IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DIANE M. SCHRADER-VANNEWKIRK, individually and as Next Friend of NICOLE C. VAN NEWKIRK, a minor,	)	C.A. No. 08C-02-089 WLW
Plaintiffs,	)	
v.	)	
SHARON C. DAUBE,	)	
Defendant.	)	

Submitted: January 7, 2014
Decided: January 13, 2014

ORDER

Upon Defendant's Partial Motion for Summary Judgment
and Confirmation of Settlement Agreement.
Denied.

Diane M. Schrader-VanNewkirk, *pro se*

Brian T. McNelis, Esquire of Young & McNelis, Dover, Delaware; attorney for Defendant.

WITHAM, R.J.

ISSUE

Whether the Court should grant Defendant's Partial Motion for Summary Judgment on the basis that the minor plaintiff's attorney had allegedly reached a settlement agreement with Defendant's attorney.

BACKGROUND

Defendant Sharon Daube ("Defendant") moves for Partial Summary Judgment on the claims pertaining to injuries suffered by minor Plaintiff Nicole C. VanNewkirk ("Nicole") on the basis that a settlement agreement has already been reached for Nicole's injuries. Nicole was six years old at the time of the accident, and is still a minor at 14 years old.

Defendant alleges that on Monday, January 11, 2010 a settlement agreement was reached via telephone between Defendant's attorney Brian McNelis ("McNelis") and Nicole's attorney, Mark Ippoliti ("Ippoliti"). Ippoliti was an attorney with Gary Nitsche's ("Nitsche") firm; Nitsche represented Plaintiff Diane-Schrader-VanNewkirk ("Diane") at the time. Defendant contends that Ippoliti accepted a settlement of $3,000 on behalf of Nicole.

By letter to Ippoliti dated January 11, 2010, McNelis confirmed the settlement amount of $3,000. McNelis' letter states that Ippoliti would be taking care of obtaining Court approval for the minor settlement, and assuring that the proceeds would be placed in an account for Nicole's benefit. This letter was provided to the Court and added as part of the docket.

It appears that neither Ippoliti nor Nistche ever took steps to obtain Court

approval for the purported settlement. Defendant points to McNelis' 2010 letter to Ippoliti, as well as the absence of any trial exhibits, medical exhibits or voir dire questions pertaining to Nicole's claim for damages as evidence of the settlement agreement.

Upon request by this Court, Nitsche submitted a letter dated December 11, 2013 addressing McNelis' allegations of a settlement agreement. Nitsche states that Ippoliti "thought he had the authority to resolve this matter with [Diane]. . .but it was never 'allegedly' accepted." Nitsche also states that there was never any payment submitted to his office towards Nicole's settlement, and thus no minor settlement petition was filed.

Diane, since proceeding *pro se*, has submitted a series of undated and unsigned letters to the Court addressing the case. Two of these letters appear to respond to the instant motion. In the first letter, Diane states "I am also not clear on what is going on with my daughter's case, as [Nitsche] has continually refused to tell me anything about the status of her case."

In the second letter addressing the motion, Diane states that on January 4, 2010, Ippoliti had advised her of the settlement for Nicole's injuries in the amount of $3,000. Diane asked Ippoliti via e-mail why $3,000 was agreed to, as it seemed to be a low amount. Diane claims that Ippoliti told her the case was settled for $4,000, and Ippoliti also told her that he could accept the settlement without Diane's approval because he had power of attorney over Nicole.

In addition, it must be noted that the Nitche firm has withdrawn from this case

without ever clarifying what in fact was agreed to by his former client to resolve the minor's claim. This Court does find this troubling to have this matter unresolved on the eve of trial on the merits.

STANDARD OF REVIEW

Superior Court Civil Rule 56(c) provides that a motion for summary judgment will be granted when "there is no genuine issue of material fact and. . .the moving party is entitled to judgment as a matter of law."[1] The moving party initially bears the burden of establishing both of these elements; if there is such a showing, the burden shifts to the non-moving party to show that there are material issues of fact for resolution by the ultimate fact-finder.[2] This Court shall consider the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" in determining whether to grant summary judgment.[3] Summary judgment will only be appropriate when, upon viewing all of the evidence in a light most favorable to the nonmoving party, the Court finds there is no genuine issue of material fact.[4] When material facts are in dispute, or "it seems desirable to inquire more thoroughly into the facts, to clarify the application of the law to the

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[1] Del. Super. Ct. Civ. R. 56(c).

[2] *See Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979) (citations omitted).

[3] Del. Super. Ct. Civ. R. 56(c).

[4] *Singletary v. Amer. Dept. Ins. Co.*, 2011 WL 607017, at *2 (Del. Super. Ct. Jan. 31, 2011) (*citing Gill v. Nationwide Mut. Ins. Co.*, 1994 WL 150902, at *2 (Del. Super. Ct. Feb. 22, 1994)).

circumstances," summary judgment will not be appropriate.[5] However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.[6]

DISCUSSION

Generally, an attorney is deemed to possess the authority to act on the behalf of his client.[7] However, when a minor is involved as a litigant, "the court's role is increased by statute, and its authority is paramount."[8] Pursuant to 12 *Del. C.* § 3926 and Superior Court Civil Rule 133, "any settlement of tort claims reached on behalf of a minor-litigant. . .must first be approved by the court in order to be binding."[9] This approval involves "two distinct steps": (1) the parties must petition the Court to authorize the settlement; and (2) medical or other evidence, satisfactory to the Court, must be heard in open court.[10]

Neither one of these two steps have been met in this case. Even if McNelis reached a settlement agreement with Ippoliti, because Nicole was (and still is) a minor, one of the parties had to petition the Court for authorization. This was

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[5] *Ebersole v. Lowengrub,* 180 A.2d 467, 468-69 (Del. 1962) (citing *Knapp v. Kinsey*, 249 F.2d 797 (6th Cir. 1957)).

[6] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

[7] *Barlow v. Finegan*, 76 A.3d 803, 805 (Del. 2013).

[8] *Id.*

[9] *Id.* at 806.

[10] *Id.*

required by both § 3926 as well as Rule 133. Nitsche's letter acknowledges that such petition was never filed because no money was ever received.

Defendant cannot circumvent these requirements via a motion for summary judgment. There is no valid, authorized minor settlement before the Court. Thus, the Court cannot confirm the settlement agreement. Further, there is a genuine dispute of material fact because Diane seems to dispute the amount of the purported settlement agreement. If Defendant wished to confirm this settlement agreement, it should have sought this Court's authorization for the settlement at the time. It failed to do so.

CONCLUSION

Defendant's Partial Motion for Summary Judgment and Confirmation of Settlement Agreement is **DENIED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh