Artis v Masaryk Towers Corp.
2007 NY Slip Op 34609(U)
October 25, 2007
Supreme Court, New York County
Docket Number: 115145/04
Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 55
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PHINEUS ARTIS, an Infant by his Mother and Natural Guardian, LINDA ARTIS, and LINDA ARTIS, Individually,

INDEX NO. 115145/04

DECISION AND ORDER

Plaintiffs,

-against-

MASARYK TOWERS CORPORATION, ARCO WENTWORTH MANAGEMENT CORPORATION and DEWITT REFORMED CHURCH HEADSTART,

Defendants.

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JANE S. SOLOMON, J.

The infant plaintiff, Phineus Artis, was three years old when he was pushed from a playground slide by another child and suffered a broken arm. At the time, he and the other child were under the supervision of a day care operated by defendant Dewitt Reformed Church Headstart. His mother sued both the day care, and others, on his behalf and in her individual capacity. Plaintiffs' counsel negotiated a settlement from the day care operator in the amount of $100,000 for the child, and now seeks judicial approval of an infant's compromise.

Plaintiffs allege that the infant plaintiff has fully recovered from his injury, and that the proposed settlement is fair and equitable under the circumstances. Aff. Of Sharon A. Scanlon, Esq., paragraph 16, and Aff. Of Linda Artis, paragraph paragraphs 7-11, annexed to Notice of Motion. Under the terms of

plaintiffs' retainer agreement with counsel, they recover sixty-six and two thirds of the amount recovered by trial or settlement, after litigation expenses are paid. Retainer Agreement, annexed to Notice of Motion at Exhibit F.

The application states that litigation expenses in the amount of $2,717.48 will be reimbursed from the proceeds, and plaintiffs' counsel will receive one third of the remainder (i.e., $32,427.50) as a fee. The net proceeds to the child would be $64,855.02. The mother has agreed to accept no money in her individual capacity. Plaintiffs claim that all medical expenses have been paid. There is, however, a purported Medicaid lien in the amount $10,232 representing payments made for the infant plaintiff's medical bills.

The application for an infant's compromise is opposed by the Human Resources Administration of the City of New York ("HRA"), which administers the Medicaid program and seeks to recover the amount of the lien.

Medicaid is a medical assistance program established by Title XIX of the Social Security Act (42 USC § 1396, et seq), and is implemented by the New York Social Services Law (Social Services Law § 363). HRA is the agency charged with implementing the program in New York City.

Under Social Services Law § 104-b, HRA is authorized to assert a lien against the proceeds of a personal injury lawsuit

for which HRA provided Medicaid assistance.

Plaintiffs contend that no payment is due to HRA because the negotiated settlement does not segregate any funds for the purpose of paying medical expenses. They argue that in Department of Health and Human Services v. Ahlborn (547 US 268 [2006]), the United States Supreme Court held that a state Medicaid administrator may not assert a lien and collect funds from a personal injury settlement with a third party tortfeasor unless the settlement agreement specifically provides that some of the money will be designated to reimburse medical expenses.

In Ahlborn, the Court held that the state's right to recover funds it paid on recipient's behalf is expressly limited by the federal statute (42 USC 1396a[a][18], 42 USC 1396p). The federal statute prohibits a state administrator from placing a lien against the property of a Medicaid recipient in most circumstances. Accordingly, the state may only recover funds from the proceeds of a personal injury lawsuit where those funds are specifically allocated to pay medical expenses.

The Court acknowledged the risk that parties to a tort suit will "allocate away" the state's interest in recovering medical expenses paid on behalf of the injured person (Ahlborn, at 547 US 288). This risk can be avoided by obtaining the state's advance agreement to an allocation, or by submitting the matter to a court for decision (Id.). Under the facts presented

to it, the Court affirmed the decision of the United States Court of Appeals for the Eighth Circuit that limited the state's assertion of a lien to $35,581.47. There was no allocation between categories of damages in the settlement agreement, but Ahlborn had stipulated with the state that the settlement amount represented approximately one sixth of the reasonable value of her claim, and $35,581.47 is equal to one sixth of the Medicaid benefit she received in connection with the underlying accident.

In this action, there was no agreement between plaintiffs and HRA as to the appropriate allocation of damages to past medical expenses. Plaintiffs maintain that there should be no allocation for past medical expenses, and HRA argues that it is entitled to the amount it actually expended on behalf of the infant plaintiff. There is no question of fact in this lawsuit as to whether the proposed settlement amount represents a full recovery for the claim (cf., Lugo v Beth Israel Medical Center, 13 Misc.2d 681 [Sup Ct, NY County 2006] [hearing appropriate because plaintiff claimed only a partial recovery]). It does. Therefore, no hearing is necessary, and it is the court's duty under Ahlborn to impose the appropriate allocation of the settlement proceeds to medical expenses (see Lugo, 13 Misc.2d at 689-690). Although plaintiffs obtained a full recovery, the amount actually received after expenses and attorney's fees is only 64.855% of the total. Accordingly, the amount allocated to

medical expenses is 64.855% of the amount of Medicaid assistance provided to pay medical expenses to treat the infant plaintiff's injury, i.e., $6,636. Accordingly, it hereby is

ORDERED that the motion by plaintiffs to approve the settlement of $100,000 is granted provided, however, that the order proposed by them is modified to provide that of the proceeds payable to the infant, the allocation of proceeds to past medical expenses is $6,636, and that amount shall be paid to HRA in satisfaction of its claim allowed herein.

Dated: October 25, 2007

ENTER:

J.S.C.