

# CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

ERNEST A. LONG

## Alternative Dispute Resolution

❖ Resolution Arts Building ❖

2630 J Street, Sacramento, CA 95816

ph: (916) 442-6739 • fx: (916) 442-4107

elong@ernestalongadr.com • www.ernestalongadr.com

### *Pearson v Superior Court* 1/25/12

#### **Petition to Compromise Minor's Claim; Death of Minor; Enforceability**

Bryce Pearson, a minor, was injured on an all terrain vehicle operated by a friend. On June 9, 2010, the parties and the defendants' insurance carrier entered a settlement of the minor's claims on the record at a settlement conference. Because Bryce was a minor, the settlement required court approval. A petition for approval was filed, but tragically, Bryce died about three weeks before the superior court ruled on the petition.

Defendants filed opposition to the petition on the ground that the settlement agreement was not enforceable because it had not been approved by the court before minor's death, which extinguished damages attributable to pain and suffering. Guardian ad litem, Bryce's father, moved to enforce the settlement agreement, contending that CCP section 372 allows only the minor to repudiate a settlement agreement before it is approved by the court. The trial court denied the petition and the motion to enforce the agreement, reasoning that the settlement never became final because it had not been approved prior to the minor's death.

Guardian ad litem filed a petition for a writ of mandate to compel the superior court to grant the motion for approval of the minor's compromise and enforcement of the settlement agreement. The Second District Court of Appeal issued an order to show cause and considered the matter. It stated that when no minors are involved, the parties to pending litigation may enter into a final and binding settlement agreement by reciting the terms of their agreement on the record, in the court in which the action is pending. (CCP section 664.6) When one of the parties is a minor, however, an additional step is required to protect the

minor.

It has long been the rule in California that a minor has limited capacity to enter into contracts, and that a contract of a minor may be disaffirmed by the minor before majority. (Family Code sections 6700, 6701, 6710) In litigation, the guardian ad litem “shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same,” or take other necessary action. (CCP section 372) An agreement to settle or compromise a claim made by a minor is valid only after it has been approved, upon the filing of a petition, by the superior court in the county where the minor resides or the action could have been brought. (Probate Code section 3500(b)) The requirements that a guardian ad litem be appointed and that the proposed compromise of a minor’s claim be approved by the trial court exist to protect the best interests of the minor. (*Williams v Superior Court* (2007) 147 Cal.App.4<sup>th</sup> 36) Just as the minor lacks capacity to enter into a contract, the guardian ad litem lacks contractual capacity to settle litigation without endorsement of the court. (*Scruton v Korean Air Lines Co. Ltd.* (1995) 39 Cal.App.4<sup>th</sup> 1596)

Without trial court approval of the proposed compromise of the ward’s claim, the settlement cannot be valid. (*Andersen v Latimer* (1985) 166 Cal.App.3d 667) Nor is the settlement binding on the minor until it is endorsed by the trial court. Therefore, a proposed settlement is always voidable at the election of the minor through his guardian ad litem unless and until “the court’s imprimatur has been placed on it.” (*Scruton*, at p. 1606) The court in *Scruton* also concluded that there was not statutory authorization for the defendant to move to enforce the compromise over the guardian ad litem’s objections. (*Scruton*, at p. 1608)

Here, the Justices point out that the guardian seeks not to object to the compromise, but to enforce it. The settling defendant seeks to repudiate the deal. The 2<sup>nd</sup> DCA asserted that the purpose of CCP section 372 is to protect the minor involved in litigation by adding an extra layer of scrutiny to the settlement of a minor’s claim. The statute is a “shield” to protect the interests of the minor. It was not enacted to be a “sword” for a defendant and/or its insurance carrier. The defendant and its carrier “bought peace” at the settlement conference and were bound as of that time. The intervening death of the minor before he could get on calendar for approval should not, and does not, inure to the benefit of the

defendant and/or its carrier.

There is a strong public policy in California to encourage the voluntary settlement of litigation. It is the policy of the law to protect a minor against himself and his indiscretions and immaturity as well as against the machinations of other people and to discourage adults from contracting with an infant. Any loss occasioned by the disaffirmance of a minor's contract might have been avoided by declining to enter into the contract. (*Niemann v Deverich* (1950) 98 Cal.App.2d 787)

The Justices demonstrated that other jurisdictions (Pennsylvania, Kansas, New York) agree with their analysis. Defendants contend these authorities are distinguishable because the objections to the settlement agreements were substantive rather than procedural. Defendants claim their attempted repudiation is procedural: the minor has died and damages may no longer be recovered for his pain and suffering. But that tragic event occurred after defendants entered into the settlement agreement. Because defendants are not minors, the agreement was binding upon them when it was entered on the record in the trial court. (CCP section 664)

Had Bryce been an adult when his settlement agreement was entered on the record, his subsequent death would not have released the defendants from their obligations under the agreement. ( CCP sections 377.20, 377.34; *Sullivan v Delta Air Lines, Inc.* (1997) 15 Cal.4<sup>th</sup> 288) Because defendants were bound by the agreement when it was made, regardless of whether Bryce had the power to disaffirm it, the agreement remains enforceable after his death. A peremptory writ of mandate will issue, commanding the superior court to vacate its order denying plaintiff's motion to enforce the settlement agreement and entering a new order granting that motion. Plaintiff is to recover costs.

////

**All Case Studies and original Opinions from 2008 through the present are now archived on our Website:**

<http://www.ernestalongadr.com/index.php/library.html>

////

This case study is provided in the hope it may prove useful in your practice or in the handling of litigated cases. If you receive a forwarded copy of this message and would like to be added to the mailing list, let me know.

Mediation and Binding Arbitration are economical, private and final. Alternative dispute resolution will allow you to dispose of cases without the undue time consumption, costs and risks of the courtroom. Your inquiries regarding an alternative means to resolve your case are welcome.