

IN THE SUPREME COURT OF TEXAS

No. 03-0179

IN RE KANSAS CITY SOUTHERN INDUSTRIES, INC.

ON PETITION FOR WRIT OF MANDAMUS

Argued November 12, 2003

JUSTICE HECHT, concurring.

I join the Court's opinion and add a word only to say that one should not take from the opinion's businesslike approach to the legal issues now before us that the trial court proceedings it describes were proper. The trial court appointed a guardian ad litem to represent about a thousand children individually and authorized him to settle all of their personal injury claims for anywhere from a few dollars to a few hundred dollars apiece over some parents' objections, without even telling other parents, and without ever ascertaining what injuries were suffered by 285 of the children who have never appeared to collect their portion — all with the approval of counsel for plaintiffs and defendants. The court found this global settlement to be in the children's best interest. It strikes me as astonishing that it should be thought in the best interest of a party before the court to have his claim for personal injuries settled without his knowledge. At oral argument, counsel for the relator and for the plaintiffs were each asked how the trial court proceedings could be justified.

The only answers were simply that trial courts and guardians ad litem should have the power to do what was done here. No one cited any supporting authority.

There are a few situations in which the appointment of a guardian ad litem to represent unknown parties is authorized by statute.¹ This is not one of them. Rule 1.08(f) of the Texas Disciplinary Rules of Professional Conduct prohibits aggregate settlements in circumstances at least similar to, if not indistinguishable from, those here.² The Court's conclusion that relief cannot be provided by mandamus, with which I agree, in no way suggests that these children's claims were properly settled.

Nathan L. Hecht
Justice

Opinion delivered: July 2, 2004

¹ *E.g.*, TEX. CIV. PRAC. & REM. CODE § 64.102 (b) (authorizing the appointment of a guardian ad litem to protect “the best interest” of a missing person in receivership proceedings); TEX. PROB. CODE § 53 (authorizing the appointment of a guardian ad litem in probate proceedings to represent the interests of unknown or incapacitated persons); TEX. PROP. CODE § 115.014 (authorizing the appointment of a guardian ad litem in trust proceedings “to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate”).

² TEX. DISCIPLINARY R. PROF'L CONDUCT 1.08(f) (“A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients . . . unless each client has consented after consultation, including disclosure of the existence and nature of all the claims . . . involved and of the nature and extent of the participation of each person in the settlement.”).