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CPLR 1209: Statute Not Applicable Where Infant Plaintiff Seeks Relief Under an Uninsured Automobile Indorsement

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despite the legislative mandate for a free stenographic transcript for poor persons on appeal or in other proceedings,[70] in *Lester v. Lester*,[71] the Supreme Court, Sullivan County, decided that an indigent has no statutory right to a county-paid stenographer during pre-trial examination. The court stated that such an examination was not a "proceeding" which would compel the county to pay for a stenographer. Even if a stenographer's charge were considered a "fee" under the CPLR for which a poor person would not be liable unless he were to recover,[72] the court did not believe that it had the affirmative right to order a county to pay such an expense.[73] In addition, it reasoned that lack of stenographic services does not deny the mandated access to the courts;[74] it merely limits the effectiveness of litigation.[75] With reservations, the court did allow the indigent plaintiff to take the defendants' depositions by tape recorder.[76]

ARTICLE 12 — INFANTS AND INCOMPETENTS

CPLR 1209: Statute not applicable where infant plaintiff seeks relief under an uninsured automobile indorsement.

CPLR 1209 provides that an infant or judicially declared incompetent may not seek relief through arbitration unless his authorized representative has procured permission by court order. An existing exception to this seemingly all-inclusive provision was recently reaffirmed in *Lunger v. Hartford Accident & Indemnity Co.*[77] Therein, the minor plaintiff brought an action based on the New York Automobile Accident Indemnification Endorsement in the insurance policy issued by the defendant to his parents. The defendant moved to stay the action pending arbitration, citing CPLR 1209. The Appellate Divi-

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Quarterly Survey, 46 ST. JOHN'S L. REV. 355, 369 (1971); *The Quarterly Survey*, 46 ST. JOHN'S L. REV. 147, 157 (1971); *The Quarterly Survey*, 44 ST. JOHN'S L. REV. 135, 139 (1969).

70 CPLR 1102(b) states:

> Where a party has been permitted by order to appeal as a poor person, the court clerk . . . shall so notify the court stenographer, who . . . shall make and certify two typewritten transcripts of the stenographic minutes of said trial or hearing. . . . The expense of such transcripts shall be a county charge. . . . A poor person may be furnished with a stenographic transcript without fee by order of the court in proceedings other than appeal, the fee therefor to be paid by the county. . . .

71 69 Misc. 2d 528, 330 N.Y.S.2d 190 (Sup. Ct. Sullivan County 1972).

72 CPLR 1102(d).

73 69 Misc. 2d at 530, 330 N.Y.S.2d at 193. The court was careful not to call such an expenditure a "cost or fee" and cited authority to call them "disbursements." *See* 8 WK&M ¶ 8301.27.

74 69 Misc. 2d at 531, 330 N.Y.S.2d at 194.

75 *Id.* at 532, 330 N.Y.S.2d at 194.

76 *Id.* 330 N.Y.S.2d at 195.

77 38 App. Div. 2d 857, 330 N.Y.S.2d 123 (2d Dep't 1972) (mem.).

sion, Second Department, following *Chernick v. Hartford Accident & Indemnity Co.*,[78] held that an infant plaintiff need not seek the court's permission to arbitrate his claim under an uninsured automobile endorsement, but may bring a plenary action against the insurer based on his claim.[79]

ARTICLE 21 — PAPERS

CPLR 2104: Settlement recorded by justice in chambers is valid.

CPLR 2104 states that an agreement between parties or their attorneys regarding any matter in an action, other than one made between counsel in open court, is binding on a party only if made in a writing subscribed by him or his attorney or reduced to the form of an order and entered.[80]

In *Golden Arrow Films, Inc. v. Standard Club of California, Inc.*,[81] the parties reached a post-trial settlement at an hour when no court reporters were available. The court, in chambers, therefore, made its own "detailed, complete notes of the settlement terms."[82] Thereafter, the defendant sought to revoke the settlement since CPLR 2104 requires "oral" stipulations to be made in open court. Rejecting this argument, the trial court held for the plaintiff. The Appellate Division, First Department, affirmed,[83] stating that "[u]nder the unique facts and circumstances of this case, we hold that there was substantial compliance with CPLR 2104."[84]

Although better practice dictates that settlements be either written or entered in open court, the instant decision is just. The defendant, a close family corporation, was represented in the negotiations by its president, who later personally informed the court of his consent to the

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78 8 App. Div. 2d 264, 187 N.Y.S.2d 534 (3d Dep't), *aff'd*, 8 N.Y.2d 756, 168 N.E.2d 110, 201 N.Y.S.2d 774 (1959). Although *Chernick* involved CPA 1448, the court stated that "the successor section in the CPLR (1209) has been held to be merely a recodification of section 1448, without any substantive change." 38 App. Div. 2d at 858, 330 N.Y.S.2d at 125, *citing* Schneider v. Schneider, 17 N.Y.2d 123, 127, 216 N.E.2d 318, 320, 269 N.Y.S.2d 107, 110 (1966).

79 38 App. Div. 2d at 858, 330 N.Y.S.2d at 125.

80 Apparently, the court rejected the view that CPLR 2104 is inapplicable to settlements. This is consistent with other recent First and Second Department rulings interpreting CPLR 1204's exact predecessor, RCP 4. *See* 2A WK&M ¶ 2104.03 n. 19, *citing* Solins v. Klosky, 8 App. Div. 2d 848, 190 N.Y.S.2d 633 (2d Dep't 1959); Anders v. Anders, 6 App. Div. 2d 440, 179 N.Y.S.2d 274 (1st Dep't 1958); Ariel v. Ariel, 5 App. Div. 2d 168, 171 N.Y.S.2d 138 (1st Dep't 1958).

81 38 App. Div. 2d 813, 328 N.Y.S.2d 901 (1st Dep't 1972) (mem.).

82 *Id.* at 814, 328 N.Y.S.2d at 902.

83 *Id.*

84 *Id.*, *citing* Gass v. Arons, 131 Misc. 502, 227 N.Y.S. 282 (N.Y. City Ct. Bronx County 1928) (deeming a settlement made in chambers as made in open court). *See generally* 2A WK&M ¶ 2104.03.