FLORIDA DISTRICT COURT OF APPEAL, SECOND DISTRICT

Jaime Stinson, as natural mother and next friend of Randall Deily, and Toral, Garcia, Pineyro & Franz, P.A. v. GEICO Insurance Company

In re Guardianship of Deily, 26 So. 3d 639 (Fla. 2d DCA 2010) · No. 2D08-2965

SUMMARY

The Second District extended the *Phillips v. Nationwide Mutual Insurance Co.* rule—requiring a hearing on the necessity and fairness of a contingent fee contract entered into on behalf of a minor—to incapacitated adults. The court held that a mother acting as next friend under Florida Rule of Civil Procedure 1.210(b) could retain counsel for her incapacitated adult son before a guardian was appointed, and the probate court erred in striking the firm's petition without conducting a *Phillips* hearing.

CASE DETAILS

COURT	Florida District Court of Appeal, Second District
WRITING FOR THE COURT	WHATLEY; SILBERMAN; CRENSHAW
JURISDICTION	Florida
DOCKET	2D08-2965
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Circuit Court for Pinellas County, Probate Court, granting the guardian's petition to strike the Firm's amended petition to approve settlement and to confirm the Firm's retention as counsel.
PRECEDENTIAL VALUE	Published
PARTIES	JAIME STINSON, as natural mother and next friend of Randall Deily, TORAL, GARCIA, PINEYRO & FRANZ, P.A., a Florida Professional Association v. GEICO INSURANCE COMPANY

TOPICS

guardianship procedure · attorney fees · contracts · civil procedure · probate procedure

PRACTICE AREAS

Probate · Guardianship · Insurance · Attorney's Fees

QUESTIONS PRESENTED

1. Whether the probate court properly struck the law firm's amended petition to approve settlement and confirm retention without conducting a hearing under Phillips v. Nationwide Mutual Insurance Co.

HOLDINGS

1. Under the unique circumstances of this case, it was improper for the probate court to strike the firm's amended petition without conducting a hearing to determine whether the contingent fee arrangement was binding on the incapacitated adult—i.e., whether it was reasonably necessary to employ an attorney and whether the contract was fair and reasonable at the time it was entered into.

KEY QUOTATIONS

> *"a contingent fee arrangement entered into on behalf of a minor will be binding on the minor if the trial court determines: 1) that it was reasonably necessary to employ an attorney on behalf of the minor; and 2) that the contract by which the attorney was employed was fair and reasonable at the time it was entered into."* (at 466-67)

> *"Under the unique circumstances of this case, we hold that it was improper for the probate court to strike the Firm's amended petition without conducting a hearing pursuant to Phillips v. Nationwide Mutual Insurance Co., 347 So. 2d 465 (Fla. 2d DCA 1977)."* (at 466)

FACTUAL BACKGROUND

On June 6, 2007, eighteen-year-old Randall Deily suffered an incapacitating brain injury when his bicycle collided with a car. The police report initially indicated Randall was at fault, but the law firm retained by his mother discovered meritorious claims. The firm secured full policy limits from the driver's liability insurer ($300,000) and from Randall's uninsured motorist insurer ($25,000). No other viable assets were found. The mother was not formally appointed guardian at the time of retention but filed for guardianship soon after, and a professional guardian was later appointed.

PROCEDURAL HISTORY

After Randall Deily's incapacitating injury, his mother signed a contingency fee agreement with the Firm. The Firm obtained full insurance policy limits and directed Stinson to file petitions to determine incapacity and appoint a guardian. The probate court appointed a professional guardian, who moved to strike the Firm's amended petition for settlement approval. The court granted the motion, finding the mother lacked authority to retain counsel. The Firm appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Conduct a hearing to determine the applicability of the factors set forth in Phillips v. Nationwide Mutual Insurance Co.

CASES CITED

- Phillips v. Nationwide Mutual Insurance Co., 347 So. 2d 465 (Fla. 2d DCA 1977)

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