

240252

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY
AT NASHVILLE

FILED

2019 FEB 19 AM 8:58

MEKIYAH N. STROUD, a minor,)
by legal custodian JANICE STROUD)
BOTLEY,)
)
Plaintiffs,)
)
v.)
)
CITY OF MT. JULIET, TENNESSEE)
)
Defendant.)

RICHARD B. ROOKER, CLERK
[Signature] D.C.

Docket No. 190406

**JOINT PETITION FOR COURT APPROVAL OF THE
COMPROMISE AND SETTLEMENT OF THE CLAIM
OF A MINOR, MEKIYAH N. STROUD, 16 YEARS OLD**

Comes the parties, by and through counsel, being Plaintiff Mekiyah N. Stroud, date of birth, February 3, 2002, and Plaintiff Janice Stroud Botley, her grandmother and the minor's legal custodian, and Defendant Mt. Juliet, Tennessee, all of whom hereby make this Joint Petition for the Court approval of the settlement of the minor Mekiyah Stroud's tort claim, pursuant to T.C.A. § 29-34-105. For the purposes of this Joint Petition for the settlement of the tort claim of minor Mekiyah Stroud, the parties to this settlement, as there has been no prior suit filed, agree and stipulate that jurisdiction and venue are proper in this Davidson County Circuit Court in Davidson County, Tennessee at Nashville, with Circuit Judge Hamilton V. Gayden, Jr. presiding. In support of this Joint Petition, the parties would show as follows:

1. This settlement arises out of an automobile accident that happened on February 16, 2018, when a City of Mt. Juliet Police vehicle, a Dodge Charger, driven by on-duty Mt. Juliet Police officer Dustin Delgado, struck the rear of a Hyundai vehicle in

front of him. Minor Plaintiff Mekiyah N. Stroud, date of birth February 3, 2002 was in the back seat of the vehicle struck in the rear by the Mt. Juliet police vehicle.

2. The minor Mekiyah N. Stroud was transported to the Tri-Star Summit Medical Center E.R. and was treated and released. The minor was reported at the E.R. to have had a loss of consciousness at the scene. At the Tri-Star Summit E.R., she also complained of headache and neck pain and left shoulder pain, and was diagnosed with a concussion, a closed head injury, cervical strain and a left shoulder injury. The minor Mekiyah N. Stroud received CT scans of the head and spine at the Tri-Star E.R. which were reported as normal.

3. The minor Mekiyah N. Stroud followed up with treatment on February 20, 2018 with a visit to Vanderbilt Medical Center (VUMC) with Orthopedic Doctor Alex Diamond for neck and left shoulder injuries, and also with a Neurology consult for concussion at Vanderbilt Children's Clinic with Dr. Margareeta Johnson.

4. The minor was treated at VUMC in the orthopedic department and in the Children's Clinic for the concussion from February 20, 2018 through March 13, 2018.

5. The minor was offered Physical Therapy by Dr. Diamond, but never took any treatments.

6. The parties have agreed to fully and finally settle the minor Mekiyah Stroud's tort claim for the total sum of \$31,500.00

7. There were Medical expenses for treatment of Mekiyah Stroud in the amount of \$21,608.02 (Exhibit 1), with approximately \$19,000 of those bills related to the Tri-Star Summit Medical Center E.R., where the minor received numerous scans.

8. Blue Cross Blue Shield of Tennessee for TENNCARE/BLUECARE has paid the medical bills in the amount of \$21,608.02 for Mekiyah Stroud that were related to

the accident of February 16, 2018. (Exhibit 1). BCBST asserted a subrogation interest of \$1,491.35 for the amounts paid on behalf of Mekiyah Stroud.

9. Blue Cross Blue Shield of Tennessee for TENNCARE/BLUECARE has agreed to accept \$1,193.08 in full and final settlement for their TENNCARE/BLUECARE subrogation for \$1,491.35 in payments made. (Exhibit 2). This subrogation will be paid by insurer for Defendant by check to BCBST.

10. The parties assert there is a TennCare lien in the amount of \$4.01, which is a subrogation for \$5.99 paid by TennCare for pharmacy and/or dental treatment for the minor. (Exhibit 3) This TennCare subrogation will be paid by Defendant's insurer by check to TennCare.

11. There are no other outstanding medical expenses or any other subrogations or liens or Hospital Liens.

12. The attorney fees for Plaintiff's counsel, Bart Durham Injury Law are in the amount of \$10,499.99 (one-third (1/3) of recovery) plus additional with legal expenses advanced, in the amount of \$1,099.74, for a total amount of legal expenses in the amount of \$11,599.73 to be paid by Defendant's insurer from the total settlement amount of \$31,500.00.

13. The minor Mekiyah N. Stroud is the granddaughter of Janice Stroud Botley.

14. Ms. Botley has been the legal custodian of Mekiyah Stroud since September of 2006, when she was awarded, by the Juvenile Court of Wilson County, Tennessee, the "full custody, care, and control" of Mekiyah Stroud by an Order Establishing Paternity (Exhibit 4) which states said "full custody, care and control" of Mekiyah "be" with her grandmother Janice Stroud Botley and "shall remain with Janice

Stroud Botley, legal custodian.” (See Exhibit 4) Ms. Botley is the minor’s sole source of support.

15. The parties would assert to the Court that Janice Stroud Botley, who has been the Court appointed “legal custodian” of Mekiyah Stroud for over 12 years, is the legal and lawful equivalent under T.C.A. § 35-7-102(8) of a “legal guardian.” The parties would call to the attention of the Court to T.C.A. § 35-7-102(8), which is a section of the Tennessee Uniform Transfers to Minors Act, which deals with the transfer of a minor’s property to a “custodian.” In T.C.A. § 35-7-102(8), the term “guardian” is defined as a “person appointed by a Court to act as a general, limited, or temporary guardian or conservator of a minor’s property ... or a person legally authorized to perform substantially the same functions.”

16. The parties therefore would assert to the Court that Ms. Botley, the court-appointed legal custodian, has for over 12 years, by Court Order, performed substantially the same functions as a guardian and therefore the parties aver Plaintiff Janice Botley, as legal custodian, should be recognized and ruled by this Court as the legal and lawful equivalent of a “legal guardian,” under T.C.A. § 35-7-102(8). The parties therefore urge this Court that the statutory requirement under T.C.A. § 29-34-105(b)(3) for approval of a minor’s settlement that there be a statement that the affiant, here Ms. Botley, is the “legal guardian,” be found by this Court to be satisfied in that Ms. Botley as legal custodian is the lawful equivalent of a “legal guardian” and therefore T.C.A. § 29-34-105(b)(3) is satisfied.

17. Mekiyah Stroud will be a senior in high school in the fall of 2019.

18. Plaintiff Ms. Janice Stroud Botley, the grandmother and legal custodian, who works outside the home, and is the sole provider for the minor Mekiyah Stroud,

respectfully moves the Court to Order that at least \$10,000 of the total settlement of \$31,500.00 be paid to Janice Botley as legal custodian of Mekiyah Stroud, a minor, for the purchase by Plaintiff Botley of an automobile for the primary use of Plaintiff minor Mekiyah Stroud who will be seventeen (17) years of age on February 3, 2019, to transport herself to school and to take her newborn child to and from childcare facilities and doctor's appointments and for the everyday usage by Mekiyah Stroud as set out by any orders of the Court, and the Plaintiffs assert this purchase of a car with \$10,000.00 of the total settlement fund is in the best interest of the minor.

19. The Plaintiffs and Defendant would assert the settlement of the claim of the minor for the total amount of \$31,500.00 is in the best interest of the minor Mekiyah N. Stroud, and the parties move the Court to approve that total amount, and thereby move the Court to Order payment of legal fees and expenses in the amount of \$11,599.73 and to Order direct payment of the BCBST TennCare related lien in the amount of \$1,193.08, and to Order direct payment of the TennCare lien in the amount of \$4.01.

20. Further, the parties move the Court to Order that \$10,000.00 of the total settlement amount of \$31,500.00 be paid to Janice Botley as legal custodian for Mekiyah Stroud, a minor, for the purchase of a vehicle for the minor to be used primarily for the minor's transportation of herself to school and for taking her new baby to childcare and to doctors appointments.

21. The parties also move that the Court, in its discretion, based on T.C.A. § 29-34-105(a) grant the above requests and further that the Court Order the payment of the remainder of the total settlement of \$31,500.00, being \$8,703.18, to be paid to the minor's legal custodian to start a bank account in the minor's name for the minor's

support, education and maintenance, or in the alternative for the Court to Order that the remaining amount of \$8,703.18 be held in trust by the Court under conditions to be set by the Order of the Court when approving the settlement of the minor's claim.

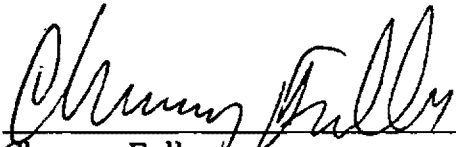
22. The parties further agree once the settlement is approved and the total settlement amount paid, that Plaintiffs will hold Defendant City of Mt. Juliet and its insurer harmless from any and all claims by Plaintiffs arising from the accident of February 16, 2018, and from any and all payments above the total settlement amount of \$31,500.00

Based on the above settlement agreement terms presented to the Court, the parties finally move the Court for further and general relief pursuant to the facts of the case and Tennessee law, based on the judgment and discretion of the Court.

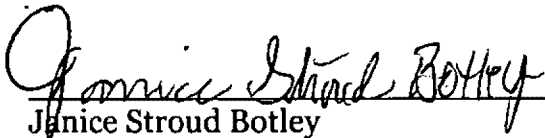
NOTICE OF HEARING

THIS MATTER IS SET TO BE HEARD IN THE FIRST CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE, AT THE METROPOLITAN COURTHOUSE, 1 PUBLIC SQUARE IN NASHVILLE, TENNESSEE ON TUESDAY, JANUARY 8, 2018 AT 8:30 A.M., BEFORE JUDGE HAMILTON V. GAYDEN, JR.

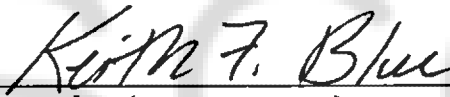
APPROVED AND SUBMITTED FOR ENTRY:



Chaucey Fuller
Bart Durham Injury Law
404 James Robertson Parkway
1712 Parkway Towers
Nashville, TN 37219-1505
Counsel for Mekiyah N. Stroud and Janice Stroud Botley



Janice Stroud Botley
Plaintiff and Legal Custodian

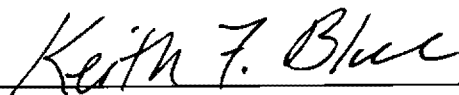


Keith F. Blue (BPR #010377)
FARRAR & BATES, LLP
211 Seventh Avenue North, Suite 500
Nashville, TN 37219
Counsel for City of Mt. Juliet, TN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 8th day of January, 2019, a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid to the following:

Chaucey Fuller
Bart Durham Injury Law
404 James Robertson Parkway
1712 Parkway Towers
Nashville, TN 37219-1505
Counsel for Mekiyah N. Stroud and Janice Stroud Botley



Keith F. Blue