

# Chicago Daily Law Bulletin®

Volume 153, No. 245

Friday, December 14, 2007

## Court upholds accord despite mother's objections

By Stephanie Potter  
Law Bulletin staff writer

A Cook County judge had the authority to approve a \$16 million settlement in the death of Northwestern University football player Rashidi Wheeler despite the objections of Wheeler's mother, the 1st District Appellate Court held Friday.

The appeals court denied an appeal from Linda Will, Wheeler's mother and co-executor of his estate with her former husband, George Wheeler Jr. Wheeler collapsed and died of an asthma attack on August 3, 2001, following a preseason conditioning drill, and his parents filed a wrongful death and survival action against Northwestern.

George Wheeler Jr. agrees with the settlement, but Will argued on appeal that Cook County Circuit Judge Kathy M. Flanagan did not have the authority to approve the settlement over her objection. Will was seeking certain nonmonetary compensation not included in the settlement, including the erection of a memorial to her son. While the appeals court's opinion says Will's objection to the settlement had nothing to do with the amount, her attorney, David A. Novoselsky, contends she did not find the settlement adequate.

In approving the settlement, Flanagan found it to be in the best interest of three minor heirs who are Rashidi Wheeler's half brothers. In all, according to the opinion, there are six heirs: Rashidi's parents, his adult brother George Wheeler III and half brothers Hershel Will, Matthew Wheeler and Daniel Wheeler.

Matthew and Daniel received proceeds from the survival action but not the wrongful death settlement. Further, Hershel is no longer a minor and, like his mother, objects to the settlement. As such, Will argued Flanagan's ruling improperly took away the rights of three adult heirs to a jury trial.

"We wholeheartedly disagree, finding that, for various reasons, the trial court did indeed have the power to accept and exe-

cute the settlement between Rashidi's estate and Northwestern and that it executed this power properly in light of the circumstances presented in the instant case," wrote Justice James Fitzgerald Smith for the appeals court.

Novoselsky said Linda Will would seek leave to appeal to the Illinois Supreme Court. He contends the decision was unfairly critical of Will's actions. Novoselsky said a former Northwestern doctor admitted to burning medical records belonging to Wheeler after his death.

"We have a mother who wanted to know the circumstances of her child's death," Novoselsky said.

Attorneys for George Wheeler Jr., however, said the settlement was "extraordinary." Thomas A. Demetrio of Corboy & Demetrio P.C. said the ruling affirms the responsibility of trial court judges to protect the interests of minors.

"Every trial judge in the state should read this and be confident the inherent authority they have to exercise their discretion is alive and well," Demetrio said.

Northwestern spokesman Alan Cabbage said the school was pleased with the ruling and believed Flanagan acted appropriately in approving the settlement.

Smith wrote that Linda Will had a fiduciary obligation to the beneficiaries of the estate.

"Clearly, Linda's duties did not include an attempt to satisfy her own personal interests; yet, that is precisely what occurred here and what prompted the trial court to intervene," Smith wrote.

Further, the appeals court found that Flanagan's actions were proper because the judge had a responsibility to the minor beneficiaries of Wheeler's estate. In so doing, the court relied heavily on *Ott v. Little Company of Mary Hospital*, 273 Ill.App.3d 563 (1995), in which the court found judges have a duty to prevent the rejection of settlement offers which would not be the best interests of a minor plaintiff.

The *Ott* case involved a medical malpractice suit brought on behalf by parents as the co-guardians of their daughter's estate. In that case, the child was living and needed medical care, which Will argued made it distinguishable from her case. The appeals court, however, disagreed.

"[W]e find that the trial court not only had the power to accept the settlement and execute all pertinent documents, but that it did so properly and without any abuse of its discretion," Smith wrote. "Linda, as the estate's representative, refused to effectuate the settlement in direct contradiction to the trial court's reasoned determination that the settlement was in the best interest of the minor beneficiaries she had been entrusted to represent."

The appeals court also affirmed Flanagan's award of attorney fees to Cochran, Cherry, Givens, Smith & Montgomery LLC from the proceeds of Linda Will's share of the settlement funds. Will had agreed to a one-third contingent-fee agreement with the firm, but later fired her attorneys shortly before the settlement was ordered, the opinion said. The appeals court found the firm was entitled to that fee for its work in negotiating the \$16 million settlement.

Justices John P. Tully and Michael J. Gallagher concurred in the 40-page opinion.

In addition to Novoselsky, Will was represented by Leslie J. Rosen. George Wheeler Jr. was represented by Demetrio and Ottawa attorney Michael T. Reagan. Reagan said the ruling was notable for its enforcement of Will's fiduciary duties to the beneficiaries of the estate.

The Cochran firm was represented by Michael W. Rathsack, who said the ruling recognized the quality of work the Cochran firm did in obtaining the settlement.

Northwestern was represented by Eugene A. Schoon of Sidley Austin LLP and Eric F. Quandt and Mark D. Andrews of Pugh, Jones, Johnson & Quandt P.C.