

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE D.C.)
TRANSFER OF SETTLEMENT) C.M. No.: 19460-N-AML
PROCEEDS PURSUANT TO)
10 DEL. C. § 6601)

Submitted: February 11, 2021
Decided: May 20, 2021

MEMORANDUM OPINION

Michael Heyden, Esquire, Law Office of Michael C. Heyden, Esquire, Wilmington, Delaware; *Attorney for Petitioner.*

David J. Ferry, Jr., Esquire, and Kristopher T. Starr, Ferry Joseph, P.A., Wilmington, Delaware; *Master Guardians.*

D.C., *pro se*

LeGROW, J. ¹

¹ Sitting as a Vice Chancellor by designation under Del. Const. art. IV, § 13(2).

The petitioner seeks court approval to purchase a structured settlement payment right belonging to a twenty-year-old payee who received the structure in the *Doe v. Bradley* class action settlement. The payee received significant monies in March 2019 as part of her first structured settlement payment. Eighteen months later, those monies were dissipated completely, and the payee signed an agreement to transfer part of her next periodic payment to Petitioner for a discounted present value. At an evidentiary hearing on the petition to approve the transfer, the payee could not articulate a clear plan for how she would spend or save the money if she received it. Other than a vaguely expressed interest in pursuing a college education at some future time, the payee apparently intends to use this payment for everyday living expenses until her next scheduled payment is made.

Under Delaware's statutory scheme, structured settlement payment rights only may be transferred with court approval. In evaluating a petition to transfer payment rights, the Court must consider, among other statutory requirements, whether the transfer is in the best interests of the payee and her dependents.² Here, despite the Court's sympathy for the difficult life circumstances the payee recently has faced, it is manifest that permitting the transfer is not in her or her minor child's best interests. The Court bases this conclusion on the fact that the payee spent the full amount of the first structured settlement payment within 18 months of receiving

² 10 *Del. C.* §6601(3).

it, could not explain how the bulk of that money was spent, and has no coherent plan to prevent the same thing from happening with the proceeds of this requested transfer. Unfortunately, the Court believes the payee's family members or friends have taken advantage of her generosity or naivete in the past, and the same thing is likely to happen again if the transfer is approved. Accordingly, the petition is denied.

FACTS AND PROCEDURAL BACKGROUND

These are the facts as I find them after considering the testimony and exhibits presented at the evidentiary hearing. The Petitioner, DRB Capital, LLC ("DRB") filed this Petition for Court Approval of Purchase of Structured Settlement Payment Rights (the "Petition") under the Structured Settlement Protection Act (the "Act").³ DRB has agreed, subject to Court approval, to purchase the rights of a future structured settlement payment (the "Agreement") from D.C. D.C. was born on March 1, 2001 and is a member of the *Doe v. Bradley* class action settlement.

D.C. has two annuities as a result of the settlement. One annuity was issued by Metropolitan Life Insurance Company (the "MetLife Annuity"), and the second annuity was issued by Prudential Life Insurance Company of America ("the Prudential Annuity"). The terms of those annuities entitle D.C. to the following periodic payments: (1) two payments on March 1, 2019 (the "First Payments"); (2)

³ 10 *Del. C.* §§ 6601-6604. *See* Del. H.B. 392, 140th Gen. Assem. (2000) (creating a "Structured Settlement Protection Act").

two payments on March 1, 2022 (the “Second Payments”); and (3) two payments on March 1, 2025 (the “Third Payments”).⁴

D.C. received the First Payments in March 2019. Based on her testimony, her grandfather was the only person who helped her manage those funds. D.C. testified that her grandfather handles all her finances because he is very organized and good at saving money. At the time she received the First Payments, D.C. was living with her mother and helping pay for rent and utilities. Sadly, D.C.’s mother passed away approximately three months later, at which point D.C. moved in with her grandmother. During this time period, D.C. spent money toward the care of her siblings and expended approximately \$8,000 for her mother’s funeral. D.C. purchased a car for \$35,000, putting about \$16,000 down and financing the remaining purchase price. D.C. also spent approximately \$10,000 on a vacation. Other than those three figures, she could not identify how much money she spent, for what, or when. She also offered no explanation for why she incurred debt to purchase the car, rather than paying for it outright. D.C. did not seem to have any demonstrated understanding of how the money was spent, and it was unclear whether she even had access to account statements reflecting how the First Payments were used. Put more succinctly, D.C. could not account for most of the monies she received in the First Payments.

⁴ See Response to Pet. ¶3.

By September 2020, D.C. had applied to DRB to sell her Second Payment of her MetLife Annuity. DRB offered to purchase D.C.’s Second MetLife Payment (the “Proposed Payment”).⁵ DRB initially filed a petition for approval of sale in the Superior Court of Delaware.⁶ But, the terms of the order approving the distribution of the class action settlement award specifically provide that none of the periodic payments or any interest in those payments may be sold or otherwise transferred without the approval of the Court of Chancery.⁷ Recognizing the issue, the Superior Court directed DRB to refile the petition in the Court of Chancery. DRB then filed this action, a response was filed by the Master Guardians appointed by the Court of Chancery to implement the Final Order approving the Class Action Settlement,⁸ and the Court held an evidentiary hearing.

D.C. is a 20-year-old high school graduate. She ultimately hopes to train and find work in the medical field as a surgical technician. She applied to Delaware Technical Community College when she was a senior in high school and filled out portions of the Free Application for Federal Student Aid (“FAFSA”). Her

⁵ Master Guardian Hearing Exhibit (hereinafter “MG Ex.”) 3. The Agreement refers to the annuity issuer as B.L. Life Insurance Company rather than MetLife. DRB’s counsel advised the Court that MetLife changed its name to Brighthouse.

⁶ *In re D.C. Transfer of Settlement Proceeds*, C.A. No. S20M-09-019 MHC.

⁷ *In re Trust for the Benefit of the Class Action Settlement Victims in the Superior Court of the State of Delaware*, C.M. No. 16942, Final Order ¶ 1(A)(vi)(c) (Sept. 26, 2014).

⁸ *See* 10 *Del. C.* § 6601(5)(a)(1). As the persons appointed to implement the Final Order approving the structured settlement, the Court concluded the Master Guardians were interested parties entitled to notice under Section 6601.

grandparents, however, never completed the FAFSA form, so she did not receive any student aid awards. D.C. is not enrolled in college, and although she testified that she wants to use part of the Proposed Payment to attend college, she readily admitted that she is “not really sure how college works” and has not taken any steps to explore college costs or degree programs.

D.C. worked last summer at a restaurant and in a nursing home, but she was not employed at the time of the hearing in this matter. She previously delivered groceries, but no longer was doing so because of the amount of driving involved. Although she submitted applications for work in the home healthcare field, she had not yet found a job.

At the time of the hearing in this matter, D.C. had no funds remaining from the First Payments. She was living with her four-year-old daughter in a subsidized apartment in Delaware. In addition to rental assistance, she was receiving Medicaid and SNAP benefits. Tragically, her daughter’s father was killed in October 2020. D.C.’s daughter recently was approved for SSI benefits, and she will receive those payments retroactively to the date of her father’s death. D.C. anticipates, however, that this additional income may result in an incremental increase in her rent. D.C. also is eligible for state assistance for childcare expenses.

D.C. testified that, if the transfer is approved, she intends to use the Proposed Payment to pay existing debts, pay off her car, put money aside for car insurance,

attend college, move out of her current apartment, and take care of herself and her minor daughter. D.C. mentioned college only after she was prompted by DRB's counsel. D.C.'s debts at the time of the evidentiary hearing included her car payment and money she owed for utilities. She estimated her monthly expenses are approximately \$1,000 a month, and she anticipated receiving approximately \$800 a month in SSI benefits for her minor daughter.

D.C. testified that she met with counsel, Chad Lingenfelder, Esquire, to discuss the possible consequences of selling her second MetLife Annuity payment.⁹ She is not aware how, if at all, the transfer will affect the government subsidies she currently receives. She has not participated in any of the instructional classes offered by the Delaware Department of Justice for the members of the Bradley Class Action Settlement. D.C. testified that she wants the Court to approve the transfer and Proposed Payment because “we are all out [of money] now, and we are struggling a little.” D.C. did not explain to whom she was referring with her use of the word “we.” That statement, combined with D.C.'s lack of understanding of what happened to most of the funds she received in March 2019, her admission that she had given money to family members in the past, and her undeveloped plan for responsibly saving or spending the Proposed Payment contributes to the Court's belief that D.C. has been taken advantage of financially in the past.

⁹ See also Petition Ex. D.

PARTIES' CONTENTIONS

DRB argues the Court should approve the transfer of D.C.'s second MetLife Annuity payment because the Proposed Payment is fair, reasonable, and in her best interests. DRB contends (i) D.C. is not a minor or infirm person; (ii) even after the proposed transfer, she will have substantial additional payments available in the future; and (iii) a series of past difficulties in her life have led to her strained financial circumstances, which she should not be forced to endure when money is available to her upon the Court's approval of the transfer. In addition, DRB suggests that, if the Court is concerned about D.C. squandering the Proposed Payment or being taken advantage of, the Court could order DRB to hold the funds for D.C.'s benefit so that DRB could pay her bills as the Court directs.¹⁰

The Master Guardians oppose the Petition, arguing the transfer is not in D.C.'s or her minor daughter's best interests. The Master Guardians contend (i) D.C.'s explanation of how she spent the First Payments does not reasonably account for those funds; (ii) it is highly likely that D.C.'s friends or family may have taken advantage of her and obtained a large portion of the First Payment; and (iii) it equally is likely that, if the Court approves the transfer, the Proposed Payment quickly will be spent without significantly improving her and her daughter's circumstances.

ANALYSIS

¹⁰ See Letter to the Court from M. Heyden, Esq. dated Feb. 4, 2021, at 3.

Under 10 *Del. C.* § 6601, no direct or indirect transfer of a structured settlement payment is effective unless authorized by a court of competent jurisdiction based on express findings that (i) the transfer complies with the requirements of the statute and any other applicable law; (ii) the payee received a disclosure statement containing certain statutorily-enumerated information; (iii) the transfer is fair and reasonable and in the best interests of the payee and his dependents; (iv) the payee received independent professional advice regarding the legal, tax, and financial implications of the transfer; (v) notice was provided to each interested party and each court or government authority that originally approved the structure; and (vi) the transferee gave notice to the annuity issuer and structured settlement obligor as required by statute.

In this case, the parties only dispute whether the proposed sale is in D.C.'s and her daughter's best interests. The parties agree and the record reflects that the remaining statutory factors have been met.

Section 6601 does not define what factors the Court should consider in applying the best interests standard. Although there are few published decisions applying Delaware's statute, this Court previously has considered the statute's legislative history and case law from other jurisdictions applying similar structured settlement statutes.¹¹

¹¹ See *In re D.J.*, C.M. No. 18865-N-AML, Mem. Op. at 10-12 (Dec. 20, 2018).

When the Act was adopted, it was based upon the Model Structured Settlement Act.¹² The Delaware bill’s sponsors explained that structured settlements are used to provide long-term financial security to victims of serious injuries, and unregulated secondary market purchases of structured settlement payments harm payees by dissipating their resources and leaving them dependent on public assistance.¹³ When it first was introduced, the proposed bill sought to prohibit the sale of a structured settlement payment right except upon a judicial finding that the sale was “necessary to enable [the payee] and/or his dependents to avoid imminent financial hardship.”¹⁴ That imminent financial hardship language was amended before the bill’s passage to the current “best interests” standard.¹⁵ The amendment expanded the statute’s scope to allow payees to sell their payment rights for purposes other than avoiding financial hardship, such as purchasing a house, financing an education, consolidating debt, or buying a business.¹⁶

Courts in states with statutes similar to Delaware’s Act have developed a number of factors that may be relevant in applying the best interests standard. For example, in *Settlement Funding of New York LLC v. Kiezel*, a New York court held

¹² Del. H.B. 392 syn.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Del. S. Amend. 5, H.B. 392.

¹⁶ Del. S. Amend. 5 syn., H.B. 392.

the following factors, at a minimum, should be considered in weighing whether a proposed sale of a structured settlement right is in the payee's best interests:

(a) physical age, level of maturity, physical and mental capacity of the beneficiary; (b) the beneficiary's ability to earn a living and to support his or her dependents; (c) the beneficiary's intended usage of the proceeds; (d) the beneficiary's present financial situation and whether he or she is laboring under such a hardship as to be in dire and immediate need of the proceeds; (e) whether the beneficiary has obtained independent counsel regarding the financial consequences of the proposed transfer; (f) the level of financial sophistication, or lack thereof, of the beneficiary; and (g) the timing of the application *vis-a-vis* other scheduled payments.¹⁷

The Minnesota Court of Appeals also considered the proper scope of the best interests analysis in a statute similar to the Act and held that the court must engage in a "global consideration of the facts, circumstances, and means of support available to the payee and his or her dependents."¹⁸ The Minnesota court considered factors such as a payee's reasonable preference in light of his age, mental capacity, maturity, and stated purpose for the transfer, along with additional considerations where the periodic payments were intended to cover future income loss or future medical expenses.¹⁹

Of the factors listed in *Kiezel*, only one supports a finding that the proposed transfer is in D.C.'s best interests: the fact that she received independent legal advice

¹⁷ 2006 WL 1358465, at *2 (N.Y. Sup. Ct. May 17, 2006).

¹⁸ *Settlement Capital Corp. v. State Farm Mut. Auto. Ins. Co.*, 646 N.W.2d 550, 556 (Minn. Ct. App. 2002).

¹⁹ *Id.*

regarding the proposed transfer. The Court places little weight on this factor, however, since the advice D.C. received was mandated by statute, and she has not otherwise sought out or received any independent advice to help her manage the class action settlement proceeds. Instead, D.C. appears to have relied solely on her grandfather to help with her finances. Despite her grandfather's guidance, however, D.C. rapidly squandered the First Payments.

The remaining *Kiezel* factors weigh against a finding that the transfer is in D.C.'s best interests. As to her age and maturity, D.C. is very young, and her testimony during the hearing – as well as the rapid and largely unexplained dissipation of her First Payments – demonstrated a lack of financial maturity. With respect to her ability to earn a living and support her dependents, although D.C. has not yet attended college, she has a high school diploma and a capacity to obtain full-time gainful employment. The availability of work and the government subsidies she currently receives should allow her to support herself and her minor daughter, albeit not as comfortably as she might like.

The third factor, D.C.'s intended use of the proceeds, will not improve her medium range or long-term prospects for financial security. Despite vague, aspirational references to obtaining a college degree, D.C. has no developed plans to pursue an advanced degree, and her testimony during the hearing makes it clear that she simply intends to use the Proposed Payment for everyday living expenses.

As to D.C.'s present financial situation, although she is by no means financially secure, she has obtained government benefits that will provide a safety net for her and her daughter, and she testified she actively is seeking employment and is able to work full time. Her financial needs are not "dire," particularly in light of the Court's overarching concern that, if it approves the transfer, D.C. and her daughter will not be the only people who expect to live off the Proposed Payment.

Regarding D.C.'s financial sophistication, she did not demonstrate any degree of financial acumen or sophistication during the hearing. She could not explain how she spent the vast majority of the First Payments, and she demonstrated minimal insight into how she might improve her ability to manage her finances. She also appears to have generously supported her family, including her siblings, mother, and grandparents. Although that generosity is admirable, the Court is concerned that D.C. may be taken advantage of in the future.²⁰ Finally, as to the timing of the proposed transfer vis-à-vis other payments, D.C. began pursuing this transfer 18 months after she received the First Payments. She will be eligible to receive the Second Payments in ten months. In the Court's view, allowing D.C. that additional

²⁰ The Court took particular note of D.C.'s statement that "we" are out of funds and "we" are struggling. Combined with her testimony about the financial support she provided her family, the Court is left wondering whether D.C.'s desire to transfer her MetLife Annuity originates with her or with other members of her family.

time to mature and explore other options to help manage her finances would serve both her and her minor daughter better than approving of the transfer at this time.

It is true that D.C. has experienced a series of tragedies in her life that make it more difficult for her to move forward and climb out of poverty. In addition to being victimized by Dr. Bradley, D.C.'s mother is deceased, her father is in prison, and her daughter's father recently was murdered. The Court feels tremendous sympathy that D.C. has suffered those misfortunes. But, approving the transfer and allowing D.C. access to these funds does nothing to address the root of her financial difficulties. Instead, it simply postpones to a later date her inevitable need to develop a plan to pursue an education and career that will allow her to care for herself and her child over the long term. If, however, D.C. can develop a plan now, and use the Second Payments to put that plan into motion, she will be in a much better position to end the cycle of poverty for herself and her daughter.

Finally, as an alternative to approving the transfer outright, DRB suggested it could hold the Proposed Payment for D.C. and pay her bills as the Court directs. There are at least two obvious problems with this suggestion. First, DRB did not articulate any legal mechanism by which it would hold funds for D.C.'s benefit. D.C. is an adult, and the Court is not aware of any structure by which it would order

DRB to act as a fiduciary for D.C..²¹ Second, this Court does not have the resources to approve or supervise the expenditure of funds on D.C.'s behalf or on behalf of the myriad other class action beneficiaries who might propose to transfer their structured settlement payments. In short, this proposal is unworkable.

For those reasons, the Court concludes that the record weighs strongly against a finding that the Proposed Payment is in D.C.'s best interests.

CONCLUSION

DRB Capital, LLC's Petition for Court Approval of Purchase of Structured Settlement Payment Rights therefore is **DENIED. IT IS SO ORDERED.**

²¹ For example, this arrangement does not appear to fit within the Delaware Uniform Transfers to Minors Act. *See* 12 *Del. C.* § 4501, et seq.