IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

GILBERTO LOPEZ, by and through the Cumberland Trust & Investment Company as next friend and trustee of The Gilberto Kelly Lopez Irrevocable Trust v.)))) No. 3-07-0799
METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON)
COUNTY; and GENESIS LEARNING)
CENTERS)

ORDER

The parties' joint petition for approval of the minor settlement (Docket Entry No. 601) is GRANTED.

The petition does not come to the Court on a blank slate since the undersigned Magistrate Judge has been intimately involved in the case addressing numerous pretrial matters since the case was filed in 2007. The parties have, although cooperative and profe ssional with each other, vigorously contested liability and other issues. By order entered February 9, 2010 (Docket Entry No. 517), the settlement between the plaintiff and defendant Metropolitan Government of Nashville and Davidson County ("Metro") for \$1,475,000.00, was approved as "amifestly in the best interest" of the minor child. At the conclusion of the nine day trial, the jury rendered a verdict in favor of defendant Genesis Learning Centers ("Genesis") on March 12, 2010. The plaintiff timely filed a notice of appeal from the order granting in part the motion of defendant Genesis for summary judgment and the order denying the plaintiff's motion for a new trial. Defendant Genesis filed a notice of cross appeal from the order denying attorney's fees to defendant Genesis.

After consideration of the parties' petition, and by order entered August 31, 2010 (Docket Entry No. 605), the Court advised the Court of Appeals for the Sixth Circuit that, if the case were remanded, the parties' petition would be granted. By order entered September 7, 2010 (Docket Entry No. 606), the Court of Appeals remanded the appeals to this District.

The plaintiff is faced with a jury verdict in favor of the defendant and the prospect of incurring additional attorney's fees and expenses, and the defendant is faced with additional attorney's fees and expenses to defend and prosecute the coross appeals. Both parties face the uncertainty of the ultimate resolution of the appeals. Under these circumstances, it is in both parties' interests to resolve the case. Although the amount of the settlement is relatively minimal, the plaintiff obtained a significant settlement from defendant Metro. Given the jury verdict and the Court's denial of the plaintiffs motion for a new trial, coupled with the significant settlement reached with defendant Metro, it is not only a wise decision by the plaintiff to resolve this case but also in the best interests of the minor child.

Because of the Court's prior knowledge of this case, the Court finds that it is not necessary to have a hearing on this matter. Because all proceeds of this settlement will be paid to the Cumberland Trust and Investment Company as trustee of the irrevocable trust for the minor child, it is not necessary to consider the need for appointment of a guardian. The parties have represented that all liens have been satisfied. Because none of the proceeds of this settlement will be paid to plaintiff's counsel, there is no need to consider attorney's fees.

In sum, the Court finds that the settlement is fair and reasonable and in the best interests of the minor child and is APPROVED.

The plaintiff and defendant Genesis shall file an agreed order or stipulation of dismissal of all claims brought by the plaintiff against defendant Genesis.

It is so ORDERED.

JULIET GRIFFIN United States Magistrate Judge