



WHEREAS, under 12 *Del. C.* § 3901, coupled with Court of Chancery Rule 180, a guardian need not be appointed for a minor who will receive \$25,000.00 or less if the funds are “placed in an annuity or structured financial instrument for the benefit of the minor” or “deposited into a UTMA account for the benefit of the minor;” if a minor is to receive more than this cap, a petition for limited guardianship may be filed, through which, generally speaking, the Court permits up to \$25,000.00 to be placed in a UTMA account, with the remainder placed in “an annuity or structured financial instrument for the benefit of the minor[;]”

WHEREAS, under 12 *Del. C.* § 3901(1)(2), the Court retained the power to appoint a plenary guardian for a minor, or permit exceptions to the structure explained herein, if and as “necessary to protect the minor’s estate and maximize benefits available to the minor, including public benefits[;]”

WHEREAS, Vice Chancellor Slights aptly explained the import of 12 *Del. C.* § 3901 and Rule 180 as follows:

[p]ursuant to 12 *Del. C.* § 3901 and Court of Chancery Rule 180, the default rule is that a “limited guardianship” of the property will be established for the benefit of a minor . . . . That limited guardianship serves the purpose of ensuring that the settlement funds are placed in “an annuity or structured financial instrument for the benefit of the minor.” . . . [T]he limited guardianship terminates once the funds are secure in one of the prescribed investment vehicles.<sup>1</sup>

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<sup>1</sup> *In re B.H.*, 2017 WL 6419348, at \*1 (Del. Ch. Nov. 16, 2017).

WHEREAS, exceptions to this general rule should only be permitted when “necessary” and “in the best interests of the minor” in order “to protect the estate and maximize benefits available to the minor, including public benefits[;]”<sup>2</sup>

WHEREAS, the Petitioner argues that an appropriate annuity or structured financial instrument is not available and seeks exception from the general rule;

IT IS HEREBY ORDERED, this 30<sup>th</sup> day of March 2022, as follows:

1. The request for an exception to the procedure in Rule 180 is DENIED.
2. The Petitioner has not met the “necessity” exception and has failed to provide sufficient support that an appropriate annuity or structured financial instrument is unavailable. Rather, it appears the Petitioner has not exhausted the available resources. For example, the Court is aware that other petitioners for limited guardianship have been successful in securing an appropriate annuity or structured financial instrument from companies not identified by the Petitioner, including, for example, Evergreen Structured Settlements, Inc.
3. The Petitioner will be appointed as a limited guardian and authorized to place up to \$25,000 in a UTMA and the remainder in an annuity or structured financial instrument. Alternatively, the limited guardian will be authorized to place

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<sup>2</sup> *Id.* (citations omitted). *See also id.* at \*5 (explaining that the enumerated “benefits” in 12 *Del. C.* §3901 are public benefits, meaning plenary guardianship is permitted to maximize benefits “such as Social Security or health insurance.”).

the entire proceeds into an annuity or structured financial instrument. A separate appointment order will be issued once the exceptions period has expired.

4. The motion to appoint an appraiser will also be granted by separate order after the Petitioner is appointed as limited guardian.

5. This is a Final Report and exceptions may be taken pursuant to Court of Chancery Rule 144. Because the Petitioner requested expedited treatment, the exceptions period is also expedited under Court of Chancery Rule 144(d)(2).

*/s/ Selena E. Molina* \_\_\_\_\_  
Selena E. Molina  
Magistrate in Chancery