

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DRB CAPITAL, LLC,

Plaintiff,

v.

TYLER WADE,

Defendant.

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CIVIL ACTION NO. 4:16-CV-00516-CAN

**MEMORANDUM OPINION AND ORDER GRANTING APPLICATION FOR
APPROVAL OF TRANSFER OF STRUCTURED ANNUITY BENEFITS
AND ORDER CLOSING CASE**

Pending before the Court is DRB Capital, LLC’s Application for Approval of Transfer of Structured Annuity Benefits, pursuant to the Texas Structured Settlement Protection Act (“Application”) [Dkt. 1]. After considering the Application and arguments presented at Hearing on October 5, 2016, the Court finds that DRB Capital, LLC’s Application should be **GRANTED**.

BACKGROUND AND ANALYSIS

On November 1, 1996, the District Court for the Sherman Division of the Eastern District of Texas entered an Agreed Final Judgment in the case *Deborah Wade, Individually and as Next Friend of Tyler Ross Wade, a Minor v. Kindercare Learning Centers, Inc. and Timothy Owen Waggoner*; Case No. 4:95-CV-162. *Id.*, Ex. D. In the Agreed Final Judgment, the Court granted Tyler Ross Wade, then a minor, the following “Periodic Payments” as personal injury damages for a tort claim:

commencing 9-1-2008, \$750.00 per month for 5 years guaranteed; commencing 9-1-2008, \$7,500.00 per year for 5 years guaranteed; commencing 12-1-2008, \$7,500.00 per year for 5 years guaranteed; commencing 9-1-2013, \$1,667.00 per month for Tyler Ross Wade’s lifetime with the first 30 years guaranteed.

Id., Ex. D at 2-3. The Agreed Final Judgment also includes an “anti-assignability clause” which states that “It is further ORDERED that Plaintiffs acknowledge that the Periodic Payments cannot be accelerated, deferred, increased, or decreased by the Plaintiffs or any payee; nor shall the Plaintiffs or any payee have the power to sell, mortgage, encumber or anticipate the Periodic Payments or any part thereof by assignment or otherwise.” *Id.*, Ex. D at 3. The judgment defines Plaintiffs as “DEBORAH WADE, Individually and as Next Friend of Tyler Ross Wade, a minor.” *Id.*, Ex. D.

Tyler Ross Wade, now being an individual over the age of eighteen with full capacity to contract, has willingly and voluntarily entered into an Absolute Sale and Security Agreement with DRB Capital, LLC (“DRB”), a limited liability company under the laws of the state of Delaware with its principal place of business in the state of Florida. *Id.*, Ex. A. By and through the Absolute Sale and Security Agreement, Tyler Ross Wade agrees to sell to DRB a portion of his structured annuity benefits that were created by the previously discussed Agreed Final Judgment in Case No. 4:95-CV-162. Specifically, Tyler Ross Wade has agreed to sell 120 monthly payments of \$833.50 commencing on or about December 1, 2024, and ending on or about November 1, 2034, to DRB for a lump sum cash payment. *Id.*, Ex. A at 1.

Because the Agreed Final Judgment in Case No. 4:95-CV-162 includes an “anti-assignability clause,” the Issuer and Obligor of Tyler Ross Wade’s annuity, New York Life Insurance Company and New York Life Insurance and Annuity Corporation, have asked DRB to obtain consent from the Sherman Division of the Eastern District Courts of Texas for the transfer in the Absolute Sale and Security Agreement between Tyler Ross Wade and DRB. Because of such request, the current action was filed by DRB on July 12, 2016, seeking consent to transfer of the aforementioned payments.

On or about September 22, 2016, the Court scheduled this matter for a prove-up hearing regarding the requested transfer of structured annuity benefits [Dkt. 12]. Therein, the Court directed Plaintiff to serve a copy of the Order setting hearing on all parties to the prior litigation and/or any other known interested parties. *Id.* On October 5, 2016, the Court convened and, after confirming notice had been provided in compliance with the September 22, 2016 Order, conducted a hearing on DRB's Application [*see generally* Dkt. October 5, 2016 Minute Entry]. More specifically, both Tyler Ross Wade and counsel for DRB Tammy Daniels Low were in attendance. DRB averred that it had provided notice of the current action and hearing to all parties to the prior suit and other known interested parties, including but not limited to, New York Life Insurance Company, New York Life Insurance and Annuity Corporation, Deborah Wade, Kindercare Learning Centers, Inc., Timothy Owen Waggoner, D. Joe Albright, Randall Betty, and James Patrick Fallon. None of the parties to the prior suit or any other known interested party has raised any objection to the assignment, nor did any person or party appear at the October 5, 2015 hearing to state an objection to approval of the transfer/assignment.

Based upon the Application, hearing on October 5, 2016, and the lack of objection from any interested party, the Court consents to the proposed transfer between DRB and Tyler Ross Wade. Having heard the arguments presented on the record, the Court finds that Wade is fully advised of the current value of the assigned payments and the consequences of making them; and, further that Wade, now that he has reached the age of majority, should be free to assign them as proposed. Additionally, the Court consents to DRB seeking approval of the proposed transfer pursuant to the Texas Structured Settlement Protection Act contained in Chapter 141 of the Texas Civil Practice and Remedies Code.

CONCLUSION

For the foregoing reasons, the Court finds that DRB Capital LLC's Application for Approval of Transfer of Structured Annuity Benefits [Dkt. 1] is hereby **GRANTED**. The Clerk is directed to **CLOSE** this civil action. All costs shall be borne as agreed by the parties.

IT IS SO ORDERED.

SIGNED this 28th day of October, 2016.



Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE