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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1998-09T3
A-6049-09T3
A-6050-09T3

IN THE MATTER OF THE INTER VIVOS TRUST, JOSEPH BRANDES, GRANTOR (September 12, 1994)

IN THE MATTER OF THE INTER VIVOS TRUST, DOROTHY SINGER, GRANTOR (December 23, 1999)

Submitted November 29, 2011 - Decided January 11, 2012

Before Judges Fisher, Baxter and Nugent.

On appeal from the Superior Court of New Jersey, Chancery Division, Bergen County, Docket Nos. P-263-08 and P-264-08.

OlenderFeldman, attorneys for Ricki Singer, appellant/cross-respondent in A-1998-09T3 and respondent in A-6049-09T3 and A-6050-09T3 (Michael J. Feldman, of counsel and on the brief).

Neal H. Klausner (Davis & Gilbert), attorney for respondents/cross-appellants Romulus Holdings, Inc. and Remus Holdings, Inc. in A-1998-09T3 and appellants Romulus Holdings, Inc. and Mars Associates, Inc. in A-6049-09T3 (Mr. Klausner, of counsel and on the brief).

Sonnenschein Nath & Rosenthal, attorneys for Steven G. Singer, respondent/cross-appellant in A-1998-09T3 and appellant in A-6050-09T3 (John M. Elias, of counsel and on the brief).

Pashman Stein, attorneys for respondent Daniel Martin Singer in A-1998-09T3 (Louis Pashman, Guardian Ad Litem, on the brief).

PER CURIAM

The linchpin of these three appeals, which were not consolidated but which we now resolve in a single opinion, is the Chancery judge's removal of appellant Ricki Singer as the guardian ad litem of her son, Daniel Martin Singer, the beneficiary of the 1994[1] and 1999[2] trusts in question in two probate suits commenced by Ricki. That removal was triggered by the Chancery judge's conclusion that Ricki's interests came into conflict with Daniel's when both Ricki and the trust became exposed to counsel fee claims following the entry of summary judgment on the merits in the 1999 trust suit. Because we conclude, after close review of the voluminous record, that the

[1]Martin and Dorothy Singer had four children: Steven, Ricki, Gary and Brad. Daniel Martin Singer, the only child of Ricki, was born on January 5, 1994. On September 12, 1994, Joseph Brandes, Dorothy Singer's brother, created an inter vivos trust (the 1994 trust), which required the trustee, Steven G. Singer, to hold the trust assets for the maintenance, education, welfare and comfort of Daniel, and to pay to Daniel the remaining balance on January 8, 2024. The appeal and cross-appeals in No. A-1998-09 relate to orders entered in the suit regarding the 1994 trust.

[2]Dorothy Singer, by agreement dated December 23, 1999, created a trust (the 1999 trust) for the sole benefit of Daniel; Steven G. Singer is also the trustee of that trust. The appeals assigned Nos. A-6049-09 and A-6050-09 relate to the 1999 trust.

proffered reasons for removal did not meet the clear and convincing standard applicable in such matters, and the decision to remove Ricki as guardian ad litem constituted a mistaken exercise of the Chancery judge's discretion, we reverse that determination and, consequently, vacate the order that approved a settlement reached on the child's behalf by the substitute guardian ad litem and remand for further proceedings in the 1994 trust suit.

I

In 2006, Ricki commenced two actions in the Probate Part, seeking a judgment compelling her brother, Steven G. Singer, the trustee of the 1994 and 1999 trusts, to provide an accounting. The Chancery judge at the time entered an order on February 28, 2006, which required that Steven provide an accounting of both trusts within forty-five days; the judge also named Ricki as her son Daniel's guardian ad litem. Ricki later filed an amended complaint against Steven, and three corporations -- Romulus Holdings, Inc., Remus Holdings, Inc., and Mars Associates, Inc. -- alleging Steven's mishandling of the trust assets, self-dealing, a breach of his fiduciary duties and the terms of the trusts, and fraud, and claiming also that some or all of the three corporations conspired with Steven to defraud the 1994 and

1999 trusts. Ricki sought damages and the removal of Steven from his office as trustee.[3]

Steven and the three corporations moved for dismissal. The judge denied Steven's motion and ordered him to file a formal accounting for both trusts within sixty days; the judge also dismissed the complaint without prejudice insofar as it sought relief from the corporations. Ricki filed an amended complaint. Steven and the corporations again moved for dismissal; those motions were denied.

Ricki served discovery demands on Steven and the corporations. When a dispute arose about the proper scope of discovery, the Chancery judge at the time appointed an attorney to "decide and determine all discovery disputes in the first instance," reserving to the parties the right to appeal any such determinations to the trial court. The record reveals that Ricki appealed some of the discovery master's determinations but the judge denied relief, concluding that Ricki's demand for documents related "to virtually every transaction spanning 13

[3]Ricki commenced this action in the Law Division at the direction of the Chancery judge. Steven successfully moved for a transfer to the Probate Part. The Chancery judge then dismissed the amended complaint without prejudice, so that it could be reasserted in two new, separate filings, one relating to the 1994 trust and the other to the 1999 trust. The new matters were filed on June 25, 2007, and consolidated.

years" and "crossed the acceptable boundaries" of our broad discovery rules.

The parties consented to a dismissal of the suits without prejudice upon receipt of Steven's anticipated formal accountings. Steven thereafter filed separate verified complaints seeking approval of his formal accountings regarding the two trusts. Ricki filed exceptions to both accountings, as well as a counterclaim and a third-party action against Steven and the corporations.[4] She also sought extensive discovery, only some of which was permitted by the discovery master. Ricki then appealed to the Chancery judge,[5] who affirmed the master's determinations by order entered on December 12, 2008.

Steven and the three corporations separately moved for summary judgment in early 2009. The Chancery judge granted summary judgment in favor of the corporations and approved Steven's accounting regarding the 1999 trust; the dispositive motions in the 1994 trust suit were denied.

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[4]At or about this time, counsel for the corporations wrote to Ricki's counsel, asserting that the claims against them were frivolous. Ricki rejected that invitation to dismiss her claims and sought additional discovery.

[5]By this time, another Chancery judge had been assigned to handle the matters and made all the subsequent rulings questioned in the three appeals before us.

In early March 2009, Romulus and Mars moved for an award of the counsel fees and costs they expended in defending against Ricki's claims in the 1999 trust suit. Steven moved for an allowance from the 1999 trust for his fees and costs and, also, sought a surcharge against Ricki, claiming she breached the fiduciary duty she owed Daniel as his guardian ad litem.

The remaining matters were scheduled for a trial to commence in late March 2009. During settlement discussions, the Chancery judge questioned whether the applications for legal fees asserted by Steven, Romulus and Mars in the 1999 trust matter created a conflict of interest that compromised Ricki's ability to continue to act as Daniel's guardian ad litem in the 1994 trust suit. The parties took the opportunity provided by the judge to brief the issue while continuing to negotiate. When their attempts to settle proved unfruitful, the judge heard argument regarding the conflict-of-interest issue and thereafter removed Ricki as guardian ad litem. By orders entered on April 15 and 16, 2009, Louis Pashman, Esq., was appointed as Daniel's guardian ad litem in the 1994 and 1999 trust matters. Pashman and the other litigants reached a settlement of the 1994 trust suit in September 2009, and the Chancery judge, over Ricki's objection, approved that settlement by order entered on October 9, 2009.

Motions for counsel fee awards were thereafter filed by Steven and the corporations, as well as Ricki, regarding the 1994 trust suit. For reasons expressed on November 13, 2009, the judge denied all these applications and memorialized her rulings in an order entered on November 17, 2009. On November 24, 2009, Steven's counsel wrote to the trial court, claiming that the November 17, 2009 order did not accurately reflect the judge's oral decision and, also, among other things, did not confirm that he had previously been allowed $172,000 in counsel fees.

In her appeal in A-1998-09, Ricki sought reversal of: (1) the discovery orders of April 30 and December 12, 2008; (2) the order of April 15, 2009, which removed Ricki as guardian ad litem in the 1994 trust action; (3) the order of October 9, 2009, which approved the settlement of the 1994 trust action; and (4) the order of November 17, 2009, which denied Ricki's fee application. Steven cross-appealed, seeking reversal of the order of November 17, 2009, which denied his application in the 1994 trust suit for fees and for a surcharge against Ricki. Romulus and Remus also cross-appealed the denial of their motion for counsel fees in the 1994 trust action.[6]

[6]Steven and the corporations also asserted that finality had not been achieved in the trial court due to the unresolved question (continued)

On July 19, 2010, the judge entered orders in both suits, denying Steven's request for counsel fees and surcharges against Ricki. The judge also declared that she would not confirm Steven's belief that he had previously been allowed $172,000 in counsel fees because "no such finding was made [and] rather the [c]ourt refrained from making an independent determination as to whether what had previously been paid (in connection to the 1994 trust) was warranted as an award of counsel fees."

Thereafter, Romulus and Mars filed a notice of appeal (No. A-6049-09) seeking review of the order of November 17, 2009, which denied their claim for frivolous litigation fees incurred in the 1999 trust case. Steven also filed an appeal (No. A-6050-09), by which he sought reversal of the July 19, 2010 order.

To summarize, by way of either appeal or cross-appeal, the following issues are before us. First, Ricki argues:

> I. THE APRIL 15, 2009 ORDER REMOVING RICKI AS GUARDIAN AD LITEM FOR HER SON DANIEL [IN THE 1994 TRUST SUIT] SHOULD BE VACATED, AND RICKI SHOULD BE REINSTATED AS GUARDIAN AD LITEM FOR HER SON DANIEL, RETROACTIVE TO APRIL 15, 2009.

(continued)
regarding the form of the November 17, 2009 order, as raised by his counsel's November 24, 2009 letter.

A. The Removal Of Ricki As GAL For Daniel Was Improper And Warrants Reversal.

B. The Basis To Remove Ricki As GAL Was Not Proven By Clear And Convincing Evidence.

C. The Public Interest Supports Ricki Remaining As GAL.

D. Any Hearing To Remove Ricki As GAL Should Have Been Conducted By A Different Judge Who Was Not Involved In Settlement Discussions.

II. THE OCTOBER 9, 2009 ORDER APPROVING SETTLEMENT MUST BE VACATED.

III. RICKI IS ENTITLED TO AN AWARD OF LEGAL FEES FROM THE 1994 TRUST, AND A SURCHARGE AGAINST STEVEN FOR REIMBURSEMENT.

IV. RICKI IS ENTITLED TO DISCOVERY WHICH WAS DENIED.[7]

In their cross-appeal and appeal, the corporations assert that the trial court erred in denying their applications for counsel fees and costs from Ricki and her attorneys, arguing an entitlement to such an award by way of either N.J.S.A. 2A:15-59.1 or Rule 1:4-8. And Steven argues in his cross-appeal and appeal that the judge erred in denying his applications for fees in both the 1994 trust and 1999 trust suits.

[7]For convenience and clarity, we have renumbered the point headings of Ricki's brief and also eliminated some of the subparts.

We first consider whether the Chancery judge mistakenly exercised her discretion in removing Ricki as guardian ad litem in the 1994 trust action,[8] a pivotal issue in these appeals and cross-appeals.

II

We are guided by the principles announced in Zukerman v. Piper Pools, Inc., 232 N.J. Super. 74, 95 (App. Div. 1989), where we considered the propriety of the removal of a guardian ad litem, who had commenced a personal injury suit on behalf of his infant child; the child was not quite three years old when he suffered devastating injuries caused by nearly drowning in a neighbor's pool. Id. at 78-79. There, after a jury had been selected, the defendants proposed a settlement, which the guardian rejected despite his attorney's contrary advice. Id. at 83-84. The defendants then renewed an earlier motion for the guardian's removal, claiming his rejection of the settlement offer was not in the child's best interests. Id. at 81-82, 84. The trial judge granted the motion, reasoning that, because he was empowered by Rule 4:44-3 to pass on the adequacy of any settlement affecting an infant, he was also empowered to remove

[8]Ricki has not appealed her removal as guardian ad litem in the 1999 trust action or the summary judgment entered against her in that matter.

a guardian "who failed to take into account the advice of his own attorney or who fails and neglects to appreciate the inherent risks of trial and 'evaluates a claim as if there were absolute liability'" rather than in the light of the defendants' questionable responsibility for the injuries. Id. at 85.

In reversing, we recognized that the standing of the party seeking removal and the manner in which the guardian was appointed were irrelevant and that the critical question was whether there were adequate grounds for the guardian's removal. Id. at 89, 95. While recognizing a court may always "inquire into the actions of the guardian ad litem" and, if sufficient grounds exist, may remove the guardian for cause, id. at 95, we rejected the ground upon which removal was based, concluding that the mere rejection of a settlement "is not in and of itself a sufficient basis to warrant removal," id. at 90. In describing the circumstances required for removal, which we found were not present in that case, we held:

> [A]ny such removal must be for good cause and based on clear and convincing evidence of misconduct or inability to serve the best interests of the ward, or incapacity of the guardian ad litem. It may include conflict of interests which would prevent any reasonably prudent person, including a parent, from continuing to serve as a guardian ad litem. However, a mere difference of opinion, such as existed in this case, as to whether or not a proposed settlement offer was sufficient, or should be accepted

> because of the inherent risks of a trial on liability or damages, or both, is neither misconduct nor such conflict of interest as would warrant the court's interference to in effect compel a settlement.
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> [Id. at 95-96.]

Although little has been written on the subject since, the parties agree that Zukerman announces the principles applicable to the propriety of Ricki's removal. We agree.

Applying the Zukerman standard, and recognizing that the power of removal is to be "exercised sparingly and with great caution," Braman v. Central Hanover Bank & Trust Co., 138 N.J. Eq. 165, 197 (Ch. 1946), we conclude that Ricki should not have been removed as guardian ad litem simply because her adversaries were seeking fee awards in the 1999 trust suit, or might seek fee awards in the 1994 trust suit, or for any of the other circumstances alluded to in the Chancery judge's decision. To understand whether removal was appropriate, we must first understand the judge's decision to remove Ricki.

At the outset of the hearing on April 6, 2009, the judge summarized the status of the two suits. She observed that summary judgment motions were filed in both suits. Summary judgment was entered in the 1999 trust suit, dismissing Ricki's complaint and approving Steven's accounting, but summary judgment was denied in the 1994 trust suit, a matter then before

the court for trial. The judge also explained how the discovery master had mediated proposals for settling the matters both before and after entry of summary judgment in the 1999 trust suit, and she then observed that despite

> [the discovery master's] good efforts, it is my understanding that there has not been a settlement in this [the 1994 trust] case.[9] So, I am very concerned about the conflict of interest which has occurred as a result of the litigation, which is to say, and I cannot say that I anticipated this in the sense that I just didn't really think about it, and I don't know that anybody raised it previously, but it is nonetheless accurate, I think, that having granted [s]ummary [j]udgment in the '99 trust, the trustee naturally is looking for counsel fees to be paid.
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> Also, counsel for the interested parties and the corporations are looking for their counsel fees to be paid on the '99 [t]rust . . . not from the [t]rust but from the guardian ad litem, the argument being made that she should not have pursued the litigation on the '99 [t]rust, and that [the ward] should not be hurt financially because his mother, who is the guardian ad litem decided to pursue a legal cause of action that was not meritorious.

In regard to the strength of Ricki's claims in the 1999 trust suit, the judge held that she did not view the entry of summary judgment as determinative on whether the claim was frivolous,

[9]Despite their differences in content and in resolution, the judge viewed both suits as "somewhat of a unit" and stated her understanding that the settlement proposals related to a resolution of both lawsuits.

and stated that she "[did not] intend to decide today whether or not pursuit of the [the 1999 trust suit] was frivolous or without base." But recognizing Steven and the corporations' intentions to pursue counsel fee awards, the judge suggested

> that the mother, Ri[c]ki, is in a conflicted position with regard to this counsel fee question in the [1999 trust suit], which is to say that she could certainly argue, and I'm sure would argue, that neither she nor the [t]rust should pay counsel fees, and in that sense that's fine, but if the [c]ourt does not accept that argument and goes behind it to say the [t]rustee, the [c]ompanies, and the [i]nterested [p]arties should not have to pay counsel fees for the [1999 trust suit], someone on the other side has to pay, and then there would be a question whether it would be Ri[c]ki, the guardian ad litem or whether it would be the [t]rust, and that's a conflict.

With those observations, the judge then heard the argument of counsel, at the conclusion of which she held:

> [G]iven the very unusual posture of this case, I do feel compelled to replace [Ricki] as guardian ad litem in both cases for the reasons that I placed on the record earlier when we began this conference.
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> [Ricki's counsel] makes some very good points with regard to the amount of time and energy his firm has put into this litigation, [the 1994 trust suit], and that is of concern to me, but there is clear and convincing evidence that Ri[c]ki's self-interest, the mother's self[-]interest in avoiding paying counsel fees [in the 1999 trust suit] prevents her from settling this matter, the matter being both cases together being settled, which is the only way that

> settlement to my knowledge has been seriously discussed, not that it wouldn't be possible to settle one case without the other, but one case is so much weaker than the other, and it just in practicality makes, I don't believe, any sense to settle one without the other.

The judge also raised whether a different approach to the management of the proceedings in the two suits might alleviate the perceived conflict without taking the drastic step of removal. That is, the judge considered whether it would be propitious to rule on the fee applications in the 1999 trust suit before taking any further steps in the 1994 trust suit but ultimately concluded "that doesn't really cure the problem, because you still have counsel fees as a pawn, as a piece of the settlement which Ri[c]ki can't really fairly evaluate without thinking about her own self[-]interest." With that the judge removed Ricki, advised the parties she would ask Louis Pashman, Esq., to act thereafter as guardian ad litem, and adjourned the trial of the 1994 lawsuit.[10]

As can be seen, the conflict detected by the Chancery judge was based on the potential for an award of counsel fees in favor of Steven and the corporations, or some or all of them, against

[10]Ricki has argued -- but we find no evidence to support her claim -- that removal was preordained once settlement appeared unlikely, as demonstrated by the fact that the judge named the substitute guardian ad litem immediately after rendering her oral decision removing Ricki.

either Ricki or the 1999 trust or both. We find this circumstance alone to be insufficient to create a conflict necessitating removal of a guardian.

As a general matter, any action against a trustee has the potential to deplete the trust corpus -- thereby injuring the beneficiary -- because, when sued, trustees are "entitled to the advice and help of counsel in the performance of their duties" reimbursable from the trust. Mears v. Addonizio, 336 N.J. Super. 474, 480 (App. Div. 2001) (quoting Gardner v. Baldi, 24 N.J. Super. 228, 232 (Ch. Div. 1952)). When Ricki commenced these actions, she created the potential that the trustee may seek compensation for having to respond to the suits[11]; to that extent, there was, as in any litigation brought by a guardian against a trustee, an inherent and potential divergence of interest between the guardian and the ward.[12]

[11]A trustee, however, is not entitled to have counsel fees paid from the trust for bookkeeping or accounting services rendered on behalf of the trust. Mears, supra, 336 N.J. Super. at 482; In re Wharton, 47 N.J. Super. 42, 46 (App. Div. 1957). Accordingly, it was unlikely that Steven would have been permitted fees for providing the accountings required by earlier orders.

[12]Such a situation is to be distinguished from instances where a parent and child are both beneficiaries of an estate or trust. See, e.g., In re Will of Maxwell, 306 N.J. Super. 563, 580-81 (App. Div. 1997) (holding that where parents were life beneficiaries and children were remainderpersons, the parents (continued)

The Chancery judge also found this circumstance exacerbated by the assertion of Ricki's adversaries that they would seek an award of counsel fees directly from her for having filed and prosecuted what they believed was a frivolous suit regarding the 1999 trust. We find no merit in this conclusion. In fact, rather than increasing any potential conflict between guardian and ward, the viability of a claim for fees directly from the guardian would actually alleviate the concern. Every dollar in counsel fees obtained directly from the guardian would be one less dollar for which the trust might be liable to pay. That Ricki could have been expected to resist an award sought from her for having commenced and prosecuted an allegedly frivolous suit did not place her in an impermissible conflict with her ward. As we have recognized, Daniel might have received a benefit to the extent Ricki were to be held liable for some or all of the fees incurred by defendants, but he was not disadvantaged by Ricki's resistance to an award against her because the trust, in the first instance, was a fund from which the trustee might permissibly turn for reasonable compensation. We, thus, find the potential for a fee award against either the trust or the guardian ad litem, or both, as an insufficient

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were in a conflict of interest and not entitled to appointment as guardian ad litem), certif. denied, 153 N.J. 214 (1998).

ground upon which removal may be based and conclude that the Chancery judge erred in removing Ricki as guardian ad litem. Indeed, we are particularly concerned that a contrary conclusion might cause a practice of seeking such awards to become a routine tactic whenever a party is desirous of the removal of what that party might perceive to be a difficult or litigious guardian ad litem.

We additionally find error in the judge's decision to remove the guardian prior to determining whether the conditions, which prompted her concerns about a conflict of interest, could be met. That is, as the judge observed, there had yet to be a determination that the 1999 trust suit was frivolous or that any of the defendants in that action had a legitimate claim for counsel fees against Ricki or the trust. In fact, that observation suggested a better way to question or illuminate whether a conflict existed. There was no reason that the trial in the 1994 trust suit could not be adjourned until such time as the judge had ruled on any counsel fee applications in the 1999 trust suit.[13] As it turns out, the judge ultimately denied all

[13]No reason was given to suggest that the proceedings could not be re-ordered in a manner that might illuminate whether or to what extent Ricki's position in the 1999 trust suit impacted her ability to properly act as guardian ad litem in the 1994 trust suit. No party would have been injured by an adjournment of the trial in the 1994 trust suit; indeed, the judge recognized that (continued)

requests for counsel fee awards in the 1999 trust suit; if that result had been reached earlier, this reason for the judge's decision to remove Ricki would have played no role in the analysis and would have revealed that there was no conflict at all.

Even though we find the potential fee applications to be of insufficient concern to warrant removal, if we further entertain the hypothesis on which removal occurred here, pending or future fee applications in the 1999 trust suit had no legitimate impact on the existence of a conflict in Ricki's role as guardian ad litem in the 1994 trust suit. That is, not to be overlooked is the fact that the Chancery judge implicitly determined -- without, we conclude, an adequate basis -- that the alleged conflict arising from Ricki's commencement and prosecution of the 1999 trust suit somehow created a conflict with regard to her continued prosecution of the 1994 trust suit. Even if, at the time removal was ordered, there may have been some doubt about the frivolousness of the 1999 trust suit, there was no reasonable basis for concluding that the 1994 trust suit was frivolous; the Chancery judge had in fact denied summary

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Ricki's removal in the 1994 trust suit required the adjournment of the trial so that the substitute guardian ad litem could become familiar with the matter.

judgment in the 1994 trust suit. And, although the denial of summary judgment might not entirely eliminate a later holding that the suit was frivolous, at that time such a holding would have hardly seemed likely, and certainly not likely enough to meet Zukerman's clear and convincing standard.

Other than the inherent possibility that the trust might have been depleted, and the ward injured by its depletion, by the commencement and prosecution of the suits, there is no evidence -- except the judge's reference to the impact on settlement -- to suggest a need to remove Ricki as guardian ad litem in the 1994 trust suit because of the circumstances resulting from the 1999 trust suit, let alone clear and convincing evidence. The Chancery judge, in her oral decision, referred to the fact that the various fee claims in the 1999 trust suit were frustrating a potential settlement of the 1994 trust suit. With the exception of the understanding that settlement proposals apparently encompassed all pending issues in both cases, the nature and content of the settlement proposals are not otherwise revealed in the record on appeal. Moreover, although we have no cause to assume that Ricki's adversaries may have been motivated to craft settlement proposals in order to present the appearance of a conflict in this matter, the lack of clarity as to the nature of the

proposal, or proposals, further demonstrates the absence of a clear and convincing reason for removal. In fact, as Zukerman reveals, there is a great danger in assessing the existence of a conflict of interest based upon a settlement proposed by the very parties seeking removal. 232 N.J. Super. at 96 (holding that "[a]ttempts to remove a guardian for rejecting a settlement are to be discouraged").

The judge also erred by failing to recognize that removal had the potential for creating additional damage to rather than preserving the trust. That is, the appointment of a substitute guardian necessarily required not only the further expenditure of the time and expenses of all parties, who were at the time of removal about to commence the trial of the 1994 trust suit, but also brought into the situation yet another party with a right to seek fees from the trust.[14] Ultimately, the settlement that was reached did not encompass all issues, permitting the parties to seek awards of counsel fees; there was, however, a waiver by Steven and others of the right to collect fees from the 1999 trust.[15]

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[14]The substituted guardian ad litem was ultimately awarded $18,360, plus disbursements, to be paid from the 1994 trust.

[15]We would lastly observe that the perceived conflict only arose with regard to the potential for settlement of either or both suits. Had no settlement proposal ever been made, not even the (continued)

We, thus, conclude that the Chancery judge erred in removing Ricki as guardian ad litem.[16]

III

Our reversal of Ricki's removal as guardian ad litem in the 1994 trust action causes a ripple effect that requires little further discussion.

First, the settlement of the 1994 trust suit can no longer stand as a result. It should have been Ricki's decision to settle; her objection to the settlement negotiated by the substitute guardian ad litem -- and her appeal of the judge's approval of the settlement -- reveals Ricki's unwillingness to

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perceived conflict, which we have found inadequate, would have arisen.

[16]We agree that removal is not required in circumstances of this type where a settlement agreement is reached. The judge's broad discretion to approve or reject settlement agreements reached on a minor's behalf, R. 4:44-3, provides ample protection in such instances. See Zukerman, supra, 232 N.J. Super. at 96-97. Of course, the existence of this power does not provide protection where a settlement is proposed but rejected, although, as we noted in Zukerman, in those circumstances the court retains the power to inquire into the guardian's actions. Id. at 95. Here, we find no fault in the judge's inquiry about a potential conflict of interest and in questioning whether Ricki should be removed, only in the finding that removal was required.

settle on those terms.[17] The order approving the settlement is, therefore, vacated and the proceedings regarding the 1994 trust suit must continue where they were when Ricki was mistakenly removed.

Second, for those same reasons, the disposition of the fee applications in the 1994 trust suit must also be set aside. They may be renewed following the ultimate disposition of the merits of the 1994 trust suit or at any other occasion the court deems appropriate.

Third, our disposition of the removal question revives Ricki's right to complain of the trial court's disposition of her discovery applications. As to those aspects of Ricki's appeal, however, we find insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

And fourth, our disposition of the removal question has no impact on the judge's disposition of the fee applications in the 1999 trust suit. As to those issues, we also find insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

To summarize, in A-1998-09, we reverse the April 15, 2009 order, which removed Ricki as guardian ad litem, vacate the

[17]We need not express nor intimate any view of the fairness or appropriateness of the settlement reached by the substitute guardian ad litem with the other parties.

October 9, 2009 order, which approved a settlement reached by the substitute guardian ad litem, and vacate all orders -- that have been appealed -- that disposed of fee applications in the 1994 trust suit. We remand for further proceedings in conformity with this opinion and do not retain jurisdiction. And, we affirm all orders that have been appealed, either in A-1998-09, A-6049-09, and A-6050-09, that were entered with regard to the 1999 trust suit.

Affirmed in part; reversed and vacated in part. We do not retain jurisdiction.