

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

N.M.S., a minor, by and through her natural
guardians and Next Friends, AMBER
SHORT and SCOTT SHORT,

Plaintiff,

v.

HEATHER RAMSEY, APRN-CNM, THE
MIDWIFE'S PLACE LLC, and
BELLEVUE MEDICAL CENTER, LLC,

Defendants.

8:16CV499

**MEMORANDUM
AND ORDER**

This matter is before the Court on a Settlement Agreement (Filing No. 163-restricted) under the Nebraska Hospital-Medical Liability Act, Neb. Rev. Stat. § 44-2801 *et seq.*, filed for approval by plaintiff N.M.S., by and through her natural guardians and Next Friends, and defendant Bellevue Medical Center, LLC (“BMC”). Also pending before the Court is a Joint Stipulation for Dismissal (Filing No. 164) between N.M.S. and defendants Heather Ramsey (“Ramsey”) and The Midwife’s Place, LLC (“MP”).

Taking the Joint Stipulation for Dismissal first, the Court notes that counsel for N.M.S., Ramsey, and MP have signed that stipulation, and that defendant BMC has no objection. With that, the Court finds the Joint Stipulation should be approved and this case is dismissed with prejudice as to Ramsey and MP.

Next, the Court will consider the Settlement Agreement. On April 29, 2019, N.M.S. and BMC filed (Filing No. 162) a Joint Motion and Application to the Court for Approval of Claims Settlement Pursuant to Neb. Rev. Stat. § 44-2833 and for Dismissal with Prejudice of Defendant Bellevue Medical Center, LLC (“Joint Motion”). On June 6, 2019, the Court held a telephone status conference (“Conference”) on the record to resolve

questions about the Joint Motion and Settlement Agreement. At the Conference, counsel for N.M.S. and BMC, as well as the representative of the Nebraska Excess Liability Fund (“Fund”), argued that § 44-2833 does not govern the Court’s approval of the Settlement Agreement, but instead Neb. Rev. Stat. § 44-2832 controls. N.M.S. and BMC filed (Filing No. 165) an Amended Joint Motion and Application to the Court for Approval of Claims Settlement Pursuant to Neb. Rev. Stat. § 44-2832 and for Dismissal with Prejudice of Defendant Bellevue Medical Center, LLC (“Amended Joint Motion”).

Following the Conference and after review of the Amended Joint Motion, the Court was not convinced that § 44-2832, which in the Court’s view sets forth the procedures for the Director of Administrative Services to issue a warrant for payment out of the Fund, applies in this case. The Court ordered (Filing No. 167-restricted) N.M.S. and BMC to file either joint or contemporaneous briefing on the issue. Upon receiving a joint brief (Filing No. 168), the Court again concluded that § 44-2833, which outlines the procedures for seeking the Court’s “approval of an agreed settlement,” governs. Neb. Rev. Stat. § 44-2833(2).

Accordingly, the Court “set the matter for trial” as required by § 44-2833(5) and held a hearing on June 19, 2019. The Court received evidence, including expert reports and depositions, to enable the Court to determine whether the Settlement Agreement should be approved. Upon careful review of the evidence and arguments by counsel for N.M.S. and BMC and the representative of the Fund, the Settlement Agreement, and record in this case, the Court finds that the Settlement Agreement conforms with § 28-4433 and should be approved.

Based on the foregoing,

IT IS ORDERED:

1. Plaintiff N.M.S. and defendants Heather Ramsey and The Midwife’s Place, LLC’s Joint Stipulation for Dismissal of Defendants Heather Ramsey and The Midwife’s Place, LLC (Filing No. 164) is approved.

2. Plaintiff N.M.S. and defendant Bellevue Medical Center, LLC's Joint Motion and Application to the Court for Approval of Claims Settlement Pursuant to Neb. Rev. Stat. § 44-2833 and for Dismissal with Prejudice of Defendant Bellevue Medical Center, LLC (Filing No. 162) is granted.
3. Plaintiff N.M.S. and defendant Bellevue Medical Center, LLC's Settlement Agreement (Filing No. 163) is approved.
4. Plaintiff N.M.S. and defendant Bellevue Medical Center, LLC's Amended Joint Motion and Application to the Court for Approval of Claims Settlement Pursuant to Neb. Rev. Stat. § 44-2832 and for Dismissal with Prejudice of Defendant Bellevue Medical Center, LLC (Filing No. 165) is denied as moot.
5. The Nebraska Excess Liability Fund is authorized and directed to pay plaintiff N.M.S. its portion of the agreed upon settlement amount along with defendant Bellevue Medical Center, LLC and defendant Bellevue Medical Center, LLC's insurer, COPIC Insurance Company.
6. This case is dismissed with prejudice as to all defendants with all parties to bear their own fees, costs, and expenses.

Dated this 19th day of June 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", written in a cursive style.

Robert F. Rossiter, Jr.
United States District Judge