

More about minor settlements in NC: a caution about provisions in the settlement order regarding a child's medical expenses

My colleague Ann Anderson previously wrote about minor settlements in a blog post which may be found [here](#).

From Ann's post: "Although [unemancipated] minors generally are legally incapable of binding themselves to contracts, the law allows a minor's claims to be resolved through a settlement agreement. The settlement, however, is **not enforceable against the minor unless it has first been investigated and approved by the court.** *Sigmund Sternberger Found., Inc. v. Tannenbaum*, 273 N.C. 658, 677 (1968); *Ballard v. Hunter*, 12 N.C. App. 613, 619 (1971) ... The purpose of the court's review is to protect the interests of the minor. The investigation must focus on the minor's welfare and fairness *to the minor* under the circumstances. See *Redwine v. Clodfelter*, 226 N.C. 366, 370 (1946) (minor's welfare is the "guiding star"); *Reynolds v. Reynolds*, 208 N.C. 578, 631?32 (1935) (affirming "fair, just, and equitable" settlement)."

When the claim being settled is based on personal injury to the minor, what expenses can be included in the court approved settlement?

To state the obvious, the purpose of a minor settlement is to settle claims a minor has against the defendant(s) named in the complaint. A minor settlement should address only the claims between those parties.

The general rule is that a child's claim against a defendant for personal injury does not include a claim for the recovery of the child's medical expenses.

When a minor has been injured by negligence or wrongdoing, two causes of action arise: (1) one for the minor child to recover damages for the child's pain and suffering, permanent injury, and reduced earning capacity; and (2) one for a parent to recover necessary expenses for the minor's medical treatment. *Ellington v. Bradford*, 242 N.C. 159 (1955). The two causes of action are distinct from each other, since they involve different parties, and therefore must be considered separately. *Id.* By common law, a minor's personal injury settlement does not include compensation for medical expenses, because it is the parent who is entitled to seek such compensation, not the minor. *Id.* This is because it is the parent's responsibility to pay for the child's medical expenses. *Id.*

But a child can recover medical expenses if the parent waives the right to recover those

expenses and asserts the child's right to recover those expenses.

In *Shields v. McKay*, 241 NC 37 (1954) and in *Bolkhir v. NC State University*, 321 NC 706 (1988), the court acknowledged the general rule that medical expenses are not recoverable by a child in a personal injury action but nevertheless allowed a child to recover medical expenses and all other damages arising from the injury because the child's parent waived his right to recover and asserted a right on behalf of the child to recover these damages.

In *Shields*, the court explained:

"[I]t is apparent that Roy Shields, the father of plaintiff, a minor, as her next friend, has cast his pleading, the complaint, and conducted the trial on the theory of the child's right to recover for loss of services and diminished earning capacity during her minority as well as after she attains her majority, and to recover for medical expenses, as detailed, incurred before she reaches her majority as well as afterwards. By so doing, the father treats the child as emancipated in so far as recovery for such elements of damage are concerned, and cannot claim that he, and not the child, is entitled to recover therefor; and, hence, she may recover the full amount to which both she and her father would have been entitled if separate suits had been brought."

And in *Bolkhir*, the court stated:

"[P]rior to commencing this action, plaintiff [father] had a separate cause of action for his son's medical expenses. However, a father waives this right by participating as guardian ad litem in a trial in which the minor is awarded medical expenses. [See *Doss v. Sewell*, 257 N.C. 404, 410, 125 S.E.2d 899, 903 \(1962\)](#); *Pascal v. Transit Co.* and [Lambert v. Transit Co.](#), 229 N.C. 435, 441-42, 50 S.E.2d 534, 538-39 (1948). By this waiver, the father treats the minor as emancipated for the purpose of recovering the medical expenses, and the minor may recover all the damages flowing from the injury. [Shields v. McKay](#), 241 N.C. 37, 84 S.E.2d 286 (1954).

So unless a parent is acting as the child's Rule 17 GAL [formally and sometimes still referred to as "next friend"] and the child's complaint asserts a right on behalf of the child to recover medical expenses, a minor settlement should not include provisions relating to the payment of medical expenses.

Medical liens

G.S. 44-49 creates a lien on any amounts recovered as damages for personal injury in favor of medical providers, including where damages are recovered on behalf of a minor. Again stating the obvious, a lien attaches only to the settlement proceeds of a claim seeking the recovery of medical expenses. If the settlement does not include compensation for medical expenses because the minor could not or did not assert a claim for recovery of medical expenses, no lien attaches to the proceeds of the settlement. Conversely, if the claim did appropriately assert a claim for medical

expenses, the settlement proceeds may be susceptible to liens pursuant to G.S. 44-49. *Ellington v. Bradford*, 242 N.C. 159, 161 (1955).

Rights of Medical Providers

Even if a minor settlement does include compensation to the minor for medical expenses incurred by a parent, the minor settlement should not address or attempt to limit the rights of medical providers to recover amounts above those approved in the settlement order. As stated above, the minor's settlement only resolves claims between the minor and the defendant; the order cannot and does not affect the rights of persons who are not parties to the action brought by the minor. See generally *Branch Banking and Trust Co. v. Wright*, 74 NC App 550 (1985)(court entering judgment settling equitable distribution claim between two former spouses had no authority to affect rights of creditors not a party to the equitable distribution proceeding); and *Kleibor v. Rogers*, 265 NC 304 (1965)(father was not barred from seeking recovery for expenses arising out of personal injury to son even though defendant had been found not liable in earlier proceeding for the same personal injury brought by child's mother; principle of res judicata does not apply to person who was not a party to the previous proceeding).