

SUPREME COURT OF DELAWARE

Barlow v. Finegan

76 A.3d 803 (Del. 2013) · Decided October 1, 2013

SUMMARY

The Delaware Supreme Court held that a tort settlement involving minors is not binding without prior court approval under 12 Del. C. § 3926 and Superior Court Civil Rule 133. The court reversed and remanded because the Superior Court improperly focused on enforcing the parties’ settlement allocation rather than independently determining, on a clean slate, whether the settlement was fair and should be approved.

CASE DETAILS

|                       |                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Delaware                                                                                                                                                         |
| WRITING FOR THE COURT | Holland, Justice; Holland; Jacobs; Steele                                                                                                                                         |
| JURISDICTION          | Delaware                                                                                                                                                                          |
| DECIDED               | October 1, 2013                                                                                                                                                                   |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                             |
| PROCEDURAL POSTURE    | Appeal from the Superior Court's judgment enforcing a settlement and apportioning settlement proceeds between two minors after remand for a minors' settlement hearing.           |
| PRECEDENTIAL VALUE    | published and precedential Delaware Supreme Court opinion                                                                                                                         |
| PARTIES               | Dawn Locke, guardian ad litem of Kimberly Foth v. Michael P. Finegan, Jr., Michael Patrick Finegan, Angela M. Barlow, John Barlow, Jr., John Barlow, III, Titan Indemnity Company |

TOPICS

- guardianship procedure
- guardianships
- statutory interpretation
- civil procedure
- appellate procedure

PRACTICE AREAS

- civil procedure
- guardianships
- torts
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court properly approved a minor's tort settlement by evaluating the fairness of the negotiated apportionment rather than independently determining, from a clean slate, whether the

settlement should be approved.

2. Whether 12 Del. C. § 3926 and Superior Court Civil Rule 133 require prior court authorization and an evidentiary hearing before a settlement involving a minor or legally disabled person becomes binding.

#### **HOLDINGS**

1. A settlement of a tort claim involving a minor or otherwise legally disabled litigant must receive prior court authorization to be binding; an attorney, receiver, or guardian cannot rely solely on the authority to settle the claim.
2. The Superior Court must independently determine whether to approve or reject a minor's settlement, beginning with a clean slate; it may not treat the hearing as an enforcement proceeding or approve a negotiated allocation despite reservations about the settlement's fairness.
3. Settlement approval requires two distinct steps: filing a petition to authorize the settlement and presenting medical or other satisfactory evidence at an open-court hearing, with the minor present unless excused.

#### **KEY QUOTATIONS**

*“All single-transaction settlements of tort claims involving minor or otherwise legally-disabled litigants require prior court authorization in order to be binding.” (806)*

*“In such cases, therefore, two distinct steps must be taken: first, the litigants must petition the court to authorize the settlement; and second, medical or other evidence, satisfactory to the court, must be heard in open court.” (806)*

*“Title 12, section 3926 mandates that court approval of a minor settlement always starts with a “clean slate” by providing that no person dealing with the receiver of a minor can rely upon the receiver’s authority to settle tort claims.” (807)*

#### **FACTUAL BACKGROUND**

Two minors, Kimberly Foth and John Barlow, III, were parties to a tort settlement totaling \$15,000, with each minor allocated \$7,500. No minors' settlement hearing had occurred before the Superior Court entered judgment and enforced the settlement. After remand, the Superior Court reviewed medical records and heard testimony from the minors and their mothers, concluded that the equal division was fair and reasonable, but indicated that a clean-slate apportionment would have awarded Foth \$10,000 and Barlow \$5,000.

#### **PROCEDURAL HISTORY**

The Superior Court initially entered final judgment and granted a motion to enforce a settlement under which each minor would receive \$7,500. The Delaware Supreme Court previously vacated that judgment and remanded for a minors' settlement hearing because the settlement had not received the court approval required by 12 Del. C. § 3926 and Superior Court Civil Rule 133(c). On remand, the Superior Court held a hearing, found the equal division fair and reasonable, but stated that on a clean-slate apportionment it would award Foth \$10,000 and Barlow \$5,000. The Supreme Court reversed and remanded for an independent settlement-approval determination.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The matter was remanded for further proceedings in accordance with 12 Del. C. § 3926 and Superior Court Civil Rule 133. The Superior Court was required to independently determine whether to approve or reject the settlement, rather than enforce the negotiated allocation. Jurisdiction was not retained.

## CASES CITED

- Vance v. Irwin, 619 A.2d 1163, 1165 (Del. 1993)
- Trans World Airlines v. Summa Corp., 394 A.2d 241 (Del. Ch. 1978)
- Gebhart v. Ernest DiSabatino & Sons, Inc., 264 A.2d 157, 160 (Del. 1970)
- Jane Doe 30's Mother v. Bradley, 64 A.3d 379, 400-401 (Del. 2012)