

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BRONSON R. HATCH and CRISTA L. HATCH, as the Natural Guardians and Next Friends of the minor K.H.H., the Heir-at-Law of Richard V. Farnsworth,
Plaintiffs,
v.
MICHAEL B. COX, et al.,
Defendants.

Case No. 11-1263-RDR

O R D E R

This matter is presently before the court upon the Report and Recommendation of Magistrate Judge K. Gary Sebelius. The Report and Recommendation addresses the proposed settlement of this action. Having carefully reviewed the Report and Recommendation, the court is now prepared to rule.

This is a wrongful death action based on diversity jurisdiction. The case arises from a motor vehicle accident that occurred in Hamilton County, Kansas. In that accident, Richard V. Farnsworth was killed when his vehicle was struck by a vehicle driven by defendant Michael B. Cox and owned by defendant Wade Hill doing business as M&W Trucking. The minor K.H.H. is the biological daughter of Mr. Farnsworth. Plaintiffs Bronson R. Hatch and Crista L. Hatch, who are prosecuting this action on K.H.H.'s behalf, adopted K.H.H. after her father's death. The defendants have agreed to pay \$50,000 to settle this case, with \$10,000 of the proceeds going to intervenor Bituminous Casualty Corporation, the workers compensation liability carrier for intervenor The Hub of Syracuse, the company that

employed Mr. Farnsworth and for which he was in the course and scope of his employment at the time of the accident. As part of the settlement, Bituminous Casualty Corporation will not seek from K.H.H. any subrogation other than the \$10,000 received as part of the settlement. Plaintiffs' counsel has waived his claim to costs and attorney fees.

After notifying all potential parties to the settlement, Judge Sebelius conducted a hearing to apportion the settlement proceeds of \$40,000 among the heirs-at-law of Mr. Farnsworth. Mr. Farnsworth has four biological children: Seth Farnsworth, T.C.P., E.V.S, and K.H.H. Judge Sebelius considered the relevant circumstances and determined that the following awards should be made: K.H.H.-\$38,000; E.V.S.-\$1,500; and T.C.P.-\$500.

The parties and heirs of Mr. Farnsworth have not filed objections to the Report and Recommendation, and the time for doing so has passed. See 28 U.S.C. § 636(b)(1). "In the absence of timely objection, the district court may review a magistrate. . .[judge's] report under any standard it deems appropriate." Summers v. Utah, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing Thomas v. Arn, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings.")). The court has reviewed the relevant pleadings concerning the Report and

Recommendation. Based upon that review, the court finds that Judge Sebelius' Report and Recommendation should be adopted in its entirety. The court notes that Judge Sebelius conducted a thorough hearing of the matter and analyzed the circumstances in a just and sensible manner. The settlement in this case is fair and reasonable under the circumstances. Accordingly, the court hereby adopts Judge Sebelius' Report and Recommendation. The court finds that the settlement proceeds shall be awarded as follows: Bituminous Casualty Corporation-\$10,000;K.H.H.-\$38,000;E.V.S.-\$1,500;and T.C.P.-\$500.

IT IS THEREFORE ORDERED that the Report and Recommendation of Magistrate Judge K. Gary Sebelius (Doc. # 68) is hereby adopted.

IT IS FURTHER ORDERED that the settlement reached in this case by the parties is hereby approved. The settlement proceeds are hereby awarded as follows: Bituminous Casualty Corporation-\$10,000; K.H.H.-\$38,000; E.V.S.-\$1,500; and T.C.P.-\$500.

IT IS FURTHER ORDERED that this action be hereby dismissed with prejudice.

IT IS SO ORDERED.

Dated this 10th day of October, 2013, at Topeka, Kansas.

s/Richard D. Rogers
United States District Judge