

2016 WL 9274930 (Tex.Dist.) (Trial Order)
District Court of Texas.
288th Judicial District
Bexar County

Dale SMITH and Heather Smith, Individually and as Next Friends of C.S., a **Minor**, Plaintiffs,
v.

YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER SAN ANTONIO
& THE HILL COUNTRY and YMCA of Greater San Antonio, Defendants.

No. 2016CI07036.
December 28, 2016.

Final Judgment

[R. Matthew Kyle](#), State Bar No. 11784515, The Kyle Law Firm, 707 N. Walnut Ave., New Braunfels, Texas 78130, Telephone: (830) 620-9402, Facsimile: (830) 620-5076, mkyle@kylelawfirm.com, for plaintiffs.

[Paul Taylor](#), State Bar No. 19717550, 10010 San Pedro, Suite 430, San Antonio, Texas 78216, Telephone: (210) 490-2031, Facsimile: (210) 490-2031, Email: paul@ptaylor.com, Guardian Ad Litem.

[Richard W. Espey](#), State Bar No. 06667580, [Joseph A. Bourbois](#), State Bar No. 0079034, Espey & Associates, PC, 13750 San Pedro Avenue, Suite 730, San Antonio, Texas 78232, Telephone: (210) 404-0333, Telecopier: (210) 404-0336, email: espeyservice@lawespey.com, for defendants.

*1 On this day, the above-numbered and styled cause came on to be heard, and Plaintiffs, DALE SMITH AND HEATHER SMITH, INDIVIDUALLY, AND AS NEXT FRIENDS OF CHARLES SMITH, a **MINOR**, appeared in person and by their attorney of record; **Minor** Plaintiff, CHARLES SMITH, appeared in person and by Guardian Ad Litem PAUL TAYLOR, who had previously been appointed by the Court; and Defendants, YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER SAN ANTONIO & THE HILL COUNTRY AND YMCA OF GREATER SAN ANTONIO, appeared by their attorney of record, and, a jury having been waived, all matters of fact as well as of law were submitted to the Court and the Court was informed that this lawsuit as it concerns Plaintiffs has been compromised and settled by agreement which is in full and final satisfaction of said Plaintiffs' causes of action, and of any and all future claims, demands, and expenses whatsoever that might accrue to Plaintiffs or to others by virtue of the injuries and damages to Plaintiffs occurring on the date and occasion set forth in Plaintiffs' Original Petition, and that said agreement was to the effect that Plaintiffs herein should recover from Defendants, YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER SAN ANTONIO & THE HILL COUNTRY AND YMCA OF GREATER SAN ANTONIO, the amounts set forth below.

The Court, having heard and considered the evidence and argument of counsel; the testimony of Plaintiffs concerning the damages and injuries to the Plaintiffs and the **Minor** Plaintiffs and the liability of Defendants; and the report of the Guardian Ad Litem, is of the opinion and finds that said agreement and settlement is fair, reasonable, and in the best interest of the **Minor** Plaintiff, and that the same should be and is hereby adopted as the Judgment of this Court. The Court further finds the Next Friend to be fit and proper to act in such capacity for the **Minor** Plaintiff.

It further appears to the Court that the settlement sum should be apportioned between the Plaintiff and the **Minor** Plaintiff herein and that an apportionment thereof in the following manner would be fair and reasonable. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs, DALE SMITH AND HEATHER SMITH, INDIVIDUALLY, have and recover

from Defendants, YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER SAN ANTONIO & THE HILL COUNTRY AND YMCA OF GREATER SAN ANTONIO, the following amount, which includes medical and other expenses, all damages, and attorney fees:

The sum of THIRTY FIVE THOUSAND DOLLARS AND NO CENTS (\$35,000.00) to DALE SMITH AND HEATHER SMITH, Individually, and jointly and severally to THE KYLE LAW FIRM, in full and final settlement of all claims of DALE SMITH AND HEATHER SMITH, all medical and/or health care expenses and/or funeral expenses incurred by DALE SMITH AND HEATHER SMITH as a result of the incident made the basis of this lawsuit, and for reimbursement of attorney fees and litigation expenses.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that CHARLES SMITH, a **Minor**, have and recover from Defendants, YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER SAN ANTONIO & THE HILL COUNTRY AND YMCA OF GREATER SAN ANTONIO, the following:

*2 Periodic payments which may be funded through the purchase of an **annuity** with a present value of FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00) which is to be paid to **Minor** CHARLES SMITH as follows:

\$4,000.00 semi-annually, guaranteed 5 years, beginning on February 7, 2029. The last guaranteed payment will be made on August 7, 2033.

\$36,758.88 guaranteed in one (1) lump sum to be paid on February 7, 2034.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the above period payments will be provided through a qualified assignment to MetLife Tower Resources Group, Inc. (Assignee), within the meaning of [Section 130\(c\) of the Internal Revenue Code of 1986](#), as amended, and the issuance of an **annuity** policy from Metropolitan Life Insurance Company (**Annuity** issuer), all as more fully described and in accordance with the terms and conditions of the Settlement Agreement.

The Court finds that the settlement sums being paid as set forth herein constitute damages on account of personal physical injuries within the meaning of [Section 104\(a\)\(2\) of the Internal Revenue Code of 1986](#), as amended.

It is further ORDERED that PAUL TAYLOR, Guardian Ad Litem for said **Minor** Plaintiff, be allowed a fee of *two thousand two hundred fifty* AND NO/100 DOLLARS (\$ 2,250.00). Upon entry of this final judgment, the guardian ad litem's duties are satisfied and the Guardian Ad Litem is fully discharged, with no further responsibility or duty to the **Minor**.

It is further ORDERED that Defendants be and are hereby relieved and discharged from any and all further liability to Plaintiffs DALE SMITH AND HEATHER SMITH, INDIVIDUALLY, AND AS NEXT FRIEND OF CHARLES SMITH, A **MINOR**, for all of Plaintiffs' and the **Minor** Plaintiff's causes of actions, and any and all future claims, demands, and expenses whatsoever that might accrue to the Plaintiffs, the **Minor** Plaintiff, or others by virtue of the injuries and damages to the Plaintiff and the **Minor** Plaintiff occurring on the date and occasions set forth in the Plaintiffs' Original Petition filed herein and that no execution shall issue on this Judgment but the same shall be entered as having been fully satisfied.

It is further ORDERED that court costs shall be paid and taxed against the party incurring same, except for the guardian ad litem fee, which is taxed against Defendants, for which let execution issue if the same be not timely paid.

It is further ORDERED that once payment is made as set forth above and in the Full and Complete Release, the qualified assignment has been executed, the **annuity** is funded, and the **annuity** contract to the **Minor** Plaintiff has been issued, Defendants shall be fully relieved and discharged from this judgment and from any and all liabilities, claims, demands, and causes of action of whatsoever nature asserted or which might have been asserted herein, known or unknown, accrued or to

accrue, arising from or in any manner growing out of the accident or occurrence described in Plaintiffs' Original Petition on file herein, and no execution shall ever issue hereon except for costs of Court as hereinafter provided.

This judgment finally disposes of the following parties and all claims as follows: DALE SMITH AND HEATHER SMITH, INDIVIDUALLY, AND AS NEXT FRIEND OF CHARLES SMITH, A **MINOR**, v. YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER SAN ANTONIO & THE HILL COUNTRY AND YMCA OF GREATER SAN ANTONIO.

***3** As such, this judgment is appealable.

Signed and entered this the 28th% day of *December*, 2016.

<<signature>>

JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:

THE KYLE LAW FIRM

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GUARDIAN AD LITEM

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ATTORNEYS FOR DEFENDANTS

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