

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE : : **Orphan’s Court Division**
GRIFFIN K. ENGLISH and :
LANDON W. ENGLISH :
: **No. 41-13-0133**
:

OPINION AND ORDER

Before the Court is what is styled as a “Petition to Settle Wrongful Death and Claims Action” filed by Joseph English, the administrator of the Estate of Ryan English.

The petition alleges that the petitioner was appointed as administrator of the Estate of Ryan English. The decedent died on March 1, 2013 as a result of a motor vehicle accident. At the time of his death, the decedent did not have a Will. While the Court cannot decipher for sure, at the time of his death, Defendant had at least two children, Griffin English and Landon English.

The petition requests approval of a settlement of a wrongful death claim of the children “based upon the maximum policy limits of the motor vehicle insurance of the deceased.”

The petition proposes that \$33,333.00 be paid as counsel fees and the remaining amount be distributed equally between the children apparently to purchase annuities that would then distribute certain amounts to the children at ages 18, 19, 20 and 21.

More specifically, the petition requests authorization to execute all documentation necessary to secure annuities issued by Metropolitan Life Insurance Company, which would result in Griffin English receiving certain monies between December 1, 2021 and December 1, 2024 and Landon English receiving certain monies between July 9,

2027 and July 9, 2030.

The petition as presented will be denied without prejudice to refile an amended petition.

Pursuant to Rule 2206 of the Pennsylvania Rules of Civil Procedure, an action for wrongful death in which a minor had an interest can only be settled pursuant to court approval. The court has the obligation of ensuring that the settlement is both fair and equitable. As well, the court may approve a structured settlement by a financially responsible entity that assumes responsibility for the payments and the court may approve an agreement for the payment of counsel fees.

The content of the petition fails to set forth sufficient facts for the court to determine whether the settlement is fair or equitable. The court cannot fully determine whether the insurance proceeds are related to liability insurance, underinsurance or uninsurance. If the proceeds relate to liability insurance, as the court suspects, there is nothing to indicate whether there were other insurances available and if so whether the children's rights were protected with respect to those benefits. The release could be interpreted as a full and final release, which would preclude all claims against any tortfeasors and insurance carriers. Yet, there is no indication that any underinsurance carrier or uninsurance carrier, if applicable, was provided notice of the settlement and an opportunity to either tender the underinsured/uninsured funds or consent to the settlement.

While it appears that the co-guardians of the children were served with the petition, there is nothing to indicate whether either or both of them approve of the settlement

or have any other concerns that need to be addressed on behalf of the children. In fact, while the grant of letters for the personal representative is attached to the petition, the documents showing that the named individuals have been appointed or designated co-guardians of the children are not.

An attorney's fee of one-third of the settlement is requested without any allegations supporting the factors for determining whether it is fair or reasonable under the circumstances. See Shaw by Ingram v. Bradley, 672 A.2d 331 (Pa. Super. 1996); Estate of Murry v. Love, 602 A.2d 366 (Pa. Super. 1992); Gilmore by Gilmore v. Dondero, 582 A.2d 1106 (Pa. Super. 1990). Indeed, there is no written fee agreement attached to the petition and no indication of the complexity of the case or the time and effort expended. The court also notes that it is the practice or policy in Lycoming County that a fee of 25% is a presumptively fair and reasonable amount of attorney fees with respect to minor's claims.

Without any explanation, two "qualified assignment and release agreements" were attached to the petition. In reviewing these documents, they are exactly the same. More importantly, however, neither agreement is signed by the petitioner or a representative of the referenced insurance companies. As well, while it appears that each child's name is listed as a claimant, the signatures appear to be those of the co-guardians. Said signatures do not indicate said co-guardians or the capacity in which the agreement is being signed. Obviously, the court cannot determine whether it is a valid structured settlement agreement underwritten by a financially responsible entity that assumes responsibility for payments. Indeed, the court cannot determine if any of these factors have been met.

Finally, there is nothing to indicate that the Pennsylvania Department of Revenue has been advised of this proposed settlement and in particular all of the proceeds being designated to wrongful death and, has responded or approved such. Although the court understands that allocating all of the proceeds to the wrongful death claim may be beneficial to the children in that the funds would not be subject to inheritance tax, if the Department of Revenue is not in agreement with that allocation the children could be subject to taxes, interest and penalties in the future. It is for this reason the court has a policy that, absent a hearing of which the Department has been appropriately notified and had the opportunity to respond, the court requires a written statement indicating the Department's approval of the allocation.

While the court understands that the petitioner is being represented by attorneys from the state of New York and while some leeway may be appropriate, the petition is wholly inadequate and fails to comply with the relevant legal mandates. Accordingly and as set forth above, the petition will be denied.

ORDER

AND NOW, this ___ day of January 2015 for the reasons set forth above, the “Petition to Settle the Wrongful Death and Claims Action” filed in the above-captioned matter is **DENIED** without prejudice to the petitioner or any other interested party in refiling a petition that meets the substance of this opinion and order.

By The Court,

Marc F. Lovecchio, Judge

cc: Thomas Bowes, Esquire
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Work File
Gary Weber (Lycoming Reporter)