v.)
)
MIDWEST TRUCKING AND)
TRANSPORT, INC. and)
KAZIMIERZ WOJCIK,)
)
Defendants.)

Case No. 08-5054-CV-SW-GAF

JUDGMENT AND ORDER APPROVING SETTLEMENT

Presently before the Court is Plaintiff Keely Dunham, natural child of Tonia L. Dunham-Roa, by and through her Next Friend, Tammy Turner’s (“Plaintiff”), Supplemental Application for Approval of Minor Settlement and Wrongful Death Settlement and for Apportionment of Damages in a Wrongful Death Action. (Doc. #93). Plaintiff has entered affidavits in support of the Application (Doc. #93-4, 5) and a Letter of Guardianship from the Probate Court of Hamilton County, Ohio, which established a guardianship for Plaintiff’s benefit with John Charles Dunham, Sr. appointed as Guardian (Doc. #93-2). Defendants Midwest Trucking and Transport, Inc. and Kazimierz Wojcik (“Defendants”) do not oppose Plaintiff’s Application, and the parties have announced that, subject to the Court’s approval, they have agreed to waive a trial by jury and submit all settlement issues to the Court.

The Court, having considered the evidence presented relating to Plaintiff’s cause of action for the alleged wrongful death of Tonia L. Dunham-Roa, and in accordance with the provisions of Mo. Rev. St. § 537.080, et seq., does hereby find:

1. This is a claim for the alleged wrongful death of Tonia L. Dunham-Roa as described in Plaintiff’s Application.

2. Plaintiff is a minor and is a natural child of Tonia L. Dunham-Roa. Plaintiff's claim is brought by her Next Friend, Tammy Turner.
3. Pursuant to Mo. Rev. St. § 537.095, Plaintiff has diligently attempted to notify all parties having a cause of action under Mo. Rev. St. § 537.080.
4. John Charles Dunham, Sr., Lizzie Dunham, and Jeffrey Roa have waived their right to pursue or join in a cause of action for the wrongful death of Tonia L. Dunham-Roa or to participate in any way in any recovery that may arise from any cause of action for the wrongful death of Tonia L. Dunham-Roa, and any other rights they may have under Missouri's wrongful death statutes, and all three have also assigned any such rights to Keely Dunham.
5. While Defendants deny liability to Plaintiff of any kind or character, Plaintiff, nonetheless, has been able to negotiate a compromise and settlement, the terms of which are set out in the Release and Covenant Not to Sue (the "Release"), attached to Plaintiff's Application as Exhibit "E."
6. The settlement, attached to Plaintiff's Application as Exhibit "D," has been negotiated in good faith; was made and entered into in accordance with Mo. Rev. St. § 537.060; is fair and reasonable concerning all the facts and circumstances; and its approval by this Court will be in the best interests of Plaintiff.
7. The terms of the Release are approved in their entirety.
8. Under the Release, Plaintiff intends to release any and all claims against Defendants that she may have arising from the accident on or about August 6, 2005, including any claims arising from the death of Tonia L. Dunham-Roa as to Defendants.

9. The proposed total settlement in the amount of Eighty Thousand Dollars and 00/100 Cents (\$80,000.00), less reasonable expenses of Seven Thousand Seven Hundred and One Dollars and 32/100 Cents (\$7,701.32) and reasonable attorneys' fees of Thirty-two Thousand Dollars and 00/100 Cents (\$32,000.00) for Hosmer King & Royce P.C., is in the best interests of Plaintiff, and the remaining net amount is to be apportioned as follows: Forty Thousand Two Hundred Ninety-eight Dollars and 68/100 (\$40,298.68) to John Charles Dunham, Sr., as Legal Guardian of Keely Dunham.

The Court does hereby **ORDER, ADJUDGE, AND DECREE:**

Plaintiff's Supplemental Application for Approval of Minor Settlement and Wrongful Death Settlement and for Apportionment of Proceeds in a Wrongful Death Action is **GRANTED** and **APPROVED**; Plaintiff is directed to execute the Release; Defendants are directed to pay Plaintiff the sum of Eighty Thousand Dollars and 00/100 Cents (\$80,000.00); Plaintiff is ordered to immediately acknowledge receipt for payment in full from Defendants under the Release, and otherwise report to the Court Defendants' compliance with this Order; and each party is to bear its own court costs in this action, consistent with the parties' Release.

IT IS SO ORDERED.

s/ Gary A. Fenner
Gary A. Fenner, Judge
United States District Court

DATED: January 14, 2010