Reversed and Rendered and Opinion Filed February 12, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-01243-CV

IN RE: $133,333.33

On Appeal from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-22-06402-A

MEMORANDUM OPINION

Before Justices Goldstein, Miskel and Lewis[1]
Opinion by Justice Goldstein

This appeal is of an in rem disbursement order. The in rem proceeding involves monies deposited into the registry of the court when the trial court, after approving a minor prove up settlement, held back from the final judgment a portion of the agreed upon attorney's fees the trial court self-identified as disputed. Appellants contend that the trial court abused its discretion in unilaterally determining the appropriate percentage or amount of attorney's fees, which we discern also modifies the undisputed terms of the settlement agreement without

[1] Justice Lewis succeeds Justice Partida-Kipness, a member of the original panel. Justice Lewis has reviewed the briefs and record in this case.

resort to guiding rules or principles. We reverse the trial court's order of disbursement and render the amount of $133,333.33 to appellants.

BACKGROUND

The in rem dispute over a portion of attorney's fees emanates from a personal injury lawsuit filed on behalf of a minor, A.G., who suffered a traumatic brain injury (TBI) while playing soccer at Foro Sports Club. A.G.'s parents retained the Law Offices of Thomas E. Shaw, P.C. ("Shaw Firm") to represent them in the lawsuit against 14725 Preston LLC and Preston Sports Center, Ltd. d/b/a Foro Sports Club-Signature. The plaintiffs entered into a contingency fee agreement whereby the Shaw Firm would receive 40 percent of any settlement proceeds, plus expenses.

The Shaw Firm, together with The Law Office of Marc C. Tecce, P.C. and Keith Mitnik of Morgan & Morgan, P.A. ("Appellants"), successfully negotiated a two million dollar settlement, exceeding the defendants' insurance coverage limits by one million dollars. The settlement allocated funds for A.G.'s future medical and educational expenses, including an annuity, a trust, and reimbursement for past medical expenses. It also included $800,000 for attorney's fees and $138,343.40 for litigation expenses. The trial court approved the settlement as in the best interest of the minor child, including an amount of contingent attorney's fees that total 33 1/3 percent of the two million dollar settlement as opposed to the contractual 40 percent sought. This appeal challenges the trial court's allocation of settlement proceeds for the minor child to the extent of the segregated and severed legal fees.

BACKGROUND

The background facts are well known to the parties, so we limit our discussion to the facts necessary for a determination of the issue raised.[2]

Original Proceeding:[3]

On March 5, 2018, the parents of the minor child, individually and as next friends and legal guardians of the minor child, entered into an agreement for rendition of legal services "in connection with a lawsuit for personal injuries sustained at Foro Sports Club (injuries suffered by the minor child on February 25, 2018)."

A. Minor Prove Up Hearing in Original Cause

In the original cause, the parties presented the settlement as a minor prove up before the trial court on March 31, 2022. The minor child's parents testified, and the guardian ad litem gave her report.[4]

The guardian ad litem reviewed the case details, including medical records, expert reports, and financial information, and concluded that the settlement was fair, reasonable, and in A.G.'s best interest. Both the guardian ad litem and A.G.'s parents

[2] The facts are derived from the record in this in rem appeal which includes the transcripts from the minor prove up hearing and the motion to disburse funds or, alternatively, motion to sever, as well as the clerk's record in this severed proceeding.

[3] Cause No. CC-19-06400-A styled *Juan D.Garrett and Nicole Garrett, et al. v. 14725 Preston LLC, et al,* ("Original Cause") has not been challenged and is final for all purposes before this Court.

[4] A guardian ad litem was appointed to represent A.G.'s interests.

testified in support of the settlement, including the agreed-upon attorney's fees under the contingency fee agreement of 40 percent or $800,000.00.

Relative to attorney's fees, the trial court questioned trial counsel on the number of lawsuits filed and whether there were provisions for the award of attorney's fees in those separate proceedings and confirmed that the fees sought related to all three lawsuits as it was "all considered part of the same representation and contract." Additionally, the trial court questioned "what would the proportion of the settlement be to the parents in this case" while acknowledging that the parents "basically waived their interest"[5] except for reimbursement for medical and dental fees incurred.

Notwithstanding the contingency contract, the trial court sought clarity on apportionment and accounting, stating that counsel "could have received attorney fees under the declaratory judgment action case. That you chose to waive them was your choice. So that would have been an amount of fees that would have not come out of this case." Uncertain on the rule 202 motion and how that was affected, the trial court stated "if there were three different lawsuits in three different courts, what's before me is what you're entitled to in this court. Now if the parties want to do a gross settlement, that's certainly appropriate. However, the apportionments have to be related to each of the cases that have been filed."

[5] Father had a bystander claim and Mother had a medical expense claim.

The trial court opined that, "[f]orty percent is extremely large in a minor prove-up." More specifically, the trial court advised:

> The parents were entitled to proceeds from the case, just as the child was entitled to proceeds. If they choose to waive their proceeds and give them to you as attorney fees, that's fine. But it's not appropriate for you to have a 40-percent attorney fee on a minor prove-up case.
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> * * *
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> At best, it would be a third because you got extraordinary results.
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> * * *
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> If your fee is 40 percent of the entirety of the case, you still need to apportion for each of the parties in the case. And if they choose to give you that portion for attorney fees, that's fine. But it needs to be reconciled.

Finally, that trial court stated:

> I am not quibbling with the amount of the settlement. I'm going to approve the amount of the overall settlement. I'm concerned about how the apportionment comes out. And it cannot be 40 percent of this case if you're including your attorney fees from work on other cases. That has to be apportioned so it's clear what is being paid per case. And so I'm going to ask you to do that.

B. Final Judgment in Original Proceeding

> On July 5, 2022, the trial court entered a final judgment[6] reciting:
>
> The Court, having considered the pleadings, reviewed evidence as to the manner in which the incidents occurred out of which the suit arises, and having inquired carefully into the nature, extent, and duration of the damages sustained by A.G., ***and the amount of the settlement, and***

[6] The final judgment entered in the original cause has not been challenged and is final for all purposes. It has been filed as part of the record in this in rem proceeding and is therefore before this Court.

> ***after the recommendations of the Guardian Ad Litem[7], is of the opinion that the settlement*** made on behalf of Defendants 14725 Preston, LLC and Preston Sports Center, Ltd., d/b/ a Foro Sports Club to Plaintiffs and A.G. ***is just, fair, reasonable, and in the best interest of the minor child, A.G., and. ought to be approved***. (emphasis added)

Notwithstanding the unqualified approval of the settlement amount, determining that it was just, fair, reasonable and in the best interest of the minor child, the trial court's final judgment awarded one-third of the gross settlement proceeds as attorney's fees in the amount of $666,666.67 and an additional $138,343.40 for litigation expenses, ordering the amount identified in the Final Judgment as "disputed"[8] of $133,333.33 into the registry of the court.[9]

C. Motion to Disburse Funds

In the original cause, appellants filed a motion to disburse funds supported by the affidavit of Thomas E. Shaw, lead counsel for the minor child. The trial court held a hearing on the unopposed amended motion to disburse funds, or alternatively, sever, on October 5, 2022. Shaw's affidavit identified the specific services rendered and testified that the forty percent contingency was reasonable. Shaw's affidavit attests that the enumerated tasks required approximately 2200 hours of attorney time

[7] The guardian ad litem recommended and approved the payment of the $800,000 in attorney's fees.

[8] The record is clear that no party to the litigation challenged or disputed the settlement amount or the reasonableness and necessity of the attorney's fees. The trial court sua sponte disputed the amount calculated as the difference between the forty percent requested and the thirty three and a third percent awarded.

[9] While not clear in the record, we discern that the order requiring that monies be tendered to the registry of the court was entered initially in the original proceeding.

between 2018 and 2022, with an hourly rate between $550 and $600 per hour. The guardian ad litem endeavored to address the court's concern of whether there is an adequate amount of funds available in the future based upon the nature of the traumatic brain injury. The trial court granted the alternative motion to sever stating that, "while 40 percent might have been an appropriate amount for the parents and the Court would have no input into that, that does not mean that 40 percent is an appropriate amount when it comes to the provision of the attorney's fees for the child . . . . Then the Court will hear how it would be appropriate to take a larger percentage of the child's recovery when there was a conflict with the parents." The trial court severed appellants' claim to the attorney's fees held in the registry of the court, pursuant to the final judgment.

Severed Cause[10]

On November 2, 2023, the trial court signed the distribution order which provides that:

> During the hearing(s) regarding the distribution of the $133,333.33 ***there was no testimony adduced as to how it was in the Minor Child's best interest for these funds to be paid to the Attorney Applicant rather than the minor***. *See Vance v. Davidson*, 903 S.W. 2d 863, 865 (Tex. App—Houston, [14th Dist.] 1995, no writ) (upholding a reduction in

[10] Cause No. CC-22-06402, *In Re: $133,333.33*, was severed per court order dated October 28, 2022, and filed November 8, 2022. A motion to disburse funds was filed on December 9, 2022. On May 22, 2023, Shaw, in response to the trial court's request during the May 19, 2023, hearing, filed a third affidavit relative to the work on the declaratory judgment action, attaching the fee agreement, an itemized list of tasks performed, as well as the unredacted report of Dr. Clayton. On May 24, 2023, to address issues raised during the March 31, 2022, prove up hearing, Shaw filed a brief regarding the non-recoverability of attorney's fees in Rule 202 actions and federal declaratory judgment actions. We note that the record reflects no other hearing or transcript prior to rendition of the distribution order and, in the March 10, 2023, request for ruling or trial setting, counsel requested a ruling without another hearing.

> attorney's fees from 40% to 33 1/3% in a case because minors were involved); *see also Diaz v. Johnson*, No. 14-14-01020-CV, 2015 WL 6496366, at *4 (Tex. App.—Houston [14th Dist.] Oct. 27, 2015, no pet.) (failure to show abuse of discretion in awarding attorney's fees sought or why amount awarded was against the great weight and preponderance of the evidence resulted in waiver of claim that attorney's fee award was unreasonable).

(Emphasis in original). The trial court noted that the agreed upon percentage was forty percent of the gross settlement proceeds or $800,000 "of the minor child's settlement proceeds awarded to him pursuant to a contract with the Minor Child's parents." The trial court then found that the minor child was "legally entitled to the disputed fees in the amount of $133,333.33" after stating that:

> Given the permanent and ongoing nature of the physical, emotional and psychological injuries suffered by the Minor Child and the projected costs of intermittent and ongoing medical and psychological treatment anticipated, the funds in question will offset the future costs of treatment and address changes in costs of services due to inflation and changing cost of service rates over time.
>
> Further the anticipated costs for future dental work (at the age of dental maturity) and facial plastic surgery when appropriate and the delicate age of the Minor Child- in the early teen years— when self-esteem and confidence is in the developmental stages and the opinion of the Forensic Psychologist that the Minor Child experiencing these issues at this time of life will have a lasting impact on the minor's overall confidence, emotional state and emotional health, distribution of the funds to the minor appears to be in the minor's best interest.
>
> Moreover, the opinion of the expert that the mTBI and left frontal lobe white matter tract damage impair the minor's ability to process and deal with complicated psychological issues and the anticipated need for life skill development and coaching to assist the minor into developing

> as an independent functioning adult also vitiates in favor of the funds in question being awarded to and in the best interest of the minor.

This appeal followed.

ISSUE PRESENTED

In a single issue, appellants argue the trial court abused its discretion in refusing to award the full amount of attorneys' fees due to appellants and awarding a portion of the attorney's fees to the minor. Stated another way, Appellants contend and aver that:

> This case presents an issue important to many litigants in Texas: can a trial court disregard undisputed evidence concerning attorneys' fees in a settlement involving a minor, despite approval of the attorneys' fees by the minor's parents and guardian ad litem, because the trial court unilaterally determines a contingency fee in excess of one-third is never reasonable and it was in the minor's best interest to award portions of the attorneys' fees to the minor?

The answer to this question is a qualified no. While the trial court has an independent responsibility to determine what is in the minor's best interest relative to approving the settlement and to evaluate whether attorney's fees are reasonable and necessary, such determinations must be based upon guiding rules and principles. As set forth below, we conclude the trial court's actions in this case were not based upon applicable guiding rules and principles.

PROCEDURAL POSTURE AND JURISDICTION

1. Severance

On appeal is an order for disbursement of funds in an in rem proceeding. We treat the order of disbursement as a final judgment.[11]

2. **Monies into Registry of Court – In Rem Proceeding**:

We note that the amount and allocation of the funds was solely disputed by the trial court. The amount of the settlement was found by the trial court to be fair, just and reasonable. The question relative to attorney's fees was not whether the same were reasonable and necessary but, from the trial court's perspective, whether the questioned funds should be re-allocated to the minor. While not a typical scenario, and as it is again unchallenged, we do not further address the propriety of placing funds in the registry of the court in a severed cause as an abuse of discretion. The final judgment, in conjunction with the severance order, placing the monies in the registry of the court, and the attendant disbursement order, provided the appellate avenue for this Court to address the issue raised in an in rem proceeding as the trial court continued to have control over the res. *City of Conroe v. San Jacinto River Authority*, 602 S.W.3d 444, 458 (Tex. 2020) ("The general rule of in rem jurisdiction is that the court's jurisdiction is dependent on the court's control over the defendant

[11] The parties do not challenge the severance and in fact requested it as alternative relief; therefore, we do not address it as an abuse of discretion. We make note that severance generally divides a lawsuit into two or more independent lawsuits, each of which will terminate with a separate, final, enforceable and appealable judgment. *Van Dyke v. Boswell, O'Toole, Davis & Pickering*, 697 S.W.2d 381, 383 (Tex. 1985); TEX. R. CIV. P. 41 (any claim against a party may be severed and proceeded with separately). The trial court cannot sever a case after the case has been submitted to the trier of fact. TEX. R. CIV. P. 41. *State Dept. of Highways and Pub. Transp. v. Cotner*, 845 S.W.2d 818, 819 (Tex. 1993). Here, the proceeding was to adjudicate rights to the monies ordered to be deposited into the registry of the court. Although questionable, without a specific challenge, we do not further address this issue.

res." (quoting *Costello v. State*, 774 S.W.2d 722, 723 (Tex. App.—Corpus Christi 1989, writ denied)).

ANALYSIS

The recovery of reasonable attorney's fees is authorized by statute. TEX. CIV. PRAC. & REM. CODE § 38.001(b)(1) ("A person may recover reasonable attorney's fees from an individual … for: (1) rendered services."). The award of attorney's fees generally rests in the sound discretion of the trial court. *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 760 (Tex. 2012). Under Texas law, a trial court will generally enforce contingency fee agreements as written unless the agreement is void due to illegality or violations of disciplinary rules. *In re Polybutylene Plumbing Litig.*, 23 S.W.3d 428, 436 (Tex. App.—Houston [1st Dist.] 2000, pet. dism'd). However, an exception applies in cases involving minors, where courts must independently evaluate whether attorney's fees are fair and reasonable, and whether the settlement is in the minor's best interest in light of the facts of the case. *Id.*; *Baladez v. Gen. Motors, LLC*, No. 1:17-CV-0194-C-BL, 2018 WL 6737978, at *2 (N.D. Tex. Dec. 18, 2018). The reasonableness and necessity of attorney's fees are questions of fact. *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 498 (Tex. 2019). Courts must assess fees using the lodestar method, which requires evidence of the services performed, the time spent, and the hourly rate charged. *Id*. The party seeking recovery of attorney's fees "bears the burden of establishing the fees are reasonable *and* necessary." *Id*.

Appellate courts review a trial court's award of attorney's fees for an abuse of discretion. *Pettigrew v. Cedar Springs Alexandre's Bar, L.P.*, 2018 WL 1580776, at *4 (Tex. App.—Dallas 2018) (citing *North Star Water Logic, LLC v. Ecolotron, Inc.*, 486 S.W.3d 102, 105 (Tex. App.—Houston [14th Dist.] 2016, no pet.)). "A trial court abuses its discretion when it acts arbitrarily or unreasonably, without reference to guiding rules or principles." *Pettigrew*, 2018 WL 1580776, at *4.

A. The Trial Court Has the Authority to Review Attorney Contingency Fees in Cases Involving Minors.

The statute that expressly governs contingent fee contracts is section 82.065 of the Texas Government Code, which provides the following: "(a) [a] contingent fee contract for legal services must be in writing and signed by the attorney and client; (b) [a] contingent fee contract for legal services is voidable by the client if it is procured as a result of conduct violating the laws of this state or the Disciplinary Rules of the State Bar of Texas regarding barratry by attorneys or other persons." TEX. GOV'T CODE § 82.065 (a)(b); *In re Polybutylene Plumbing Litig.*, 23 S.W.3d at 436. As a general rule, a court has no authority to determine what fee a litigant should pay his or her own attorney, that being a matter of contract between attorney and client. *In re Polybutylene Plumbing Litig.*, 23 S.W.3d at 436. When the language in an attorney fee contract is plain and unambiguous, it must be enforced as written. *Stern v. Wonzer*, 846 S.W.2d 939, 944 (Tex. App.—Houston [1st Dist.] 1993, no

writ). The usual rules of contract law are applicable to contingent attorney's fee contracts. *Id*.

In cases where a minor is involved, Texas caselaw carves out an exception to the general rule that attorney's fee contracts between attorneys and clients will be enforced as written if they have been fully performed by the attorneys. *In re Polybutylene Plumbing Litig.*, 23 S.W.3d at 437 (citing *Stern*, 846 S.W.2d at 947). In most cases, the agreement of the parties to a suit is sufficient basis for rendition of judgment. *Terrazas v. Ramirez,* 829 S.W.2d 712, 719 (Tex. 1991). But in cases involving minors, even if the parties and the ad litem agree to a settlement, the final judgment cannot be rendered without a hearing and evidence that the settlement serves the minor's best interest. *Baladez*, 2018 WL 6737978, at *2; *see* TEX. R. CIV. P. 44 (2). Moreover, "[r]egardless of any fee agreement, as the protector of the minor's interests, the court must independently investigate the fee to be charged to ensure that it is fair and reasonable." *Baladez*, 2018 WL 6737978, at *2. The parties have not cited us to any authority, and we have found none, that authorizes the trial court to unilaterally modify the agreement or act as a fact finder and determine legal entitlement or apportionment to the proceeds. As a practical matter, in the context of a minor prove up, the trial court may solely accept or reject the settlement; if the trial court does not approve the settlement, it may set the case for trial on the merits.

i. Minors' Rights in Legal Proceedings Under Texas Law.

Rule 44 and Rule 173 of the Texas Rules of Civil Procedure safeguard the rights and interests of minors in legal proceedings. *Webb v. Paccar Leasing Co.*, No. 4:09CV211, 2009 WL 1703207, at *1 (E.D. Tex. June 18, 2009). Rule 44 provides that litigant minors may be represented by "next friend." TEX. R. CIV. P. 44 (1) ("Such next of friend or his attorney of record may with the approval of the court compromise suits and agree to judgments, and such judgments, agreements and compromises, when approved by the court, shall be forever binding and conclusive upon the party plaintiff in such suit."). In cases involving a litigant minor, "a judgment ratifying the compromise cannot be rendered without a hearing and evidence that the settlement serves the minor's best interest" even when the parties and the ad litem have agreed to the settlement. *Byrd v. Woodruff*, 891 S.W.2d 689, 705 (Tex. App. 1994, writ denied, dismissed by agreement, and withdrawn). There, "[t]he overarching issue […] is whether the settlement is in the best interests of the minors in light of the particular facts of the case." *Baladez*, 2018 WL 6737978, at *2. "[T]he parties and counsel are typically in the best position to evaluate the settlement; their judgments are entitled to considerable weight." *Id*.

Baladez is instructive. There, a district judge referred the matter of a proposed settlement agreement involving two litigant minors to the United States District Court for the Northern District of Texas, Abilene Division for its recommendation on whether to approve it. *Baladez*, 2018 WL 6737978, at *1. The litigant minors in that case were plaintiffs in a personal injury suit and had an appointed guardian ad

litem to protect their interests. *Id*. Once the parties reached a settlement agreement, "[t]he guardian ad litem agreed that the settlement [was] in [the litigant minors'] best interests and stated that requested attorney fees are fair and reasonable." *Id*. at *2. The court reviewed the settlement agreement, considered the law, weighed the testimony of the litigant minors' mother, counsel's statements, and the guardian ad litem's statements. *Id*. It also noted that that no one objected to the settlement agreement. *Id*. In light of all this, the court recommended that the settlement agreement be approved. *Id*.

As the trial court determined that the settlement was in the best interest of the minor, we focus our analysis on the trial court's independent determination of the reasonable and necessary attorney fees. In its disbursement order, the trial court conflates the issue of the "best interest of the minor" as to the settlement with the establishment of reasonable and necessary attorney fees, stating that "there was no testimony adduced as to ***how it was in the Minor Child's best interest for these funds to be paid to the Attorney Applicant rather than the minor***" relying on and citing to *Vance*, 903 S.W.2d at 865 (upholding a reduction in attorney fees from 40% to 33 1/3% in a case because minors were involved) and *Diaz*, 2015 WL 6496366, at *4 (failure to show abuse of discretion in awarding attorney fee sought or why amount awarded was against the great weight and preponderance of the evidence resulted in waiver of claim that attorney fee award was unreasonable).

While the trial court had the ability to determine the reasonableness and necessity of attorney's fees, it approved the settlement as in the best interest of the child, which included the amount of the attorney's fees. Rather than conduct the appropriate analysis, the trial court made a factual determination that the best interest of the child would be served by awarding the severed funds to the minor. [12]

3. **Reasonable and Necessary Attorney's Fees.**

Appellants had the burden to prove that "legal authority permits [their] recovery of attorney's fees, and that the requested attorney's fees are reasonable and necessary." *Rohrmoos*, 578 S.W.3d at 487.

The trial court did not rely on *Rohrmoos;* rather, the trial court relied on two cited cases, *Vance* and *Diaz*, to support its interpretation of appellants' burden and support its determination. Neither case is persuasive nor supports a determination based solely on contingent contractual percentages rather than guiding rules and principles for the determination of reasonable and necessary attorney's fees.

In *Vance*, the issue was whether a trial court, in a lawsuit involving minor plaintiffs, could void or reform a lawyer's referral fee agreement when the court had no jurisdiction over one of the attorneys who was a party to the agreement. *Vance*, 903 S.W.2d at 864.

[12] In essence, the trial court contradicts its final judgment that settlement is in the best interest of the child by finding that additional funds were necessary due to the "permanent and ongoing nature of the physical, emotional and psychological injuries suffered by the Minor Child and the anticipated "projected costs of intermittent and ongoing medical and psychological treatment," "future dental work," "facial plastic surgery," and "need for life skill development and coaching."

We do not agree, as the trial court's order reflects, that the *Vance* court "upheld a reduction in attorney's fees in a case *because* minors were involved." Rather, the *Vance* court left that aspect of the judge's determination undisturbed because it was not raised as an issue. *Vance*, 903 S.W.2d at 864, 868 ("This case does not concern or abrogate the trial court's broad discretion to set attorney's fees in a case involving minor plaintiffs . . . . [W]e conclude that respondent abused his discretion by modifying the referral agreement . . . because respondent had no personal jurisdiction over [appellant]."). We disagree with the trial court's assessment that *Vance* supports the proposition that attorney's fees in cases involving minors must be restricted to one-third of the settlement amount solely because a minor is involved.

In *Diaz*, the appellant filed a personal injury lawsuit on behalf of his minor son, although he lacked legal authority under a divorce decree granting that right exclusively to the minor's mother. *Diaz*, 2015 WL 6496366, at *1. The mother intervened in the lawsuit as the minor's legal representative. *Id*. A settlement was reached, but disputes arose regarding the allocation of attorney's fees. *Id*. at *2. The appellant's attorney sought a twenty-five percent contingency fee, but the trial court reduced the fee to $2,500, citing the appellant's lack of authority, failure to attend hearings, and the role of the guardian ad litem in negotiating medical liens. *Id*. at *2–*3. The appellate court ultimately found that the appellant failed to adequately brief this argument or analyze the evidence before the trial court and that he waived

his attorney's fees issue as a result. *Id*. at *4. The appellate court affirmed the trial court's judgment, finding no abuse of discretion or error in its rulings. *Id*. The *Diaz* case does not provide the necessary guiding rule or principle to support the trial court's determination of limiting the appropriateness of awarding attorney's fees exceeding one-third of the settlement amount in cases involving minors. *See id*.

B. The Trial Court Abused its Discretion Because it Ruled Without Reference to any Guiding Rules or Principles.

The applicable standard of review dictates that "a trial court abuses its discretion when it acts arbitrarily or unreasonably, without reference to any guiding rules or principles." *Pettigrew*, 2018 WL 1580776, at *4 (citing *Celmer v. McGarry*, 412 S.W.3d 691, 705 (Tex. App.—Dallas 2013, pet. denied)). As discussed above, the cases cited by the trial court in its order are not instructive and do not provide the requisite guiding rules or principles necessary to support the trial court's reduction and reallocation of attorney's fees.

Notably, a panel of this Court reversed the same trial court in *Pettigrew v. Cedar Springs* for "not granting [an attorney] a hearing or trial on his claim for attorney's fees." *Pettigrew*, 2018 WL 1580776, at *4. That case bears some similarities to the present matter, particularly in that *Pettigrew*, the appellant, represented a minor in a personal injury lawsuit under a contingency fee agreement. *Id*. at *1. The agreement allowed for attorney's fees in the amount of 33 1/3% of the settlement amount if recovery occurred prior to litigation and 40% if recovery was

achieved after trial. *Id*. The parties in that case ultimately reached a $700,000 settlement following mediation. But the appellant was terminated shortly before the settlement was reached. *Id*. at *2. Appellant withdrew from the litigation and filed a plea in intervention for his attorney's fees, asserting entitlement to 40% of the settlement recovery for all claims. *Id*. In the alternative, he sought to recover in quantum meruit for services provided. *Id*. The trial court awarded him $7500 without a hearing and he appealed. *Id*. This Court found that there was "nothing in the record to show what the court considered in determining whether [the appellant] was entitled to recover his attorney's fees and the amount to be awarded." *Id*. at *4. This Court concluded that the trial court erred by not granting him a hearing or a trial, and that it abused its discretion by awarding him $7500 in attorney's fees. *Id*.

C. Determining the Reasonableness and Necessity of Attorney's Fees.

Rather than conduct the appropriate analysis to determine reasonableness and necessity of attorney fees under current guiding rules and principles,[13] the trial court indicated unequivocally that "[f]orty percent is extremely large in a minor prove-up," a 40-percent attorney fee on a minor prove-up case is not appropriate, and "[a]t best, it would be a third because you got extraordinary results." While the trial court sought guidance on apportionment and accounting, it is clear from the final judgment and ultimately the disbursement order that the trial court maintained its stance of

[13] *See generally Rohrmoos*, 578 S.W.3d at 483–503; *El Apple I*, 370 S.W.3d at 760; *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997) (party seeking attorney's fees "bears the burden of establishing the fees are reasonable and necessary.").

only permitting thirty-three and a third in a case involving a minor. The disputed amount was of the trial court's own making, and the settlement amount itself found to be in the best interest of the minor as fair, just, and reasonable. The trial court had the authority to determine whether the requested amount of attorney's fees was reasonable and necessary but not to determine "legal entitlement" to the identified disputed fees as a fact finder might in a trial on the merits nor require that the attorney testify as to how it was in the minor's best interest for these funds to be paid to the attorney rather than the minor.[14] Based upon the foregoing we conclude the trial court abused its discretion. We sustain appellants' sole issue.

CONCLUSION

We reverse the trial court's judgment and render judgment for appellants in the amount of $133,333,33.

/Bonnie Lee Goldstein//
BONNIE LEE GOLDSTEIN
JUSTICE

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[14] As a practical matter, in the context of a minor prove up, the trial court may solely accept or reject the settlement; the trial court has neither authority to unilaterally modify the agreement nor act as a fact finder and determine legal entitlement or apportionment to the proceeds. If the trial court does not approve the settlement, it may set the case for trial on the merits. Here, the trial court approved the settlement agreement in an unchallenged final judgment entered in the Original Cause. Accordingly, this Court shall not disturb the approval contained in that final judgment or opine on the reasonableness or necessity of the attorney's fees provided for in the underlying agreement approved by that final judgment.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN RE: $133,333.33 No. 05-23-01243-CV	On Appeal from the County Court at Law No. 1, Dallas County, Texas Trial Court Cause No. CC-22-06402-A. Opinion delivered by Justice Goldstein. Justices Miskel and Lewis participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and judgment is **RENDERED** that:

the Law Offices of Thomas E. Shaw, P.C., the Law Office of Marc C. Tecce, P.C. and Keith Mitnik of Morgan & Morgan, P.A., recover the amount of $133,333.33 from the registry of the trial court.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 12th day of February, 2025.