

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

**I.A.W., M.E.W., I.M.W.,
Minor Children represented by
Next Friend LANCE LEHMAN,**

Plaintiffs,

v.

Case No. 3:23cv24636-MCR-HTC

KRISTEN E. KESTEL,

Third Party Defendant.

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ORDER

The parties have resolved this interpleader case through a mediated settlement agreement and now request Court approval of their settlement, entry of final judgment, and the disbursement of funds. ECF No. 20. On review, the motion is granted.

I. Background

The suit involves a dispute over the payment of a death benefit on a life insurance policy, number 6762863 (“the Policy”), issued by Principal Life Insurance Company (“Principal”) to be payable on the death of Richard Wentworth, the insured. Wentworth died on April 16, 2023. The Complaint alleges that when the Policy was purchased, Wentworth’s wife, Kristen Kestel, was named the primary beneficiary. By the time of Wentworth’s death, however, they were divorced and

had three minor children: I.A.W., M.E.W., and I.M.W. After Wentworth's death, Kestel made a claim for the death benefit, which Principal denied due to her divorce. The children then made a claim through counsel as contingent beneficiaries, but because Kestel did not withdraw her claim, Principal was faced with competing claims and did not pay out the proceeds.

Consequently, the minor children, represented by counsel and next friend Lance Lehman, filed suit against Principal, seeking a declaratory judgment that the minor children are entitled to the death benefit proceeds. Principal sought impleader and joined Kestel as a third-party defendant. Kestel has filed an answer and appeared *pro se*. On April 3, 2024, Principal deposited the death benefit (a face value of \$750,000) together with the applicable interest, totaling \$806,450.31 ("the Funds"), into the registry of the Court, and the Court dismissed Principal as a party.

The remaining parties—the minor children by their next friend and Kestel—have now submitted a mediated settlement agreement for approval. The parties request the Court's approval without the appointment of a guardian ad litem, asserting that Lehman, as next friend, has no conflict of interest and has negotiated the settlement solely to achieve the children's best interests.¹ The settlement resolves the competing claims to the Funds as follows:

¹ At the Court's request for supplementation, Lehman submitted a sworn declaration, explaining his relationship to the children. He was a close friend of the children's deceased father and he and his wife are the children's godparents—a responsibility that he states includes "an

- (1) Kristen Kestel would receive One Hundred Thousand Dollars (\$100,000) of the Funds, which she has agreed to use in a manner for the mutual benefit of the Plaintiffs; and
- (2) Plaintiffs would receive in trust, until they each attain the age of majority, Funds in the amount of Seven Hundred Six Thousand Four Hundred Fifty Dollars and Thirty-One Cents (\$706,450.31) plus all accumulated interest, if any, with Lance Lehman, next friend, serving without compensation as trustee.

The settlement outlines the terms of the trust in detail, including the powers of the trustee and the distribution guidelines.²

II. Discussion

The Court has diversity jurisdiction over this case, which is therefore governed by Florida substantive law and federal procedural law. *See Horowitch v. Diamond Aircraft Indus., Inc.*, 645 F.3d 1254, 1257 (11th Cir. 2011) (citing *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938)). Under Florida law, a settlement on behalf of a minor is not effective “unless approved by the court having jurisdiction of the action.” Fla. Stat. § 744.387(3)(a); *see also McLaughlin v. Lara*, 133 So. 3d 1004, 1006 (Fla. 2d DCA 2013) (stating, “the purpose of an order approving a minor’s

unwavering interest in the children’s upbringing and personal development.” ECF No. 22–1. Lehman has no interest in the Funds and brings suit solely on behalf of the minor children. He holds an MBA and is a Certified Financial Planner, a Certified Private Wealth Advisor, and a Certified Investment Management Analyst. He further states that if appointed trustee for the children’s portion of the Funds, he will hire a professional money manager not affiliated with himself or his company to invest the Funds for the trust and that he will not earn any fees or commissions as a result of that arrangement. *Id.*

² The terms of the settlement agreement and the trust are set out in the Mediated Settlement Agreement attached to the motion, signed by Lehman and Kestel. *See* ECF No. 20–1.

settlement is . . . to protect the interests of the minor and the guardian and to ensure that any release given on behalf of the minor is legally effective”). In reviewing the settlement, the Court must determine whether the settlement is in the best interests of the minor child. *See* Fla. Stat. § 744.387(1); *Bullard v. Sharp*, 407 So. 2d 1023, 1024 (Fla. 4th DCA 1981).

Florida law also requires the appointment of a guardian ad litem before approving the settlement, when a settlement in favor of a minor exceeds \$50,000. *See* Fla. Stat. § 744.3025(1)(b).³ The Eleventh Circuit, however, considers the appointment of a guardian ad litem procedural and controlled by Rule 17 of Federal Rules of Civil Procedure.⁴ *See Burke v. Smith*, 252 F.3d 1260, 1264 (11th Cir. 2001) (applying federal procedural law and Alabama substantive law in relation to a minor’s settlement, and finding Alabama’s requirement for a fairness hearing to settle a minor’s claim was “substantive” whereas the appointment of a guardian ad litem was procedural). “Rule 17 does not require that a district court appoint a

³ *See also* Fla. Prob. R. 5.636(d) (“The court shall appoint a guardian ad litem on behalf of a minor, without bond or notice, with respect to any proposed settlement that equals or exceeds \$50,000 and affects the interests of the minor, if: (1) there is no court-appointed guardian of the minor; (2) the court-appointed guardian may have an interests adverse to the minor; or (3) the court determines the representation of the minor’s interest is otherwise inadequate.”). Florida law requires the guardian ad litem to take an oath and provide the Court with a report analyzing whether the settlement is in the best interests of the children. *See* Fla. Prob. R. 5.636(f); Fla. Prob. R. 5.600.

⁴ The Eleventh Circuit noted in *Burke v. Smith* that “Rule 17 deals only with the protection of incompetents in their status as parties and gives no general powers over their person or property.” 252 F.3d 1260, 1266 (11th Cir. 2001) (internal quotations omitted). As to substantive protections, the court stated that minors who settle their claims in federal court should have “the same protections afforded to a minor in state court.” *Id.*

guardian ad litem in all cases.” *Id.* Instead, “unless a conflict of interest exists between the representative and minor, a district court need not even consider the question [of] whether a guardian ad litem should be appointed.” *Id.* The Eleventh Circuit explained in *Burke* that when a minor is represented by a parent who has the same interest as the child, as is generally the case, “there is no inherent conflict of interest.” *Id.*; *see also J. T. v. Sch. Bd. of Osceola Cnty.*, No. 6:19-CV-1738-CEM-EJK, 2022 WL 21747333, at *1 (M.D. Fla. Jan. 11, 2022) (finding appointment of a guardian ad litem was unnecessary, despite the settlement being over \$50,000, where no apparent conflict existed between the parent representative and minors), *report and recommendation adopted*, No. 6:19-CV-1738-CEM-EJK, 2022 WL 21747335 (M.D. Fla. Jan. 31, 2022). On the other hand, when a conflict of interest exists between the parent and child, “the district court has a duty [under Rule 17] to determine whether a guardian ad litem is needed.” *Burke*, 252 F.3d at 1264.

If a minor has no duly appointed representative, the minor “may sue by a next friend or by a guardian ad litem[,]” and “[t]he court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.” Fed. R. Civ. P. 17(c)(2). Rule 17 has thus functionally erased the distinction between a next friend and a guardian ad litem.⁵

⁵ As other courts have explained:

Historically there was a difference in the terms guardian ad litem and next friend: “A guardian ad litem is a special guardian, appointed by the court to defend on

See Byrd on behalf of Byrd v. United States, No. 1:20-CV-03090-LMM, 2021 WL 5033826, at *7 (N.D. Ga. July 19, 2021) (stating, “for all practical purposes there is no substantive difference between a guardian ad litem and next friend”) (citing *Scannavino v. Fla. Dep’t of Corr.*, 242 F.R.D. 662, 666 n.5 (M.D. Fla. 2007) and 6A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1572 (3d. ed. 2021)). And, “where a minor or incompetent individual is already adequately represented by a next friend, there is no need to separately appoint a guardian ad litem.” *Id.* (citing *Burke*, 252 F.3d at 1264).

Lehman brought suit on behalf of the children as a next friend, but next friend status “is by no means granted automatically to whomever seeks to pursue an action on behalf of another.” *Sanchez-Velasco v. Sec’y of Dep’t of Corr.*, 287 F.3d 1015, 1025 (11th Cir. 2002) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990)). A next friend must meet two requirements: (1) provide an adequate explanation for why the real party cannot appear and prosecute the action personally, and (2)

behalf of an infant party. A next friend is one who, without being a regularly-appointed guardian, represents an infant plaintiff.” *Federal Practice and Procedure* § 1572 at 683 n.10 (quoting *Till v. Hartford Acc. & Indem. Co.*, 124 F.2d 405, 408 (10th Cir. 1941)). However, “Rule 17(c)(2) permits suit to be brought on behalf of an infant by either.” *Id.*

J.L.B. by & through H.M.B. v. Walt Disney Parks & Resorts US, Inc., No. 614CV1943ORL22GJK, 2017 WL 3065121, at *4 n.8 (M.D. Fla. July 19, 2017) (also noting that next friend and guardian ad litem function “really much the same” and “cases do not make a distinction about the formal title of the representative”); *Scannavino v. Fla. Dep’t of Corr.*, 242 F.R.D. 662, 666 n.5 (M.D. Fla. 2007) (“Rule 17 appears to have abandoned th[e] distinction” between next friend and guardian ad litem).

demonstrate that he or she is “truly dedicated to the best interests of the person on whose behalf” the next friend seeks to litigate, which may be shown by demonstrating “some significant relationship with the real party in interest.” *Id.* at 125–26 (quoting *Whitmore*, 495 U.S. at 163–64); *see also John v. Royal Caribbean Cruises, Ltd.*, No. 07-22766-CIV, 2008 WL 11407174, at *2 (S.D. Fla. June 11, 2008). The Court finds these requirements met. First, the children cannot appear and prosecute the case personally because they are minors, and their natural guardian, Kestel, has a clear conflict of interest with them in this suit because she has a competing claim to the Funds. Second, after reviewing the record, the Court finds that Lehman has demonstrated he is truly dedicated to the children’s best interest. Lehman provided a sworn declaration setting out his relationship with the children. Specifically, Lehman was a close friend of their now deceased father and has known the children since their birth. Lehman has been present in their lives for events such as birthdays, BBQs, and sporting events. Their father had asked Lehman and his wife to be godparents to the children and to raise them in the event he and Kestel both died, to which Lehman and his wife agreed. Lehman has no potential interest in the Funds. He brought suit on behalf of the children to protect their interests, he retained an attorney to represent them, and he has agreed to serve as trustee for the children without compensation. This relationship satisfies the Court

that Lehman's sole interest in this litigation is to protect the children's interests as best as possible, and he has no conflict.

On finding Lehman a qualified next friend with no conflict, the Court concludes that appointing a guardian ad litem in this case would be redundant, unnecessary, and would serve only to deplete the children's ultimate recovery.⁶ *See Byrd*, 2021 WL 5033826, at *7 (denying request for appointment as guardian ad litem as redundant given that the individual was already adequately represented by his next friend) (citing *Burke*, 252 F.3d at 1264). Under *Burke*, the absence of an actual conflict between Lehman and the children is the end of the inquiry. 252 F.3d at 1264.

Considering the substance of the settlement, the Court finds that it should be approved. Lehman, as next friend for the minor children, and counsel state that the settlement is in the best interests of the children, and Lehman's only interest was to secure the maximum benefit for the minor children. The children will receive, in trust, an amount consisting of nearly 94% of the face value of the Policy proceeds. Kestel's agreement to use her share of the Funds for the children's mutual benefit

⁶ The Court finds no conflict between this decision and Florida law because, given the lack of distinction between a next friend and guardian ad litem under Rule 17, and the content of Lehman's declaration, he has functionally served the role of guardian ad litem. His sworn declaration is adequate to serve as an oath and a report to the Court on the children's best interest, which is all the Court would require of a guardian ad litem under Florida law.

further demonstrates that the children are receiving a fair and adequate settlement that is in their best interests. In addition, the settlement will avoid the expense and uncertainty of further litigation.⁷

Accordingly:

1. The Joint Motion for Approval of Minors' Settlement, Entry of Final Judgment, and Order of Interpleader Disbursement, ECF No. 20, is **GRANTED** and the parties' Mediated Settlement Agreement is **APPROVED**.

2. The Clerk is directed to disburse the Funds deposited in the Court's registry, and accumulated interest, as follows:

a. Disburse to Kristen Kestel One Hundred Thousand Dollars (\$100,000), payable to: "Kristen Kestel" and mailed to: Kristen Kestel, 1979 Crosscreek Circle, Gulf Breeze, FL 32563. Kestel must abide by the terms of the Mediated Settlement Agreement with respect to her use of the Funds.

b. Disburse to Lance Lehman, as Trustee of The Wentworth Children's Trust, Seven Hundred Six Thousand Four Hundred Fifty Dollars and Thirty-One Cents (\$706,450.31), plus One Hundred Percent (100%) of any accrued interest on the entirety of the Funds deposited, less any assessed fee for the administration of the Funds, payable to: "Interpleader Law, LLC IOLTA" and

⁷ The parties represent that there is evidence that the deceased father intended Kestel to remain as beneficiary after their divorce and reconciliation, and thus the outcome of further litigation in this case would be uncertain.

mailed to: Interpleader Law LLC, 5800 One Perkins Place Dr., Suite 2A, Baton Rouge, LA 70808. The trust must be administered on the terms as set forth in the Mediated Settlement Agreement attached to the parties' Joint Motion, ECF No. 20–1.

3. The Clerk is directed to enter judgment dismissing the case with prejudice pursuant to the parties' settlement, and close the file.

DONE and ORDERED on this 1st day of May 2024.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE