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Murphy v. Mooresville Mills,
N.J.Super.A.D. 1975.

Superior Court of New Jersey, Appellate Division.
Kelly MURPHY, an infant, by her Guardian ad
Litem, Harold Murphy and Harold Murphy, indi-
vidually, Plaintiffs-Appellants,

v.

MOORESVILLE MILLS, a division of Burlington
Industries, Inc., et al., Defendants-Respondents,
MOORESVILLE MILLS, a division of Burlington
Industries, Inc., Third-Party Plaintiff,

v.

GENERAL MOTORS CORP., Third-Party Defend-
ant.

Submitted Jan. 14, 1975.

Decided Jan. 29, 1975.

Attorney who had represented infant and guardian ad litem in tort action filed motion for determination of reasonable fee and sought fee representing 30% Of plaintiffs' net settlement. The assignment judge of the Superior Court, Law Division, determined that he had no authority to grant fee representing 30% Of plaintiff's settlement and appeal was taken. The Superior Court, Appellate Division, Crahay, J.A.D., held that relaxation provision of rule setting contingent fee limits could be applied even though case involved infant, and that record supported finding that fee of 30% Of plaintiffs' settlement was reasonable.

Remanded.

West Headnotes

[1] Attorney and Client 45  **147**

45 Attorney and Client


45IV Compensation

45k146 Contingent Fees

45k147 k. Requisites and Validity of Contract. **Most Cited Cases**

Relaxation provision of rule setting limits on contingent fees which attorneys may collect could be applied to tort action even though injured party was

an infant. R. 1:21-7; R. 1:21-7(c, f).

[2] Attorney and Client 45  **147**

45 Attorney and Client

45IV Compensation

45k146 Contingent Fees

45k147 k. Requisites and Validity of Contract. **Most Cited Cases**

Attorney's fee of 30% of net settlement of tort claim procured by attorney for seriously injured infant was reasonable and could be awarded under relaxation provision of rule pertaining to contingent fees where factual and legal issues involved in the case were difficult and complex and involved variety of disparate contending parties, attorney's efforts were long, arduous and assiduous and resulted in excellent result for plaintiffs and both guardian ad litem and infant's father and mother consented to the fee of 30%. R. 1:21-7; R. 1:21-7(c, f).

****274 *198** Stephen S. Weinstein, Morristown, for plaintiffs-appellants (Herbert M. Korn, Morristown, on the brief).

No brief was filed for defendants-respondents.

Before Judges HALPERN, CRAHAY and ACKERMAN.

The opinion of the court was delivered by CRAHAY, J.A.D.

This appeal is addressed to the propriety of counsel fee in a tort action in which a substantial settlement was procured for a seriously injured infant and her guardian Ad litem.

Following a hearing approving the settlement plaintiffs' counsel moved before the assignment judge for determination of a reasonable fee pursuant to R. 1:21-7(f). The application was for a fee representing 30% Of plaintiffs' net settlement. The assignment judge was of the opinion that the sought fee was fair, reasonable and proper but he questioned his authority to grant it on the ground that the relaxation provisions of R. 1:21-7(f) may not apply to infant settlements.

Counsel fees in infant tort cases are governed by R. 1:21-7 ('Contingent Fees') which provides in pertinent part:

***199** (c) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another, including products liability claims, * * * an attorney shall not * * * collect a contingent fee in excess of the following limits:

(6) where the amount recovered is for the benefit of an infant * * * and the matter is settled without trial the foregoing limits shall apply except that the fee on any amount recovered up to \$50,000 shall not exceed 25%.

The outer limits established on contingent fees are not absolute. R. 1:21-7(f) provides that

(f) If at the conclusion of a matter an attorney considers the fee permitted by paragraph (c) to be inadequate, an application on written notice to the client may be made to the Assignment Judge for the hearing and determining of a reasonable fee in light of all the circumstances. * * *

See [Amer. Trial Lawyers Ass'n v. N.J. Supreme Ct.](#), 126 N.J.Super. 577, 583, 316 A.2d 19 (App.Div.1974), [aff'd](#) 66 N.J. 258, 330 A.2d 350 (1974).

[1] We perceive nothing in the rule or in reason which would warrant limiting the rule's relaxation provision to all contingent fee cases except those involving infants. It is significant that in structuring the rule the Supreme Court caused the relaxation provisions thereof, R. 1:21-7(f), to follow the limitation provisions, R. 1:21-7(c)-the former silent as to exceptions. The determinants of fee reasonableness, following an assertion of inadequacy, are 'all the circumstances'. When the rule is read as a whole it evidences a clear intention to make all contingent fees, including those in infants' tort cases, subject to increase with court approval in special cases.

[2] The circumstances here need not be detailed at length. It is enough to note ****275** that the matter was a products liability case wherein infant plaintiff suffered serious burns. The factual and legal issues as reflected in the pretrial order were difficult and

complex, involving a variety of disparate contending parties. The record supports a finding that counsel's ***200** efforts were long, arduous and assiduous in achieving an excellent result for plaintiffs. We observe that, while not controlling, both the guardian Ad litem, the infant's father and her mother consented to the increased fee. The record amply supports the assignment judge's conclusion that the sought fee was reasonable and would have been allowed by him except for his too narrow reading of the rule.

The matter is remanded to the trial court for further proceedings in conformity with this opinion.

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