UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Chambers of
STEVEN C. MANNION
United States Magistrate Judge

Martin Luther King Jr, Federal Bldg.
& U.S. Courthouse
50 Walnut Street
Newark, NJ 07102
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December 17, 2018

LETTER ORDER-OPINION

Re: Rodriguez Alvarado v. United States
Civil Action No. 16-cv-5028 (SCM)

Dear Counsel:

Before the Court is an unopposed motion by Plaintiff Suny Rodriguez Alvarado, individually and on behalf of her minor age son A.S.R., for the Court's approval of a settlement and voluntary dismissal of this Federal Tort Claims Act case against Defendant United States of America. The parties consented to magistrate judge jurisdiction and the Court conducted a "friendly" hearing on October 24, 2018.[1] For the reasons stated on the record and supplemented herein, the Court approved the settlement as reasonable as to its amount and terms, but reserved decision on whether A.S.R.'s settlement proceeds could be deposited into a private trust instead of the Surrogate's Court for the County of Hudson County, New Jersey.

Upon review of the parties' submissions and oral argument heard during the friendly hearing, the Court denies the motion to deposit A.S.R.'s settlement funds into a private trust. The

[1] (ECF Docket Entry No. ("D.E.") 82). Unless indicated otherwise, the Court will refer to documents by their docket entry number and the page numbers assigned by the Electronic Case Filing System.

settlement proceeds for A.S.R. shall be deposited with the Surrogate of Hudson County pending further application to that Court as appropriate.

I. BACKGROUND AND PROCEDURAL HISTORY[2]

The facts set forth in the Opinion on the United States Government's motion to transfer are incorporated herein by reference.[3] The Court supplements those facts to the extent necessary to resolve the pending motion.

A.S.R. entered the United States with his father, Jose Rafael Sanchez Villatoro ("Mr. Sanchez") and his mother, Suny Rodriguez Alvarado ("Ms. Rodriguez Alvarado") in 2015. They are each citizens of Honduras. Ms. Rodriguez Alvarado filed this action on behalf of herself and A.S.R. against the United States of America claiming deprivations of their respective civil rights.[4] The United States Government denies those claims.[5]

The Court held a settlement conference and counsel subsequently filed a notice of settlement on August 3, 2018.[6] Thereafter, the Court scheduled a "friendly hearing" for September 12, 2018, at the parties' request.[7] Counsel for plaintiffs requested to postpone the date of the hearing to "resolve a number of complexities related to the establishment of the trust, including

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[2] The allegations set forth within the pleadings and motion record are relied upon for purposes of this motion only. The Court has made no findings as to the veracity of the parties' allegations.

[3] (D.E. 34, Op.).

[4] (D.E. 1, Compl.).

[5] (D.E. 39, Answer).

[6] (D.E. 71, Notice of Settlement).

[7] (D.E. 72, Order).

the role of A.S.R.'s father, who is not a party to the suit."[8] The Court rescheduled the hearing to October 24, 2018.[9]

On October 22, 2018, counsel filed the proposed settlement.[10] The parties' agreement stated that "Plaintiffs must obtain Court approval of the settlement at their expense. Plaintiffs agree to obtain such approval in a timely manner: time being of the essence. Plaintiffs further agree that the United States may void this settlement at its option in the event such approval is not obtained in a timely manner."[11]

A.S.R. is presently 11 years old and resides with his mother in Hudson County, New Jersey.[12] His father, Mr. Sanchez, did not appear at the hearing, but provided a declaration indicating that he supports the settlement.

II. AUTHORITY & JURISDICTION

"It is elementary that the validity of an order of a federal court depends upon that court's having jurisdiction over the subject matter of the action and the parties."[13] "Jurisdiction" refers to

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[8] (D.E. 77, Letter).

[9] (D.E. 78, Order).

[10] (D.E. 79, Letter).

[11] (D.E. 79-4, Settlement, at ¶ 7).

[12] (D.E. 34, Opinion, at 7; D.E. 79-1, Decl. of Suny Rodriguez Alvarado, at ¶ 1).

[13] *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1287 (9th Cir. 1992) (citing *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982); *Stoll v. Gottlieb*, 305 U.S. 165, 171–72 (1938)).

"a court's adjudicatory authority."[14] Courts have an independent and continuing obligation to assess their jurisdiction.[15]

This Court has original jurisdiction over the underlying civil action because the United States is a defendant on a claim pursuant to the Federal Tort Claims Act.[16] Considering that the parties have a proposed settlement, I question whether this Court has the authority to approve the parties' agreement.

The *A.S. v. Harrison Twp.* Court similarly questioned "whether a friendly hearing is required" in a federal question case but elected not to answer that question because the plaintiff requested the hearing and the defendant did not object.[17] The parties here also requested a friendly hearing and like *A.S.*, this case is "not one of the special situations in which" a district court "is required by statute or rule to approve a settlement."[18]

Federal Rules of Civil Procedure 23(e), 23.1(c), 23.2, and 66 each respectively require court approval for settlement or dismissal of class actions, derivative actions, actions involving members of an unincorporated association, and actions in which a receiver has been appointed.[19]

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[14] *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004).

[15] *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 420 (3d Cir. 2010).

[16] 28 U.S.C. § 1346.

[17] *A.S. v. Harrison Twp. Bd. of Educ. & E. Greenwich Sch. Dist.*, No. 14-147, 2017 WL 1362025, at *1 n.2 (D.N.J. Apr. 12, 2017).

[18] *Gardiner v. A.H. Robins Co.*, 747 F.2d 1180, 1189 (8th Cir. 1984) (citing *United States v. City of Miami, Florida*, 614 F.2d 1322, 1330 & n.16 (5th Cir. 1980) ("four examples of such 'special situations' are proposed class action settlements, proposed shareholder derivative suit settlements, proposed compromises of claims in bankruptcy court, and consent decrees in antitrust suits brought by the United States"), *modified on rehearing*, 664 F.2d 435 (5th Cir. 1981)).

[19] Fed. R. Civ. P. 23(e) (settlement of class actions); Fed. R. Civ. P. 23.1(c) (settlement of derivative actions); Fed. R. Civ. P. 23.2 (settlement involving members of an unincorporated

This case is not governed by any of those rules, and absent such a requirement, settlement is ordinarily a matter between the parties.[20] Parties may settle and dismiss their suit at any time without judicial approval,[21] "and the court need not and should not get involved."[22]

Federal Rule of Civil Procedure 17(c)

Still, the Ninth Circuit has held that Federal Rule of Civil Procedure 17(c) imposes a "special duty" that requires a court to "conduct its own inquiry to determine whether a settlement involving a minor serves the best interests of the minor."[23] The Rule provides in relevant part that a district court "must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action."[24] Unlike Federal Rules 23(e), 23.1(c), 23.2, and 66, Rule 17(c) does not require court approval for a settlement or dismissal.

District courts are no doubt required by the Rule to safeguard the interests of litigants who are minors,[25] but, the Eleventh Circuit has held that "Rule 17(c) does not address the conditions under which a minor's claims may be contractually settled or released" and "simply deals with the court's obligation to protect the interests of a minor party through the appointment of a guardian

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association); Fed. R. Civ. P. 66 (dismissal of action in which a receiver has been appointed).

[20] *Gardiner*, 747 F.2d at 1189.

[21] *First Nat'l Bank v. Marine City, Inc.*, 411 F.2d 674, 677 (3d Cir.1969).

[22] *United States v. City of Miami, Fla.*, 614 F.2d 1322, 1330 (5th Cir. 1980).

[23] *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011) (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978)); *see also Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983) (holding that "a court must independently investigate and evaluate any compromise or settlement of a minor's claims to assure itself that the minor's interests are protected, even if the settlement has been recommended or negotiated by the minor's parent or guardian ad litem").

[24] Fed. R. Civ. P. 17(c).

[25] *Id.*

ad litem or other representative."[26] The Fifth Circuit has noted even more strictly that the Rule "is confined to those cases where the minor or incompetent is 'not otherwise represented.'"[27]

Here, A.S.R.'s mother has appeared in the case on his behalf, and I agree with the Eleventh Circuit that Rule 17(c) does not address approval of settlements involving minors.[28] This Court also need not rely upon its "inherent authority" to protect the interest of the minor in this case.[29]

Federal Rule of Civil Procedure 41(a)(2)

Parties may voluntarily dismiss any action without court approval.[30] Federal Rule of Civil Procedure 41(a)(2), however, provides that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper."[31] This Rule provides clearer authority and has been relied upon by district courts that have reviewed dismissals or settlements involving minors.[32] When read in the light of Federal Rule of Civil Procedure 1, which requires

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[26] *Burke v. Smith*, 252 F.3d 1260, 1266 (11th Cir. 2001) (citing *Eagan v. Jackson*, 855 F. Supp. 765, 775 (E.D. Pa. 1994) ("[T]he thrust of Rule 17 [is] the acquisition of a proper representative for an incompetent.... Rule 17(c) deals only with the protection of incompetents in their status as parties, and gives no general powers over their persons or property.")).

[27] *Hoffert v. Gen. Motors Corp.*, 656 F.2d 161, 164 (5th Cir. 1981).

[28] *See Burke*, 252 F.3d at 1266.

[29] *Eagan*, 855 F. Supp. at 775 (disagreeing with the Ninth Circuit's interpretation of Rule 17(c), and instead relying on "the Court's inherent duty to protect the interests of minors ... that come before it").

[30] Fed. R. Civ. P. 41(a)(1)(A)(ii).

[31] Fed. R. Civ. P. 41(a)(2).

[32] *See e.g.*, *G.C. v. S. Wash. Cty. Sch. Dist. 833,* No. 17-3680, 2018 WL 2694503, at *2 (D. Minn. June 5, 2018) (dismissal of minor's claims approved); *Adkins v. TFI Family Servs., Inc.*, No. 13-2579, 2017 WL 4338269, at *4 (D. Kan. Sept. 29, 2017) (approved settlement involving a minor); *Higgins v. Koch Dev. Corp.*, No. 3:11-cv-81, 2013 WL 12290826, at *1 (S.D. Ind. Nov. 25, 2013) (denied dismissal of minors' claims); *Farber v. Cty. of Suffolk*, No. 09-3255, 2009 WL 4730204, at *2 (E.D.N.Y. Dec. 1, 2009) (granted dismissal of minor's claims); *D.C.G. ex rel. E.M.G. v.*

all rules be construed to secure "the just … determination of every action and proceeding,"[33] Rule 41(a)(2) requires that any judicially approved settlement be "just" and "proper."

III. LEGAL STANDARD

A plaintiff may request dismissal of an action "by court order, on terms that the court considers proper."[34] The plaintiff bears the burden to show that the relief requested is warranted.[35] Though decisions on requests for voluntary dismissal are within the sound discretion of the court,[36] such motions are generally granted unless another party would suffer some plain legal prejudice.[37] "The court is responsible for ensuring that such prejudice will not occur."[38]

Wilson Area Sch. Dist., No. 07-cv-1357, 2009 WL 838548, at *4 (E.D. Pa. Mar. 27, 2009) (dismissal of minor's claims denied); *K.S. ex rel. T.S. v. Harvey*, No. 1:08-cv-199, 2008 WL 4682486, at *1 (D. Me. Oct. 22, 2008) (approved settlement of minor's claims); *In re Agent Orange Prod. Liab. Litig.*, 603 F. Supp. 239, 247–48 (E.D.N.Y. 1985) (granted dismissal without prejudice of minors' claims), *aff'd in part, appeal dismissed in part*, 818 F.2d 194 (2d Cir. 1987).

[33] Fed. R. Civ. P. 1.

[34] Fed. R. Civ. P. 41(a)(2); *Carroll v. E One Inc.*, 893 F.3d 139, 144–45 (3d Cir. 2018); *Cason v. Puerto Rico Elec. Power Auth.*, 770 F.3d 971, 976 (1st Cir. 2014). The case law pertaining to the earlier version of this Rule are instructive because the amendments have been non-substantive. *Carroll*, 893 F.3d at 145 n.5.

[35] *Higgins v. Koch Dev. Corp.*, No. 3:11-cv-81, 2013 WL 5274281, at *2 (S.D. Ind. Sept. 18, 2013) (citing *Tolle v. Carroll Touch, Inc.*, 23 F.3d 174, 177 (7th Cir.1994)).

[36] *Ferguson v. Eakle*, 492 F.2d 26, 28 (3d Cir. 1974) (citing *Ockert v. Union Barge Line Corp.*, 190 F.2d 303, 304 (3d Cir. 1951); *Stern v. Barnett*, 452 F.2d 211, 213 (7th Cir. 1971)).

[37] *See Quad/Graphics, Inc. v. Fass*, 724 F.2d 1230, 1233 (7th Cir. 1983); *Saviour v. Revco Disc. Drug Ctrs., Inc.*, 126 F.R.D. 569, 570 (D. Kan. 1989) (citation omitted) ("manifestly prejudicial to the defendant"); *Trautmann v. Cogema Mining, Inc.*, No. 5:04-cv-117, 2007 WL 869501, at *1 (S.D. Tex. Mar. 21, 2007) (citation omitted) ("absent some plain legal prejudice to the non-moving party").

[38] *Cason*, 770 F.3d at 976 (citing *Colón–Cabrera v. Esso Standard Oil Co. (Puerto Rico), Inc.*, 723 F.3d 82, 87 (1st Cir.2013); *Doe v. Urohealth Sys., Inc.*, 216 F.3d 157, 160 (1st Cir. 2000)).

"In exercising its 'broad equitable discretion under Rule 41(a)(2),' the district court must 'weigh the relevant equities and do justice between the parties in each case, imposing such costs and attaching such conditions to the dismissal as are deemed appropriate.'"[39] Conducting a hearing on a motion for voluntary dismissal is not necessary where the defendant has adequate notice and opportunity to be heard and the judge is familiar with the relevant issues.[40]

If, however, the plaintiff's dismissal request concerns the claims of another, such as in the case of a minor, the trial court should conduct an independent review to ensure the dismissal is on terms that the court considers proper.[41] Here, Ms. Rodriguez Alvarado, individually and on behalf of A.S.R., moved for approval of the proposed settlement and dismissal. The Government has not opposed, but in fact agrees with the proposed settlement, and insisted upon having a "friendly" hearing to protect its rights and the rights of A.S.R. Accordingly, the Court conducted a "friendly" hearing to determine whether the proposed settlement payment to A.S.R. was proper and just.

The Third Circuit has not yet provided guidance for district courts to make such determinations in these circumstances. However, in analogous situations involving settlements for the benefit of others, courts are guided by the Federal Rules to conduct a fairness hearing prior to determining whether the proposed settlement "is fair, reasonable, and adequate" after considering whether counsel provided adequate representation and negotiated at arm's length, the costs and risks of continued litigation, and the proposed agreement itself.[42]

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[39] *Pontenberg v. Boston Sci. Corp.*, 252 F.3d 1253, 1256 (11th Cir. 2001) (quoting *McCants v. Ford Motor Co.*, 781 F.2d 855, 857 (11th Cir. 1986)).

[40] *Puerto Rico Mar. Shipping Auth. v. Leith*, 668 F.2d 46, 51 (1st Cir. 1981).

[41] *Island Tile & Marble, LLC v. Bertrand*, No. 2012-0050, 2012 WL 5499863, at *10 (V.I. Nov. 7, 2012).

[42] *See e.g.*, Fed. R. Civ. P. 23(e)(2) (requirements for approval of a class settlement).

New Jersey Law

Though not bound by New Jersey law in this instance, it offers persuasive authority and guidance for the protection of minors. Court approval is required for settlement on behalf of a minor.[43] "A 'friendly' hearing is a proceeding … wherein the court reviews a settlement of a minor's claims."[44] Once a court approves the amount and allocation of the settlement, a fully represented minor is bound by the agreement just as if he was an adult.[45] Consequently, courts in New Jersey review the settlement to "determine whether [it] is fair and reasonable as to its amount and terms."[46]

> The judge's role at such a hearing is to assess "whether the proffered settlement is commensurate with the settling defendant's liability and, if so, whether it adequately compensates the infant for his past, present and future losses attributable to that defendant." The trial court, after assessing these factors, then must make a determination whether the proposed settlement, as advanced by the parties, is fair and reasonable.[47]

"After review, the Court may accept the settlement, reject the settlement, or suggest different terms."[48] A court cannot re-write the settlement by ordering different terms. Courts retain discretion to approve settlements involving minors.[49]

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[43] N.J. Ct. R. 4:44-3.

[44] *A.S. v. Harrison Twp. Bd. of Educ. & E. Greenwich Sch. Dist.*, No. 14-147, 2017 WL 1362025, at *1 n.2 (D.N.J. Apr. 12, 2017) (citing *Impink ex rel. Baldi v. Reynes*, 396 N.J. Super. 553 (App. Div. 2007)).

[45] *Riemer v. St. Clare's Riverside Med. Ctr.*, 300 N.J. Super. 101, 111 (App. Div. 1997).

[46] N.J. Ct. R. 4:44-3.

[47] *Impink*, 396 N.J. Super. at 562 (quoting *Riemer*, 300 N.J. Super. at 111).

[48] *A.S.*, 2017 WL 1362025, at *1 (citing *Impink*, 396 N.J. Super. at 562).

[49] N.J. Ct. R. 4:48A(a).

IV. DISCUSSION

The settlement proposal includes payment of $125,000.00 by the United States in full satisfaction of all claims to avoid the "expenses and risks of further litigation."[50] The agreement provides that seventy-five (75) percent of the proceeds ($93,750.00) would be allocated to A.S.R. and twenty-five (25) percent be allocated to Ms. Rodriguez Alvarado.[51]

Their counsel represented them *pro bono* and will not be paid for their time or reimbursed for their expenses.[52] Thus, A.S.R.'s gross and net award will be $93,750.00. The Court finds that the settlement is fair, reasonable, and adequate for the claims asserted by A.S.R. in the light of the risks of continued litigation.

For the reasons set forth on the record at the conclusion of the hearing on October 24th, and as supplemented herein, the Court makes the following findings: a) The Stipulation of Compromise, Settlement and Release is just and proper for all parties to the suit; b) A.S.R. received adequate representation by counsel in the settlement; c) the proposed agreement was negotiated at arm's length; and d) the proposed settlement is fair, reasonable, and adequate in light of the costs and risks of continued litigation.

Disposition of Funds

Disposition of the proceeds due to A.S.R. is the only remaining issue. Once a settlement involving a minor is approved, the court must address the disposition of the proceeds. There is no federal guidance here, so the Court will again rely on New Jersey authority.

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[50] (D.E. 79-4, Settlement, at ¶ 4).

[51] *Id.*

[52] (D.E. 79-3, Decl. of Muneer I. Ahmad, at ¶ 6).

New Jersey law requires that if a court approves a settlement involving a minor "it shall enter an order reciting the action taken and directing the appropriate judgment in accordance with R. 4:48A."[53] New Jersey's Legislature has determined that proceeds for a minor's settlement will be deposited either with the minor's parents or guardians if the funds do not exceed $5,000, N.J.S.A. 3B:12–6, or in court if the funds exceed $5,000, N.J.S.A. 3B:15–16.[54]

According to Ms. Rodriguez Alvarado's counsel, funds deposited with the Surrogate are invested in an account earning 2.13% interest.[55] Withdrawals from funds held by the court for a minor must be made on motion supported by "an affidavit explaining the necessity for the requested withdrawal."[56] New Jersey has a body of law explaining what charges against the estate of a minor are appropriate and what charges are not.[57]

Ms. Rodriguez Alvarado bears the burden to show both that her proposal is in A.S.R.'s interest and there is good cause to deviate from the legislatively prescribed disposition of the settlement funds.[58] She proposes to establish a private irrevocable trust to "be used for the health, education, maintenance and support of A.S.R. while he is a minor."[59] Her proposal further includes the following: 1) She would "serve as trustee" and would "not receive any compensation for" her

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[53] N.J. Ct. R. 4:44-3.

[54] *Essex Cty. Div. of Welfare v. O.J.*, 128 N.J. 632, 640 (1992).

[55] (D.E. 83-5, Decl. of Andrea Taverna, at ¶ 6).

[56] N.J. Ct. R. 4:48A(c).

[57] *See In re Conda*, 104 N.J. 163, 170–72 (1986).

[58] Comment to N.J. Ct. R. 4:48A.

[59] (D.E. 79-6, Proposed Trust).

role as trustee;[60] 2) She would retain a financial advisor and professional trustee to assist with the trust;[61] 3) She would consult with Mr. Sanchez "regarding uses of the trust funds" but would "retain final decision-making authority"; 4) "At age 18, A.S.R. will gain independent access to and authority over one-half of the funds in the trust"; and 5) "At age 21, A.S.R. would gain independent access to and authority over the remaining funds in the trust."[62]

The United States Government raised several concerns with Ms. Rodriguez Alvarado's proposal: 1) The "professional trustee" has not been identified; 2) "the amount of fees that the professional trustee will charge" have not been identified; 3) the mechanism to resolve conflicts between Ms. Rodriguez Alvarado and the professional trustee is unclear; 4) the professional trustee may change and can appoint a successor at any time; 5) neither the contemplated financial advisor nor his or her fees have been identified; and 6) several proposals discussed in the brief conflict with the proposed trust language.[63] Ms. Rodriguez Alvarado has not responded to the Government's concerns.

The Court shares the Government's concerns that Ms. Rodriguez Alvarado's proposal is incomplete and lacks key information needed to determine whether the private trust would be in A.S.R.'s interest. Ms. Rodriguez Alvarado's brief criticizes the 2.13% interest rate earned by accounts held by the Surrogate, but does not disclose the rate of return expected with the private

[60] (D.E. 80, Updated Proposed Trust, at 1).

[61] (D.E. 83, Br., at 10–11).

[62] (D.E. 80, Updated Proposed Trust, at 2).

[63] (D.E. 84, Letter Br.).

trust. Ms. Rodriguez Alvarado also does not disclose the fees and expenses, if any, that would be charged by the financial advisor or professional trustee.

The Court finds that Ms. Rodriguez Alvarado has not shown that the private trust is in A.S.R.'s interest. The Court further finds good cause has not been shown to deviate from the plan prescribed by New Jersey's Legislature for deposit with the Surrogate. Therefore, Ms. Rodriguez Alvarado's request to have A.S.R.'s settlement proceeds deposited into a private trust is denied.

An appropriate order will be issued.

Steven C. Mannion

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United States District Court,
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