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EXHIBIT 1

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STATEMENT OF BRIANNA NELSON

In compliance with the Court's September 1, 2016 Court Order, I, Brianna Nelson, state the following in support of my claim of heirship to the Estate of Prince Rogers Nelson:

1. I have filed a claim that I am the niece and heir of Prince Rogers Nelson ("Decedent").

2. My claims are not based on a genetic relationship to Decedent or to John L. Nelson.

3. I will not be offering any evidence by way of testimony, exhibits, or expert testimony that I am genetically related to the Decedent or John L. Nelson in support of my heirship claims.

Brianna Nelson

Dated: 9.28.16

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STATEMENT OF JEANNINE HALLORAN,
AS MOTHER AND GUARDIAN OF V.N., A MINOR

In compliance with the Court's September 1, 2016 Court Order, I, Jeannine Halloran, state the following in support of V.N.'s claim of heirship to the Estate of Prince Rogers Nelson:

1. V.N. has filed a claim that she is the grandniece and heir of Prince Rogers Nelson ("Decedent").

2. V.N.'s claims are not based on a genetic relationship to Decedent or to John L. Nelson.

3. V.N. will not be offering any evidence by way of testimony, exhibits, or expert testimony that she is genetically related to the Decedent or John L. Nelson in support of her heirship claims.

Jeannine Halloran

Dated: 9/28/16

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EXHIBIT 2

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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF CARVER | FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:

Estate of Prince Rogers Nelson,

Decedent,

Court File No. 10-PR-16-46

DECLARATION OF SUSAN N. GARY

I, Susan N. Gary, declare as follows:

1. I have been engaged by Brianna Nelson and V.N. to provide expert testimony on Minnesota law governing the determination of intestate heirs and whether Duane Nelson is the son of John L. Nelson under Minnesota intestacy law.

2. I am the Orlando J. and Marian H. Hollis Professor of Law at the University of Oregon in Eugene, Oregon, where I have taught Trusts and Estates and Estate Planning for over 23 years. My scholarship includes work on the definition of family for inheritance purposes, with a focus on the parent-child relationship, and I have co-authored a casebook on trusts and estates. I served as a Special Advisor to the Joint Editorial Board for Uniform Trust and Estate Acts when it revised the Uniform Probate Code's definitions related to the parent-child relationship. I have served as Reporter for two Uniform Acts developed by the Uniform Law Commission, and I currently serve as the Reporter for the Oregon Law Commission's Probate Modernization Work Group, a project that is reviewing and revising Oregon's probate code. I received my B.A. from Yale University and my J.D. from Columbia University. Prior to entering academia I practiced with Mayer, Brown & Platt in Chicago, and with DeBandt, van Hecke & Lagae in Brussels. I am an Academic Fellow and Regent of the American College of Trust and Estate Counsel. I hold or have held leadership positions in the Trust and Estate, Aging and the Law, and Nonprofit and Philanthropy Law Sections of the Association of American Law Schools, the Real Property, Trust and Estate Section of the American Bar Association, the Oregon State Bar, and the NYU National Center on Philanthropy and the Law. I am a Trustee of the University of Oregon Board of Trustees.

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3. My responses to the following questions are based on my review of Minnesota statutes and cases, court documents filed in connection with this estate proceeding, transcripts of depositions of Norrine Nelson and Sharon Nelson, a conversation with Brianna Nelson, and other information provided to me by Lisa Braganca, counsel for Brianna Nelson and V.N. I understand that discovery is ongoing. As new information is obtained through discovery, I will consider how such information affects my opinion and revise this report and my opinion accordingly.

I. How does Minnesota determine who is a parent and child for purposes of determining who is an heir of a decedent under the intestacy statutes?

Intestacy statutes determine heirs based on family relationships determined for inheritance purposes. When a decedent dies without a spouse, other relationships for intestacy purposes are determined based on parent-child relationships. Once a parent-child relationship is established, other relationships flow from that determination. The child inherits through the parent, and children of the child inherit through the child. A determination of siblings depends on whether the siblings share a common parent. In Minnesota, a sibling who shares one parent with the decedent is treated the same as a sibling who shares both parents. Minn. Stat. § 524.2-107.

A. The Minnesota Probate Code[1] Does Not Provide a Complete Definition of Parent and Child

In 2010 Minnesota amended its intestacy statutes, with revisions based on the 2008 Amendments to the Uniform Probate Code. The statutes provide a number of rules for determining who is a parent and who is a child for purposes of intestacy, but do not provide a complete definition of the meaning of parent and child for purposes of intestacy. The Minnesota Probate Code states, "Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions." Minn. Stat. § 524.1-103. Thus, an understanding of the Minnesota law on inheritance by intestacy requires analysis of both the statutes and any pertinent cases.

The Minnesota Probate Code contains several provisions relating to the parent-child relationship. The statutes describe the effect of the parent-child relationship as follows:

> Except as otherwise provided in section 524.2-119, subdivisions 2 to 5 [related to adopted children], ***if a parent-child relationship exists or is***

[1] Minn. Rev. Stat. 524.1-101 states that chapter 524, containing the probate statutes, shall be known as the "Uniform Probate Code." For purposes of this Memorandum, I will refer to the Minnesota statutes as the "Minnesota Probate Code" to distinguish the statutes as adopted in Minnesota from the Uniform Probate Code itself.

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> ***established under this part***, the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.

Minn. Stat. § 524.2-116 (emphasis added). This provision anticipates that a parent-child relationship could exist and be established outside the rules that follow this statement ***or*** be established by the rules in the statutory sections in this part of the Probate Code. If the intention had been to limit the definition of parent-child relationship to those relationships established under the rules set forth in the statutes, the words "exists or" would not have been necessary.

The Minnesota Probate Code then provides rules for three categories of parent-child relationship: a genetic relationship, Minn. Stat. § 524.2-117, an adoptive relationship, Minn. Stat. §§ 524.2-118 and 524.2-119, and the relationship considered a parent-child relationship for a child conceived by assisted reproduction. Minn. Stat. § 524.2-120. The statutes do not say that only a child who fits within one of these categories can be considered a child of a particular parent for purposes of intestacy.

In addition to Minn. Stat. §§ 542.1-103, 524.2-116, described above, two additional statutes make clear that the statutory categories do not limit the definition of parent and child. Minn. Stat. § 524.2-122 says that the statutes do not affect the doctrine of equitable adoption. Although that doctrine is not directly applicable to the facts of the Prince Rogers Nelson estate, this section reflects the view of the legislature that the new statutes do not affect existing common law. Further, the definition of child in Minn. Stat. § 524.1-201 says that the word includes a child entitled to take "under law" and "excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant." Those categories of children are excluded; other categories are not.

B. The Parentage Act Does Not Apply to Determinations for Intestacy Purposes

The Minnesota Probate Code does not provide a complete definition of parent-child relationship for these purposes, so it is necessary to consider other Minnesota law related to intestacy and inheritance. The Parentage Act is not applicable to determinations of parentage for intestacy purposes and should not be used in the intestacy context.

As a policy matter, the Uniform Law Commission intentionally chose not to incorporate the Uniform Parentage Act definition of the parent-child relationship into the intestacy statutes. The rationale of the Uniform Law Commission was that the purposes of the Probate Code (intestacy and inheritance) and the Parentage Act (custody and child support) are different, and that different definitions were appropriate. The Uniform Probate Code differs from the Uniform Parentage Act in several significant ways, and the drafting committee did not intend that the Uniform Parentage Act be used to fill the gaps in the probate definition of the parent-child relationship.

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When the Uniform Law Commission decided to revise the Uniform Probate Code to address issues created by assisted reproductive technology, I was asked to be a Special Reporter to the Joint Editorial Board for Uniform Trust and Estate Acts (the "JEB-UTEA"). Initially, the JEB-UTEA discussed revisions with respect to the definition of parent and child, and later a separate drafting committee was created for other amendments to the Uniform Probate Code. The drafting committee incorporated into the 2008 Amendments the definition of the parent-child relationship that had been developed by the JEB-UTEA. I was involved during the discussions of the JEB-UTEA, from 2003-2005, before the appointment of the drafting committee.

The JEB-UTEA concluded that the intestacy statutes needed a separate definition, and intentionally chose not to refer to the Uniform Parentage Act. Thus, when Minnesota adopted the Uniform Law Commission's revisions, it was adopting definitions that were intentionally separate from and different from the Uniform Parentage Act.

Two policy considerations underlay the JEB-UTEA's approach to revising the definition of the parent-child relationship. First, the JEB-UTEA determined that because intestacy presents different issues from family law, the intestacy rules should be different from the Uniform Parentage Act and other family law statutes. Second, the JEB-UTEA wanted to protect children and intentionally chose to be over-inclusive in some respects, to include as many children as possible within the definition of parent and child. As an example, if a child's genetic parents, P1 and P2, divorce and P1 marries P3 who then adopts the child, should the child be able to inherit from and through P1, P2 or P3? Under adoption rules related to custody and child support, P2 would have given up parental rights in order for P3 to adopt, and P2 would have no rights or responsibilities with respect to the child. *See* Minn. Stat. §§ 259.59. But under the Uniform Probate Code, the child can inherit from and through all three parents. *See* Minn. Stat. § 524.2-119.

Another difference from the Uniform Parentage Act also increases the likelihood that a parent-child relationship will be established. In Minn. Stat. § 524.2-120(7)(c), a child conceived after a person's death, using gametic material from the deceased person, will be considered the child of the deceased person in the absence of clear and convincing evidence that the deceased person did not consent to be a parent, so long as the person was married to the child's birth mother and no divorce proceeding was pending when the person died. In contrast, under the Uniform Parentage Act, consent must be established in writing, before the deceased person's death, and the consent must contemplate assisted reproduction occurring after that person's death. *See* Unif. Parentage Act § 707 (2002).

These differences demonstrate that the different purposes between the intestacy rules and the Uniform Parentage Act led to different legal rules for a determination of the parent-child relationship. The court in *Palmer*, the Minnesota

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case that provides additional information about the definition of the parent-child relationship for intestacy agreed:

> The distinct purposes of probate and family law justify the legislature's decision not to make the Parentage Act the sole means of establishing paternity for the purposes of probate.

In re Estate of Palmer, 658 N.W.2d 197, 200 (2003).

C. What Is the Role of a Determination of a Genetic Relationship?

A genetic relationship can be used to establish a parent-child relationship under the Minnesota Probate Code. Minn. Stat. § 524.2-117. It is one way of establishing a parent-child relationship, and it is not the only way.

The 2008 Amendments to the Uniform Probate Code replaced the word "natural" with the word "genetic," because using the term natural to refer to a parent biologically related to a child seemed to create a contrast with adopted children, who, the drafters thought, should not be considered "unnatural." The switch from "natural" to "genetic" was not intended to imply anything else. The term genetic is used in the statute in explaining one category of parent-child relationship, but the statutes do not limit the parent-child relationship to a relationship based on a genetic tie.

The Minnesota Probate Code defines "genetic father" by reference to the Parentage Act, the only reference to the Parentage Act remaining in the Probate Code. The term is used only to define genetic parent, and that term is used to provide that a child will be considered to have a parent-child relationship with the child's genetic parents, unless someone else adopts the child. Minn. Stat. § 524.2-117. This provision is only one of several ways a parent-child relationship can be established, as the succeeding statutory sections make clear.

Minnesota Probate Code §§ 524.2-118 and 524.2-119 use the term genetic in explaining when an adopted child will continue to be a child of the genetic parent for intestacy purposes. Under the statutes a child might be a child of two genetic parents and one adoptive parent.

The statutes on children conceived using assisted reproductive technology also contemplate that a child might not be the child of a genetic parent. A parent-child relationship does not exist between a child and a third-party donor, defined as someone who produces eggs or sperm used in assisted reproduction and who is not deemed a parent under other provisions in the statute. Minn. Stat. § 524.2-120(1), 524.1-201(54).

Although confirmation of a genetic relationship may be used, in some circumstances, to establish a parent-child relationship, a genetic relationship may

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not be determinative for intestacy purposes. If a parent-child relationship is established while the parent and child are alive, a post-death determination that the two are not genetically related will not affect the parent-child relationship for intestacy purposes. Thus, if a parent-child relationship is established for intestacy purposes under Minnesota law, the fact that a genetic relationship exists with someone else becomes irrelevant. In Minnesota law a parent-child relationship can be established through adoption, through assisted reproductive technology, or through clear and convincing evidence of the parent-child relationship.

D. Determination of Parentage Based on Clear and Convincing Evidence

Minnesota law on the determination of the parent-child relationship begins with the Minnesota Probate Code, but as already discussed, those statutes do not provide a complete or exclusive definition. The Minnesota Supreme Court has held that a determination of a parent-child relationship for intestacy purposes can be made using clear and convincing evidence. In re Estate of Palmer, 658 N.W.2d 197 (2003).

In *Palmer* the court was asked to determine whether the Parentage Act provided the exclusive means of determining parentage for purposes of intestate succession. The court concluded that it did not, and held that the parent-child relationship could be established by clear and convincing evidence. Nothing in the revisions to the Minnesota Probate Code changes this determination. Indeed, the case refers to the prior version of the Minnesota intestacy statutes, which said that the parent-child relationship "may" be determined by reference to the Parentage Act. That reference was dropped when the statutes were amended, so there is even less reason to consider the provisions of Parentage Act.

In *Palmer*, the person determined to be a parent did not live with the child and instead the child established the parent-child relationship with evidence of how the two functioned as parent and child, spending time together and engaging in activities together. The person determined to be a parent was listed on the child's birth certificate as the child's father (although not initially; the birth certificate was revised with this information), and the court noted that the father referred to the child as his son and the boy called the man "dad." Given the evidence, the court had no trouble finding that a parent-child relationship existed and that the younger man was the older man's son for purposes of the intestacy statutes.

A concern sometimes raised in connection with permitting the determination of the parent-child relationship beyond rules related to genetic relationship or adoption is that such a rule would be interpreted too broadly and would permit a caregiver or extended family member to assert that the person had the relationship of a parent. In *Palmer*, the three courts that heard the case had no difficulty in determining that the facts demonstrated clear and convincing evidence of a parent-child relationship. No genetic proof was required. Rather, the court considered how the father and son interacted, and the fact that they referred to each other as "son"

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and "dad" seems to be an important piece of the evidence. The relationship was not one of a caregiver or friend; it was a parent-child relationship. The clear and convincing evidence standard provides sufficient protection against a flood of opportunistic arguments.

I have elsewhere argued that intestacy statutes should be revised to permit a determination of the parent-child relationship by clear and convincing evidence. *See* Susan N. Gary, *The Probate Definition of Family: A Proposal for Guided Discretion in Intestacy*, 45 Mich. J. of L. Reform 787 (2012). Minnesota already has that legal rule, clearly stated in *Palmer*, and not affected or changed by subsequent amendments to the intestacy statutes. Minnesota is at the forefront of legal thought in this respect, and should be commended for establishing and using a sensible rule.

II. Was Duane Nelson Sr. the child of John L. Nelson for purposes of the Minnesota intestacy statutes?

Under *Palmer*, parentage for purposes of the Minnesota intestacy statutes may be established by clear and convincing evidence. Based on my review of the documents filed in the Estate of Prince Rogers Nelson, and information provided by Celiza Braganca, I conclude that a parent-child relationship existed between John Nelson ("John") and Duane Nelson ("Duane").

When Duane was born, John was listed as the father on Duane's birth certificate. There is some evidence that another man, Joseph Griswold, was Duane's genetic father, but he appears to have had no contact with Duane after Duane's birth. John held Duane out as his son, beginning at least by the time Duane's mother, Vivian Nelson, died when Duane was an adolescent. John treated Duane as his son throughout the rest of John's life, and when John met with a lawyer to have the lawyer prepare a will for him, the lawyer's notes reflect that John listed Duane as his son. John referred to Duane as his son, and Duane referred to John as his father.

After Duane's mother died, Duane lived with his sister, Norrine, and participated in family gatherings that included various family members in the Minnesota area, including John. In middle school and high school he spent a lot of time with the decedent ("Prince"), who was nearly the same age, and they referred to each other as brother. The fact that Prince treated Duane as his brother and referred to Duane as his brother, indicates the family view that Duane and Prince had the same father.

When Duane left to start college, John drove Duane to the University of Wisconsin-Milwaukee where Duane had a basketball scholarship. John visited him at school to watch him play basketball, and John came for Duane's graduation ceremony (although Duane did not graduate, he participated in the ceremony). At a family gathering in connection with graduation, Norrine stated that Duane was not a "real Nelson." Duane's girlfriend, Carmen, remembers that John walked over to Norrine and told her that Duane was his son.

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After college, Duane moved back to the Minneapolis area and worked there. He participated in various family gatherings that included John. Duane's daughter, Brianna, was told that John was her grandfather, and the family treated her as John's granddaughter. She explained to me in a phone conversation that she remembers going to her "Aunt Norrine's" house after church for Sunday dinner when she was a young child. She remembers being there with her father, her grandfather and other family members, and she remembers her grandfather holding her on his lap and treating her as a grandchild. She said that her relationship with John was very important to her. She further said that no one had ever said anything to her suggesting that he was not her grandfather, until he died. Thus, her relationship with him was always that of grandfather and granddaughter. Brianna always considered John her grandfather, and he always treated her as his granddaughter.

In 1989 John had a lawyer draft a will for him. The lawyer's notes, and the initial draft of the will, list five people identified as John's children, including Duane. The lawyer's notes show that John discussed Prince first, and then listed Duane first of the other children. In a copyright infringement lawsuit Duane's sister, Lorna, brought against Prince, Duane, and John, Duane is identified as John's son.

When Duane died, his death certificate listed John as his father, and no family member challenged that statement on the death certificate. Duane's obituary lists John as his father, although Norrine has stated that she wrote the obituary listing John as Duane's father to protect Brianna's feelings.

John and Duane treated each other as parent and child. John is listed as Duane's father on Duane's birth certificate and death certificate. When John consulted with a lawyer to make decisions about his estate, he listed Duane as his son. Those notes reflect the way John thought about Duane and confirm the fact that they considered each other father and son. Duane had no other father; John was the only person he ever considered his father.

III. How does a decedent's intent affect the determination of his intestate heirs?

The intestacy statutes are an approximation of what an "average" decedent might want. The statutes cannot and do not fit every family pattern, and anyone can avoid the application of the intestacy statutes by executing a will or otherwise disposing of the person's property. When a decedent has not left a valid will, the law steps in to govern the disposition of the decedent's estate. In some cases a decedent may not know his heirs, and in others the decedent might have preferred one heir over another. Personal preferences do not matter in connection with the determination of intestate heirs. In this estate, Prince's interactions with various family members may have some bearing on whether John and Duane had a parent-child relationship—considered themselves father and son—because how others viewed their relationship is evidence of the way they viewed the relationship. The fact that Prince and Duane referred to each other as brothers suggests that they, and others, thought of Duane as John's son. However, once a parent-child relationship is

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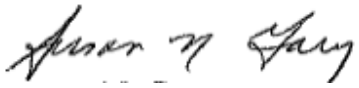
established, the intestacy statutes operate mechanically, and a decedent's possible preferences do not affect the application of those statutes.

Evidence indicates that the decedent and Duane had a falling out during a period when Duane's mental health issues began to cause erratic and violent behavior. Although it is unfortunate when family members become estranged, bad feelings can and do develop among family members. An estrangement does not change the rules for intestacy, and does not affect the determination that John and Duane had a parent-child relationship.

4. I hereby declare that the above statements are true to the best of my knowledge and belief, and I understand they are made for use as evidence in court and are subject to penalty for perjury.

DATED: September 30, 2016



Susan N. Gary

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EXHIBIT 3

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STATE OF MINNESOTA

CARVER COUNTY

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Court File No. 10-PR-16-46

Estate of Prince Rogers Nelson,

Deceased.

DECLARATION OF DEANNA BESBEKOS-LAPAGE

I, Deanna Besbekos-LaPage, make the following declaration in the above-captioned matter:

1. I am an attorney at law licensed to practice in the State of Illinois and admitted *pro hac vice* to practice in the above-captioned matter. I am one of the attorneys representing Brianna Nelson and V.N.

2. This Declaration is submitted with the Memorandum of Law of Brianna Nelson and V.N. Re Legal Basis for Heirship.

3. Attached as Exhibits to the Memorandum of Law of Brianna Nelson and V.N. Re Legal Basis for Heirship are true and correct copies of the following exhibits:

   Exhibit 4: The Amended complaint and decision in copyright lawsuit of Lorna Nelson against Prince, John L. Nelson, Duane Nelson, and PRN Productions Inc., 873 F.2d 1141 (8th Cir. 1989).

   Exhibit 5: John Nelson's Will File containing a 1989 draft will, 1986 executed will, correspondence, and notes.

   Exhibit 6: Information about 1994 recording by John L. Nelson at http://www.discogs.com/John-L-Fathers-Song/release/5931519

   Exhibit 7: Funeral Program/Obituary of Duane J. Nelson Senior

   Exhibit 8: Article about Prince Rogers Nelson from his high school newspaper

4. On September 14, 2016, while at Stinson Leonard Street's office for the deposition of Traci Bransford, David Crosby of Stinson Leonard Street hand-delivered to myself and

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Celiza Bragança hard-copies of the will file for John L. Nelson, attached as Exhibit 5. According to Mr. Crosby, these documents were located in Prince Rogers Nelson's files.

I declare under penalty of perjury that everything I have stated in this document is true and correct, and I signed this declaration in Lake County, Illinois.

Dated: September 29, 2016

/s/ Deanna Besbekos-LaPage
Deanna Besbekos-LaPage

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EXHIBIT 4

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

LORNA L. NELSON, Plaintiff, vs. PRN PRODUCTIONS, INC., PRINCE ROGERS NELSON, JOHN L. NELSON, and DUANE J. NELSON, Defendants.	)	Civil Action No. 4-87-722

PLAINTIFF'S MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR LEAVE
TO AMEND COUNT II OF COMPLAINT

Plaintiff Lorna Nelson has moved the Court for an Order granting Leave to Amend Count II of the Complaint. The amendment to Count II seeks a claim for Declaratory Judgment, declaring Plaintiff Lorna Nelson as co-author with Defendant John Nelson for the lyrics, "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION".

After Plaintiff filed her Complaint, Defendants filed a Motion Pursuant to Rule 12(b)(6) of the Federal Rules of Civl Procedure to Dismiss all of the Counts contained in the Complaint. With respect to Count II, Defendants assert that the Court does not have subject matter jurisdiction over the claim. Specifically, Defendants argue that, because Count II is a

demand for accounting by Plaintiff from Defendant John Nelson, this is a State contract claim and the Federal Court does not have jurisdiction over this claim.

Plaintiff has alleged in the Complaint that she was a co-author with her father, Defendant John Nelson, of two (2) lyrics, entitled "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION". Plaintiff further alleges that Defendant John Nelson received royalties and/or other compensation in accordance with an Agreement with Defendants PRN Productions, Inc. and Prince Rogers Nelson based on the adaptation of the lyrics, "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION". Finally, Plaintiff has alleged that Defendant John Nelson has never accounted to Plaintiff for her share of the royalties and other compensation received by Defendant John Nelson, relating to the rights conveyed with respect to the lyrics, "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION".

The amendment to Count II seeks to have Plaintiff declared a co-author with Defendant John Nelson and for an accounting flowing from this co-authorship with respect to compensation received by Defendant John Nelson for the adaptation of the lyrics, "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION".

Plaintiff was permitted to make discovery of John Nelson by way of Requests for Admissions, pursuant to Rule 36 of the Federal Rules of Civil Procedure, relating to Count II. In

response to Plaintiff's Requests for Admissions, Defendant John Nelson denied that he was a co-author with Plaintiff with respect to the lyrics, "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION". In view of this denial, Plaintiff now proposes to amend Count II to seek a Declaratory Judgment of co-authorship with Defendant John Nelson with respect to the lyrics. It appears as though Judge Doty anticipated an amendment to Count II in the event that John Nelson denied co-authorship with Plaintiff, with respect to these lyrics (see the Court's Order dated February 9, 1988).

Plaintiff believes that the amendment to Count II should be granted in view of the denial of co-authorship by Defendant John Nelson. If the amendment is permitted, then Count II would embody a claim in which the Federal jurisdiction is exclusive. In an action for a Declaratory Judgment to establish Plaintiff as the Defendant's co-author and for an accounting based thereon, the Federal jurisdiction is exclusive. 3 Nimmer § 1201[A] at 12-7. See Lieberman v. Estate of Chayefsky, 535 F. Supp. 90 (S.D.N.Y. 1982).

Accordingly, Plaintiff submits that the proposed amendment to Count II would certainly be in the interest of judicial economy and fairness to Plaintiff. It is, therefore, respectfully requested that Plaintiff's Motion for Leave to Amend Count II of the Complaint be granted for the reasons

set forth hereinabove.

Herman H. Bains (No. 4070)
Attorney for Plaintiff
608 Second Avenue South - Suite 1010
Minneapolis, Minnesota 55402
(612) 339-0159

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

LORNA L. NELSON, Plaintiff, vs. PRN PRODUCTIONS, INC., PRINCE ROGERS NELSON, JOHN L. NELSON, and DUANE J. NELSON, Defendants.	)	Civil Action No.

AMENDED COMPLAINT

Plaintiff, for her Amended Complaint, states and alleges that:

COUNT I

COPYRIGHT INFRINGEMENT

1. This action arises under the Copyright Laws of the United States, and jurisdiction of this Court is founded on such Laws and on Title 28, United States Code, § 1338(a). The venue is proper under 28 U.S.C. § 1400(a).

2. Plaintiff, LORNA NELSON, is an individual, residing at 3121 Pillsbury Avenue, Minneapolis, Minnesota 55408.

3. Plaintiff, LORNA NELSON, has created and written several lyrics for adaptation to rock music, including the unpublished work entitled, "WHAT'S COOKING IN THIS BOOK". Dominant recurring expressions in "WHAT'S COOKING IN THIS BOOK" are ". . . TAKE A (ANOTHER) LOOK" and ". . . COOKING IN THIS BOOK".

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4. Plaintiff has obtained and is the owner of Copyright Registration No. PAu 908-566 of the unpublished work entitled, "WHAT'S COOKING IN THIS BOOK", and a copy of this work and the Copyright Registration is attached hereto as Exhibit "A".

5. Defendant, PRN PRODUCTIONS, INC., is a corporation, having a principal place of business at 7801 Audubon Road, Chanhassen, Minnesota 55317, and is engaged in the business of manufacturing, producing, and distributing phonograph records featuring PRINCE ROGERS NELSON, an internationally-known rock recording star, performer, vocalist, and writer-composer.

6. Defendant, PRINCE ROGERS NELSON, an individual, is the half-brother of Plaintiff, LORNA NELSON; and, on information and belief, resides at 7801 Audubon Road, Chanhassen, Minnesota 55317, and is the owner of PRN PRODUCTIONS, INC.

7. Defendant, JOHN L. NELSON, an individual, is the father of Plaintiff, LORNA NELSON and Defendants, PRINCE NELSON and DUANE NELSON; and, on information and belief, resides at 7801 Audubon Road, Chanhassen, Minnesota 55317.

8. Defendant, PRINCE NELSON, is a performer, writer, and composer of rock music and is the principal singer featured in record albums and single albums manufactured, produced, and distributed by PRN PRODUCTIONS.

9. Defendant, DUANE J. NELSON, is an individual, residing at 539 Newton Avenue North, Minneapolis, Minnesota, is employed by PRN PRODUCTIONS, and is the brother of LORNA NELSON and the half-brother of PRINCE NELSON.

10. During the years 1982 through the Spring of 1987, DUANE NELSON was a frequent visitor to the residence of Plaintiff; and, during such visits, DUANE NELSON was allowed to casually review and inspect lyrics written and owned by LORNA NELSON, including lyrics for which Plaintiff had obtained Copyright Registrations and others for which no Copyright Registration had been obtained.

11. On information and belief, DUANE NELSON, without permission of Plaintiff, obtained a copy of Plaintiff's copyrighted unpublished work entitled, "WHAT'S COOKING IN THIS BOOK", and delivered this copy to PRN PRODUCTIONS and PRINCE NELSON.

12. In 1987, PRN PRODUCTIONS and PRINCE NELSON manufactured, produced, and distributed the record album entitled, "SIGN OF THE TIMES", which included the song "U GOT THAT LOOK", consisting of lyrics in which the dominant expressions of refrain are "U GOT THE LOOK" and "COOKING IN MY BOOK". The dominant expressions of refrain in the song "U GOT THAT LOOK" are strikingly similar to the dominant recurring expressions of Plaintiff's copyrighted unpublished work entitled, "WHAT'S COOKING IN THIS BOOK", and constitute an infringement thereof. This infringement was committed willfully and deliberately. A copy of the album jacket for the album "SIGN OF THE TIMES" is attached hereto as Exhibit B.

13. Defendants were notified of Plaintiff's Copyright Registration by a letter dated April 10, 1987 to PRN PRODUCTIONS, in which Plaintiff sought to have this matter resolved.

14. Defendants, through their Attorneys, responded in a letter,

dated May 29, 1987, denying, in effect, infringement of Plaintiff's copyright by Defendants.

15. Defendant, DUANE NELSON, is among those persons listed on the album entitled, "SIGN OF THE TIMES", credited to having made a contribution to the album's production; and, on information and belief, the designation credit of DUANE NELSON was as an author or co-author of the song, "U GOT THAT LOOK".

16. On information and belief, Defendants, PRN PRODUCTIONS, INC. and PRINCE NELSON manufactured, produced, and distributed a single record recording on one side thereof entitled, "U GOT THAT LOOK", featuring SHEENA EASTON, an internationally known recording star, and PRINCE NELSON, as vocalists. The manufacture, production, and distribution of this record constitute an infringement of Plaintiff's unpublished copyrighted work entitled, "WHAT'S COOKING IN THIS BOOK".

17. On information and belief, Defendants, PRN PRODUCTIONS, INC. and PRINCE NELSON, have manufactured, produced, and distributed a video and a sound track, featuring PRINCE NELSON and SHEENA EASTON, performing "U GOT THAT LOOK". The manufacture, production, and distribution of this video and sound track constitute an infringment of Plaintiff's unpublished copyrighted work entitled, "WHAT'S COOKING IN THIS BOOK".

18. Defendants continue to, and will continue to, infringe Plaintiff's copyright in the unpublished work entitled, "WHAT'S COOKING IN THIS BOOK", all to Plaintiff's substantial and irreparable injury and damage, unless enjoined by this Court.

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COUNT II

DECLARATORY JUDGMENT FOR CO-AUTHORSHIP AND ACCOUNTING

19. The allegations of Paragraphs 2, 3, and 5 - 8 are re-alleged and incorporated herein by reference.

20. This is a claim for a Declaratory Judgment involving an actual controversy, pursuant to 28 U.S.C.A. § 2201 and the Copyright Laws, to declare Plaintiff, LORNA NELSON, as a co-author with Defendant, JOHN NELSON, for the lyrics, "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION".

21. During the years 1983 through 1985, Plaintiff, LORNA NELSON, and Defendant, JOHN NELSON, jointly wrote several lyrics for rock music, including the lyrics entitled, "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION". A copy of each of these lyrics is attached hereto as Exhibits C and D, respectively.

22. On information and belief, JOHN NELSON entered into an agreement with Defendants, PRN PRODUCTIONS, INC. and/or Defendant, PRINCE NELSON, licensing the right to adapt the lyrics, "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION", for rock music; and this agreement was entered into by Defendants, JOHN NELSON, PRN PRODUCTIONS, INC., and PRINCE NELSON without knowledge or permission of Plaintiff, LORNA NELSON.

23. Dominant recurring expressions of the lyrics "LOVE FOR MONEY" were adapted and recorded on the single record entitled, "LOVE OR MONEY", manufactured, produced, and distributed by PRN PRODUCTIONS, featuring PRINCE NELSON as the vocalist. LORNA NELSON is a contributing author of "LOVE OR MONEY". The flip

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side of this record is a recording of the song entitled, "KISS".

24. PRN PRODUCTIONS, INC. manufactured, produced, and distributed the record album entitled, "AROUND THE WORLD IN A DAY", which included the song "AROUND THE WORLD IN A DAY", consisting of dominant recurring expressions and the theme of the lyrics "TAKING MY MIND ON A VACATION". LORNA NELSON is a contributing author of "AROUND THE WORLD IN A DAY".

25. On information and belief, Defendant, JOHN NELSON, received royalties and/or other compensation in accordance with this agreement with Defendants, PRN PRODUCTIONS, INC. and PRINCE NELSON; and Defendant, JOHN NELSON has never accounted to Plaintiff, LORNA NELSON, for her share of the royalties and/or other compensation relating to the rights conveyed with respect to the lyrics "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION".

WHEREFORE, Plaintiff prays:

1. That Defendants, PRN PRODUCTIONS, INC. and PRINCE NELSON, be enjoined from further acts of infringement of Plaintiff's copyright.

2. That Plaintiff be awarded all damages suffered as a result of the infringement.

3. That Defendants be ordered to account to Plaintiff for all profits that are attributable to the Copyright Infringement Complaint herein.

4. That this Court enter a Declaratory Judgment determining Plaintiff, LORNA NELSON, to be a co-author with Defendant, JOHN

NELSON, for the lyrics, "LOVE OR MONEY" and "AROUND THE WORLD IN A DAY".

5. That Defendant, JOHN NELSON, be ordered to account to Plaintiff for Plaintiff's share of the profits received by Defendant, JOHN NELSON, for the lyrics "LOVE OR MONEY" and "AROUND THE WORLD IN A DAY".

6. That Plaintiff be awarded costs and attorneys fees.

7. That Plaintiff be granted such other and further relief as may be proper under the circumstances.

By_____

Herman H. Bains
Attorney for Plaintiff
608 Second Avenue South
Suite No. 1010
Minneapolis, Minnesota 55402
(612) 339-0159

Positive
As of: September 29, 2016 4:18 PM EDT

Nelson v. PRN Productions, Inc.

United States Court of Appeals for the Eighth Circuit

March 17, 1989, Submitted ; May 3, 1989, Filed

No. 88-5193

Reporter
873 F.2d 1141; 1989 U.S. App. LEXIS 6164; 10 U.S.P.Q.2D (BNA) 1782; Copy. L. Rep. (CCH) P26,421

Lorna L. Nelson, Plaintiff-Appellant, v. PRN Productions, Inc., Prince Rogers Nelson, John L. Nelson, and Duane J. Nelson, Defendants-Appellees

Subsequent History: Writ of certiorari denied *Nelson v. PRN Productions, Inc., 493 U.S. 994, 107 L. Ed. 2d 541, 110 S. Ct. 544, 1989 U.S. LEXIS 5796 (1989)*

Prior History: **[**1]** Appeal from the United States District Court for the District of Minnesota. David S. Doty, Judge.

Nelson v. PRN Prods., 1988 U.S. Dist. LEXIS 19505 (D. Minn., Apr. 27, 1988)

Core Terms

substantially similar, copying, district court, lyrics, Verse, discovery, copyrighted work, infringement, trial court, fair use, cooking

Case Summary

Procedural Posture
Plaintiff appealed a decision of the United States District Court for the District of Minnesota, which granted defendant's motion to dismiss and denied plaintiff's discovery motions in a suit alleging copyright infringement.

Overview
Plaintiff sought review of the decision of the lower court, which granted defendant's motion to dismiss and denied its discovery motion. The court affirmed. The court found that the lower court properly reviewed copies of the two works at issue and applied the test for substantial similarity. The court stated that the lower court's determination that the two works were not substantially similar was not in error and that that determination provided an appropriate basis to dismiss plaintiff's suit. The court also found that plaintiff's discovery motions were properly denied as they were without merit.

Outcome
The court affirmed the decision of the lower court and found that it had properly granted defendant's motion after reviewing the two works and determining that they were not substantially similar, and that it had properly denied plaintiff's request for discovery where the basis for the request lacked merit.

LexisNexis® Headnotes

Copyright Law > ... > Civil Infringement Actions > Presumptions > General Overview

Copyright Law > Scope of Copyright Protection > Ownership Rights > General Overview

HN1 See *17 U.S.C.S. § 501(a)*.

Copyright Law > ... > Elements > Copying by Defendants > Access

Copyright Law > ... > Civil Infringement Actions > Elements > Copying by Defendants

Copyright Law > ... > Copying by Defendants > Substantial Similarity > General

Overview

Copyright Law > Scope of Copyright Protection > Ownership Rights > General Overview

Copyright Law > ... > Ownership Rights > Reproductions > General Overview

HN2 To establish a violation of *17 U.S.C.S § 106*, the plaintiff must show: (1) Plaintiff's ownership of the allegedly infringed work; and (2) Defendant's "copying" of the copyrighted work. Copying may be proven either by direct evidence or by demonstrating circumstantial evidence establishing access and "substantial similarity" of the two works.

Copyright Law > ... > Copying by Defendants > Substantial Similarity > General Overview

HN3 Determination of substantial similarity involves a two-step analysis. There must be substantial similarity not only of the general ideas but of the expressions of those ideas as well. First, similarity of ideas is analyzed extrinsically, focusing on objective similarities in the details of the works. Second, if there is substantial similarity in ideas, similarity of expression is evaluated using an intrinsic test depending on the response of the ordinary, reasonable person to the forms of expression.

Copyright Law > ... > Copying by Defendants > Substantial Similarity > General Overview

Copyright Law > ... > Civil Infringement Actions > Summary Judgment > General Overview

HN4 The so-called extrinsic test has been said not to depend upon the trier of fact, but on such objective criteria as the type of artwork involved, the materials used, the subject matter, and the setting for the subject.

Counsel: Herman H. Bains, Minneapolis, Minnesota, for Appellant.

Jerry Snider, Minneapolis, Minnesota, for Appellee.

Judges: Fagg and Beam, Circuit Judges, and Gunn, *

Opinion by: GUNN

Opinion

[*1783]** **[*1141]** GEORGE F. GUNN, JR., UNITED STATES DISTRICT JUDGE

Lorna L. Nelson brought this cause in the District Court of Minnesota against her half-brother, Prince Rogers Nelson; her brother, Duane J. Nelson; her father, John L. Nelson; and PRN Productions, Inc. Prince Rogers Nelson performs under the single cognomen, "Prince," and is a well-known recording artist, performer, and songwriter of rock music. PRN is a corporation with its principal place of business in Chanhassen, Minnesota and engaged in the business of manufacturing, producing, and distributing phonograph records featuring Prince. John Nelson and Duane Nelson are believed to be employees either of Prince or of PRN.

Count I of the complaint alleges that the song, "U Got the look," manufactured, produced and distributed by PRN and Prince, **[**2]** constituted an infringement of Lorna's copyrighted work, "What's Cooking in **[*1142]** This Book," in violation of federal copyright law. A second count was for an accounting under state law for compensation John received from Prince and PRN for the use of lyrics Lorna allegedly co-authored. The district judge [1] granted defendants' motion to dismiss Count I based on his determination that no substantial similarity existed between Lorna's lyrics and the allegedly infringing lyrics. The court dismissed Count II for lack of jurisdiction. Lorna did not appeal from this latter ruling. The district

* The Honorable George F. Gunn, Jr., United States District Judge for the Eastern District of Missouri, sitting by designation.

[1] The Honorable David S. Doty, United States District Judge for the District of Minnesota.

court denied Lorna's request to take Prince's deposition pending its ruling on the motion to dismiss.

The issues before the court on appeal are: (1) Whether the district court erred in its determination that no copyright infringement occurred, and, (2) whether the district court abused its discretion in denying appellant's discovery requests. Because the Court finds the district court acted properly on both issues, we affirm.

The Copyright Claim

17 U.S.C. § 106 [2] sets forth the exclusive entitlements granted **[**3]** to the holder of a copyright. Sections 107 through 118 provide exceptions to the exclusive entitlements. *Section 501* establishes a cause of action against "anyone who violates any of the exclusive rights of the copyright owner as provided by *sections 106 through 118* * * *." ***HN1*** *17 U.S.C. § 501(a)*.

[4]** To establish a violation of *section 106*, the plaintiff must show:

1. Plaintiff's ownership of the allegedly infringed work; and

2. Defendant's "copying" of the copyrighted work.

Knickerbocker Toy Co. v. Azrak-Hamway Internat'l, 668 F.2d 699, 702 (2d Cir. 1982); *Walker v. University Books, 602 F.2d 859, 862 (9th Cir. 1979)*; *see also* 3 M. Nimmer, *Nimmer on Copyright § 13.01* at 13-3 (1981). Copying may be proven either by direct evidence or by demonstrating circumstantial evidence establishing "access and 'substantial similarity' of the two works." *Knickerbocker Toy Co., 668 F.2d at 702*, *quoting Novelty Textile Mills, Inc. v. Joan Fabrics Corp., 558 F.2d 1090, 1092 (2nd Cir. 1977)*.

In this case, defendants have stipulated to plaintiff's ownership of a valid copyright and to defendant's access to plaintiff's song. [3] Thus, the only element in dispute is substantial similarity.

The two lyrics were appended to plaintiff's complaint **[**5]** and to her appellate brief. Lorna's copyrighted lyric, "What's Cooking In This Book," is 35 lines long, arranged in six verses, and comprised of 176 words. Prince's lyric, "U Got the Look," is approximately 47 lines long, arranged in eight verses, and comprised of 242 words.

Specifically, the allegedly infringing portions are as follows: **[***1784]**

[*1143] Lorna's lyric

Verse Two

I glanced up and saw you, a smile so pretty.

Verse Three

Makeup was rolling down my face

---

[2] The full text of ***17 U.S.C. § 106*** is as follows:

> *§ 106*. Exclusive rights in copyrighted works.
>
> Subject to sections 107 through 118, the owner of copyright under this title has the exclusive right to do and to authorize any of the following:
>
> (1) to reproduce the copyrighted work in copies or phonorecords;
>
> (2) to prepare derivative works based upon the copyrighted work;
>
> (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
>
> (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and
>
> (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

HN2

[3] Where the similarity between the original and the copy is so striking as to preclude any possibility of independent creation, access may be inferred. *Ferguson v. National Broadcasting Co., 584 F.2d 111, 113 (5th Cir. 1978)*.

Verse Three

What's cooking in this book, what's cooking in this book

Verses One and Six

Take a look

Take another look

Prince's lyric

Verses Two and Seven

I woke up, I've never seen such a pretty girl.

Verse Five

A whole hour just to make up your face

Verses Four and Six

U sho 'nuf do be cooking in my book

Verses One and Seven

U got the look

Plaintiff attempts to analogize her case to *Harper & Row Publishers v. Nation* **[**6]** *Enterprises, 471 U.S. 539, 85 L. Ed. 2d 588, 105 S. Ct. 2218 (1985)*. But that case is infelicitous here. In *Harper & Row*, a portion of a soon-to-be published memoir appeared verbatim in *The Nation Magazine* with defendants neither taking issue with the validity of plaintiff's copyright nor with the allegation that they copied a portion of plaintiff's work verbatim. Therefore, instead of challenging the strength of *Harper &* Row's prima facie case, *The Nation Magazine* argued that its admitted copying of a portion of the memoir constituted a "fair use."

In this case plaintiff contends that the district court erroneously directed its attention exclusively to the issue of substantial similarity instead of inquiring as to whether "the use" of plaintiff's work was a *Harper & Row* "fair use." But plaintiff's contention in this regard is simply an attempt to side-step the necessity of proving infringement by raising and then dismantling a defense which the defendants have not chosen to assert. Defendants have not applied "fair use" as a defense, and the trial court therefore correctly declined to discuss the application of that doctrine. Instead, it properly addressed the issue of substantial similarity.

[7]** *Hartman v. Hallmark Cards, Inc., 833 F.2d 117, 120 (8th Cir. 1987)*, indites the law in this Circuit pertaining to substantial similarity:

> ***HN3*** Determination of substantial similarity involves a two-step analysis. There must be substantial similarity 'not only of the general ideas but of the expressions of those ideas as well.' First, similarity of ideas is analyzed extrinsically, focusing on objective similarities in the details of the works. Second, if there is substantial similarity in ideas, similarity of expression is evaluated using an intrinsic test depending on the response of the ordinary, reasonable person to the forms of expression.

Id.

The District Court had before it here complete copies of both Lorna's song and Prince's and was therefore in proper position to apply the substantial similarity test.

This Court held in *Hartman* that where both works are in the record, the trial court has sufficient evidence upon which to enter summary judgment. The second step of the substantial similarity analysis does not call for "analytical dissection" or "expert opinion." Rather, "substantial similarity of expression is measured by . . . the response of the ordinary, reasonable **[**8]** person." *Id.* ***HN4*** The so-called extrinsic test has been said not to depend upon the trier of fact, therefore, but on such objective criteria as "the type of artwork involved, the materials used, the subject matter, and the setting for the subject." *Sid & Marty Krofft Television Prods., Inc. v. McDonald's Corp., 562 F.2d 1157, 1164 (9th Cir. 1977)*. The District Court was capable of making this determination.

Hartman, 833 F.2d at 120.

In this case, the trial court carefully studied the lyrics involved and determined that reasonable minds could not differ as to the absence of substantial similarity. The trial judge could properly determine the matter of substantial similarity as a matter of law and did so by granting defendants' **[*1144]** motion to dismiss the copyright count on the ground that it failed to state a claim for infringing use. On review, this Court cannot conclude that a mistake has been committed by such ruling.

Discovery

Plaintiff also alleges that the trial court abused its discretion by refusing to allow her further discovery. That is not so. **[***1785]**

Plaintiff proposed, primarily, to take Prince's deposition. She asserts that she would have sought to discover facts bearing **[**9]** upon the availability of the fair use defense and whether PRN and Prince would admit or deny copying any of the expressions in plaintiff's lyric.

In discovery matters, the trial court has wide discretion. The determination of what constitutes relevant information rests with the sound discretion of the trial court. This Court has already noted that defendants never advanced fair use as a defense. Rather, they refute plaintiff's claim that defendants copied her song on the basis of an absence of substantial similarity. Thus, this Court cannot find that the court below abused its discretion in denying plaintiff's requests for discovery designed to refute a defense defendants did not raise.

Similarly, because defendants did admit ownership and access, the Court finds plaintiff's alleged interest in whether defendants would admit copying to be totally irrelevant. Had defendants admitted copying, they would have admitted plaintiff's case. Clearly, defendants denied copying on the basis that no substantial similarity existed between plaintiff's and defendants' lyrics. Therefore, this purported basis for further discovery on plaintiff's behalf also lacks merit. The district court cannot be **[**10]** said to have abused its discretion in denying discovery on this basis.

Conclusion

For all of the foregoing reasons, we find that the district court properly granted defendants' motion to dismiss and denied plaintiff's discovery motions. Accordingly, the judgment of the District Court is hereby affirmed.

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EXHIBIT 5

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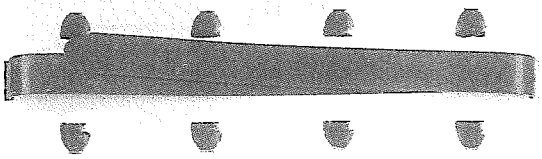

WILL

ARTHUR, CHAPMAN & MCDONOUGH, P.A.
ATTORNEYS AT LAW

INCLUDING THE FORMER FIRM OF GUSTAFSON & TYSON, P.A.

500 Young Quinlan Building
81 South Ninth Street
Minneapolis, MN 55402-3214
Telephone 612 339-3500
Telecopier 612 339-7655

Writer's Direct Line: 375-5902

June 2, 1989

Mr. Paul Jones
Breslauer, Jacobson, Rutman
& Sherman, Inc.
2121 Avenue of the Stars
Suite 1700
Los Angeles, CA 90067

Re: John Nelson (Will)

Dear Mr. Jones:

Prior to the execution and at your request, I am enclosing herewith a draft of the Will and cover letter for John Nelson. Please let me know if I can be of further assistance.

Sincerely yours,

ARTHUR, CHAPMAN & MCDONOUGH, P.A.

James D. Echtenkamp

James D. Echtenkamp

JDE:kay
Enclosure

ARTHUR, CHAPMAN & MCDONOUGH, P.A.
ATTORNEYS AT LAW

INCLUDING THE FORMER FIRM OF GUSTAFSON & TYSON, P.A.

500 Young Quinlan Building
81 South Ninth Street
Minneapolis, MN 55402-3214
Telephone 612 339-3500
Telecopier 612 339-7655

Writer's Direct Line

DRAFT

June 1, 1989

Mr. John Nelson
9401 Kiowa Trail
Chanhassen, MN 55317

PERSONAL AND CONFIDENTIAL
HAND DELIVERED

Dear Mr. Nelson:

Enclosed please find your Will that our office has drafted on your behalf. Since this is an important document and will control the disposition of your estate, I would like to point out several aspects to you:

1. This Will voids any prior Wills you may have.

2. As requested, your Will omits all of your children except your son Prince Nelson, from receiving any portion of your estate. Prince will be your sole heir under your Will. In the event your son Prince were to predecease you, your estate would be distributed to your heirs other than your children (i.e. your brothers, sisters, nieces, nephews, etc.) in an order of distribution defined by Minnesota Law. To avoid this result, you may wish to specify in your Will who should receive your estate in the event Prince does not.

3. It is our understanding that you are not currently married. If you were to remarry, your spouse would have a claim for approximately one-third of your estate. This is true regardless of the wording of your Will.

4. Your personal representative will be your son, Prince R. Nelson. As such, it will be his task to administer your estate. Administration involves gathering your assets and distributing them to your beneficiaries.

5. It is our understanding that your current estate is less than $600,000. If your estate happens to exceed approximately $600,000 at any time in the future, we

HAND DELIVERED

strongly urge you to undertake further estate planning in order to avoid payment of federal and state estate taxes.

We understand that the preparation of your estate plan is a sensitive matter. If you or your advisors should have any questions now or in the future, please contact me.

Yours very truly,

ARTHUR, CHAPMAN & MCDONOUGH, P.A.

James D. Echtenkamp

JDE/kjm

Enclosure

cc: Paul Jones
Dennis Luderer

WRK/JNELSON

"DRAFT"

LAST WILL AND TESTAMENT

OF

JOHN NELSON

I, John Nelson, domiciled in the County of Hennepin, State of Minnesota, being of sound and disposing mind and memory, do hereby make, publish and declare, with complete testamentary intent and capacity, this instrument to be my Last Will and Testament.

ARTICLE I

Revocation of Prior Wills

I hereby revoke and annul any and all wills and codicils heretofore made by me.

ARTICLE II

Debts and Taxes

I direct my Personal Representative to pay from my Residuary Estate (as hereinafter defined), without apportionment, all of my just debts allowed in my estate (except such of them as shall be secured by any mortgage, lien or other encumbrance and which shall not have become due and payable at the date of my death), expenses of my last illness and funeral, expenses of administration of my estate, including ancillary administration thereof, and all estate or other death taxes, except any generation-skipping transfer tax, which become due on account of my death, including any interest and penalties thereon.

ARTICLE III

Tangible Personal Property

I give and devise all of my household furniture and furnishings, automobiles, musical instruments, books, pictures, jewelry, watches, wearing apparel, silverware and all other items of tangible personal property which I own at the date of my death, together with all insurance policies which are in force at the date of my death insuring any of the herein devised property against any loss or liability to my son Prince R. Nelson. It is my specific

intention that my children, Duane Joseph Nelson, Sharon Nelson Blakely, Tyka Nelson and Lorna Nelson shall not share in the distribution of my tangible personal property.

ARTICLE IV

Residuary Estate

I give and devise all of the rest, residue and remainder of my estate, excluding any property over which I may have a power of appointment (it being my intention not to exercise any such power), but including any lapsed devise hereunder, all of which is herein referred to as my "Residuary Estate", to Prince R. Nelson or to the surviving issue of Prince R. Nelson by right of representation; provided that my children Duane Joseph Nelson, Sharon Nelson Blakely, Tyka Nelson and Lorna Nelson shall not receive any benefits from my estate under the provisions of this Article IV; and provided further, that the balance of any loans I may have made to any of my children, if any, during my lifetime that is outstanding at my date of death, as reflected on my personal records, shall be included in the value of my Residuary Estate for the purpose of determining the value of my Residuary Estate.

If, before the time for distribution as set out hereinabove, there is no beneficiary to receive distribution in full, then I give and devise my Residuary Estate to my heirs at law as determined under the laws of the State of Minnesota. Provided, however, that _____ shall not be considered my heirs at law for purposes of this Article IV.

ARTICLE V

Simultaneous Death

If any beneficiary named or described in this Will, shall die within thirty (30) days of my death, then all provisions of this Will shall take effect as if I had predeceased such beneficiary.

ARTICLE VI

Personal Representative Powers, Rights and Duties

_____

John Nelson

My Personal Representative shall have power and authority to do any act or thing reasonably necessary or advisable to the proper administration and distribution of my estate, and in extension and not in limitation of the powers provided by applicable law, my Personal Representative shall have full power and authority as to any properties, real, personal or mixed, at any time comprising a part of my estate, without the necessity of notice to or license, approval or order of any court or person during the term of such estate, and for purposes of division and distribution after its termination, and in the continuing discretion of my Personal Representative, including the power:

A. To exercise, without limitation, all powers, express and implied, permitted a personal representative under Chapter 524 of Minnesota Statutes; and

B. To perform all other acts necessary or advisable to administer my estate.

I recognize that my Personal Representative is granted by this Will discretion as to the distribution of my property. Unless otherwise specifically restricted by this Will, I direct that my Personal Representative shall be permitted to divide and distribute my property in any manner. My Personal Representative shall not be liable for damages to any beneficiary because of a good faith decision in making such distribution of property and such decision shall be final and binding on all parties in interest.

ARTICLE VII

Personal Representative

Section 7.1 Appointment of Personal Representative. I hereby nominate and appoint my son Prince R. Nelson as my Personal Representative under this Will. My Personal Representative may, at his discretion, choose a successor individual or corporate Personal Representative.

Section 7.2 Definition of Personal Representative. Wherever reference is made herein to my "Personal Representative", such reference shall be deemed to include any and all successor personal

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representatives at any time qualified to act and acting as Personal Representative under this Will, and each such successor Personal Representative, immediately upon qualification as such, shall be vested with all of the powers, rights and duties as if originally named as Personal Representative herein.

Section 7.3 Bond My Personal Representative herein designated shall serve without bond, and if, notwithstanding this direction, any bond is required by any law, statute or rule of court, I direct that no surety be required thereon.

Section 7.4 Exculpatory Clause. My Personal Representative shall not be liable for any loss to my estate occasioned by acts on good faith in the administration of my estate, or in reliance upon an opinion of counsel, and in any event my Personal Representative shall be liable only for willful wrongdoing or gross negligence, but not for honest errors of judgment. No Personal Representative shall be responsible or liable for the acts or omissions of any other Personal Representative in which the Personal Representative sought to be held did not participate or concur.

Section 7.5 Personal Representative Compensation and Expenses. At his option, my Personal Representative shall be entitled to receive from my estate fair and just compensation for services rendered as Personal Representative, and my Personal Representative shall also be reimbursed for any and all reasonable expenses incurred in the management, protection and distribution of my estate.

ARTICLE VIII

Miscellaneous

Section 8.1 Definitions. As used in this Will where appropriate, the masculine includes the feminine and neuter (and vice versa), and the singular includes the plural (and vice versa) and the following terms have the following meanings:

A. I have five (5) children, namely, PRINCE R. NELSON, DUANE JOSEPH NELSON, SHARON NELSON BLAKELY, TYKA NELSON and LORNA NELSON. All of said children are adults.

B. "Issue" of a person, as used herein, includes both the singular and the plural, and includes the legitimate natural descendants of such person, and also those who become such descendants through legal adoption.

Section 8.2 Statement of Intent. It is my specific intention in preparing this Will that my children Duane Joseph Nelson, Sharon Nelson Blakely, Tyka Nelson and Lorna Nelson, receive no benefits from my estate. In the disposition of my estate under this Will, I am fully mindful and aware of all my heirs-at-law, and the omission of any heirs, or the diminution of the share of any heirs from their intestate share, is intentional and not occasioned by accident or mistake. This statement is intended to comply with M.S.A. Section 524.2-302(a)(1).

Section 8.3 Headings. The headings, titles and subtitles herein are inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

Section 8.4 Governing Law. This Will shall be governed, interpreted and construed by, and all questions of law arising hereunder shall be determined under and according to the laws of the State of Minnesota.

IN WITNESS WHEREOF, I have hereunto set my hand to this my Last Will and Testament this _____ day of _____, 1989.

_____
John Nelson

THIS INSTRUMENT, consisting of _____ typewritten pages, including this page and the attached acknowledgement, each bearing the signature of the above-named John Nelson, was by his on the date hereof signed, published and declared by him to be his Last Will and Testament in our presence, who, at his request and in his presence, and in the presence of each other, we believing him to

_____
John Nelson

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Carver County, MN

be of sound and disposing mind and memory, have hereunto subscribed our names as witnesses.

_____ residing at _____

_____

_____ residing at _____

_____

_____

John Nelson

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9/30/2016 4:29:25 PM
Carver County, MN

ACKNOWLEDGMENT
TO
LAST WILL AND TESTAMENT

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

We, John Nelson, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his Last Will, that he signed it willingly, that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator signed the Will as witnesses and that to the best of their knowledge the testator was at the time 18 or more years of age, of sound mind and under no constraint or undue influence.

_____
Testator

_____
_____
Address: _____
_____

_____
_____
Address: _____
_____

Subscribed, sworn to and acknowledged before me by John Nelson, the testator and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 1989.

_____
Notary Public

C:\WPDOCS\WILLS\JNELSON

_____
John Nelson

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BRESLAUER, JACOBSON, RUTMAN & SHERMAN

To _____

From _____ Date _____

☐ For Your Files	☐ Please Note and Return
☐ For Your Comments	☐ For Your Approval
☐ For Your Information	☐ Per Your Request
☐ Please Handle	☐ Let's Discuss

TN 60 3124 Pillsbury M 55408

Call Gilbert

Dan Tyson Home (612) 824-2437

*1) Spouse

Saturday + Sunday 868-3500

2) Legal name

3) Birthdates

4) Legal Residence of children

James Echtenkamp

5) If current spouse

6)

*7) If Prince predeceased then who

(1) ~~Dwayne~~ Duane Joseph Nelson
539 Newton Ave 8/19/58
Minneapolis, Minn 55405.

Gilbert 225-0300

(2) ~~Thea Arcelle~~ Nelson ~~5/15/59~~
3447 10th Ave.
Minneapolis, Minn 55407

(3) Lorna Nelson

(4) Aharon Blakely 3/22
435 Wash 57th Apt 8L
NY NY 10019

(5) Tyler Nelson 5/18
Raleigh NC 27615 ~~Ave~~. 7224 Stonecliff Dr Apt 5

* ACTIVITY REPORT * 05/26/89 14:02 213 282 5199 BRESLAUER JACO

MODE	CONNECTION TEL	CONNECTION ID	START TIME	USAGE T.	PAGES
TX	73690916123397655	G-3	05/26 14:01	01'14	02(00)

(612) 339-7655

FAX

TO: James D. Echtenkamp, Esq.

FROM: Paul Jones

RE: John Nelson's Will

I Spouse – John was formally divorced. His ex-wife has remarried

II Children – 1) Prince Rogers Nelson

2) Duane Joseph Nelson
8/10/58
539 Newton Ave
Minneapolis, Minn 55405

3) Sharon Nelson Blakely
3/22/ pending
435 West 57th Street
Apt 8L
NY NY 10019

4) Tyka Nelson 5/18/19[illegible]
7224 Stonecliff Dr Apt 5
Raleigh, N.C. 27615

5) Lorna Nelson
~~pending~~
3121 Fillsbury Ave
Minneapolis, Minn 55408

III Beneficiary ~~other~~ other than Prince
Name Pending

MANATT, PHELPS, ROTHENBERG, TUNNEY & PHILLIPS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW

11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064

TELEPHONE (213) 312-4000

TELEX 215653 CABLE MPRT UR
FAX (213) 479-0565 (213) 478-1652

WASHINGTON, D.C. OFFICE
1200 NEW HAMPSHIRE AVE., N.W.
WASHINGTON, D.C. 20036
(202) 463-4300

JUL 18 1986

July 17, 1986

OUR FILE NO. 1432-047

Fred S. Moultrie, CPA
President
Moultrie Accountancy Corporation
4950 Wilshire Boulevard
Los Angeles, California 90010

Re: Will of John Lewis Nelson

Dear Mr. Moultrie:

Enclosed herein please find a copy of the Will of John Lewis Nelson. The original of the Will will be kept in the safe of Manatt, Phelps, Rothenberg, Tunney & Phillips.

Should you require further assistance, please do not hesitate to contact me.

Very truly yours,

Elliot B. Kristal
Manatt, Phelps, Rothenberg,
Tunney & Phillips

EBK/by
Enclosure

cc: L. Lee Phillips, Esq.
(w/o enclosure)

MOULTRIE ACCOUNTANCY CORPORATION

WORKPAPER FILE

July 10, 1986

L. Lee Phillips, Esq.
Manatt, Phelps, Rothenberg, Tunney & Phillips
11355 West Olympic Boulevard
Los Angeles, California 90064

Re: John Lewis Nelson

Dear Lee:

Enclosed herewith please find a copy of the Will Of John Lewis Nelson which has been executed by him and witnessed by Alan Leeds, Don Peake and Karen Krattinger while we were in Sheridan, Wyoming.

If I can be of any further assistance please feel free to call.

Very truly yours,

Fred S. Moultrie, CPA
President

FSM:mtm

enclosure

cc: Bob Cavallo
Steve Fargnoli

WILL

OF

JOHN LEWIS NELSON

I, JOHN LEWIS NELSON, declare that this is my Will:

I. PRIOR WILLS.

I revoke all Wills and Codicils that I have previously made.

II. PROPERTY DISPOSED OF.

I intend by this Will to dispose of all of my property.

III. DISINHERITANCE.

Except as otherwise provided in this Will, I have intentionally and with full knowledge omitted to provide for my heirs who may be living at the time of my death.

IV. CONTESTS.

If any beneficiary under this Will, directly or indirectly, contests or attacks this Will or any of its provisions, any share or interest given to that contesting beneficiary shall be revoked and disposed of in the same manner provided in this Will as if that contesting beneficiary had predeceased me.

V. REPRESENTATIVES.

I nominate my son PRINCE ROGERS NELSON as executor of this Will, to serve without bond. "My executor" as used in this Will shall include any personal representative of my estate.

My executor shall be authorized as follows:

A. Sales.

To sell, with or without notice, at either public or private sale, and to lease any property belonging to my estate, subject only to such confirmation of court as may be required by law;

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B. Investments.

To invest and reinvest any surplus money in my executor's hands in every kind of property and every kind of investment, including interest-bearing accounts, corporate obligations of every kind, stock, preferred or common, shares of investment trusts, investment companies, mutual funds, common trust funds, and mortgage participations, which persons of prudence, discretion, and intelligence acquire for their own account;

C. Distributions.

On any preliminary or final distribution of the property in my estate, to partition, allot, and distribute my estate (pro rata or otherwise) in kind, including undivided interests in my estate or any part of it, or partly in money and partly in kind, or entirely in money, in my executor's discretion;

D. Borrowings.

To borrow money and to encumber or to hypothecate by mortgage, deed of trust, pledge, or otherwise, any property in my estate;

E. Retention of Property.

To retain any property in my estate for as long as my executor deems appropriate, at the risk of my estate, in my executor's discretion;

F. Operation of Business.

To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell or liquidate the business at such time and in such manner as my executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for any resulting losses.

G. Expenses.

My executor shall determine whether any or all of the expenses of administration of my estate shall be used as federal estate tax deductions or federal income tax deductions. No beneficiary under this Will shall have any right to recoupment or restoration of any loss such beneficiary suffers as a result of use of such deductions for one or the other of these purposes; however, my executor may make adjustments between principal and income as appropriate to accommodate such loss.

VI. MISCELLANEOUS.

A. Gender.

As used in this Will, the masculine, feminine, or neuter gender, and the singular or plural number shall be deemed to include the others whenever the context so indicates.

B. Will Contracts.

I have not entered into a contract either to make Wills or not to revoke Wills.

VII. DISPOSITION OF ESTATE.

I give the property disposed of by this Will to my son PRINCE ROGERS NELSON. It is my wish, but I do not direct, that my son, in my son's absolute discretion, distribute any property which he wishes to dispose of to any members of my family who survive me and whom my son, in my son's absolute discretion, selects.

The foregoing Will is subscribed by me on this 1st day of July, 1996, at Sheridan, Wy.

John Lewis Nelson
JOHN LEWIS NELSON

On the date last written, JOHN LEWIS NELSON declared to us, the undersigned, that the foregoing instrument, consisting of four (4) pages, including the page signed by us as witnesses, was his Will and requested us to act as witnesses to this Will. He thereupon signed this Will in our presence, all of us being present at the same time. We now, at his request and in his presence and in the presence of each other, subscribe our names as witnesses. We further declare that at the time of signing this Will, JOHN LEWIS NELSON appears to be of sound and disposing mind and memory and is not acting under duress, menace, fraud, or the undue influence of any person whomsoever.

We declare under penalty of perjury that the foregoing is true and correct.

Executed on July 1, 1986, at Sheridan, Wy.

[signature] residing at 2480 S. Hwy. 180, Minneapolis, Minnesota.

[signature] residing at 10950 Baton Rouge Ave Northridge, CA 91326.

[signature] residing at 17038 Saddlewood Ln. Minnetonka, MN.

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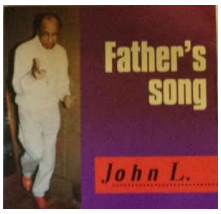
EXHIBIT 6



More Images

John L.* – Father's Song

Label: Vive Records – none
Format: CD, EP
Country:
Released: 1994
Genre: Jazz, Funk / Soul
Style: Rhythm & Blues

Tracklist

1	Yes Again
2	There'd Be No-Way For You And I
3	As I Recall
4	Fallin' Down

Companies, etc.

Phonographic Copyright (p) – Vive Records
Copyright (c) – Vive Records
Copyright (c) – Maken It Music
Recorded At – Acme Recording Studios

Credits

Co-producer – Sharon Nelson
Cover – Pasewark Creative Services
Engineer – Derrick L. Garrett
Executive-Producer – GOD (12)
Guitar – Gemini*
Lyrics By – Eleanor Landrau
Music By – John L.*, Ron Long
Organ – Gary Montoute, Ron Long
Photography By – Don Aderley
Piano – John L.*
Producer – Ron Long
Rap [Smooth Rap] – Sharon Nelson

Notes

Dedicated to the memory of Vivian Nelson

"We always thank God, the father of our Lord, Jesus Christ" - Sharon

Barcode and Other Identifiers

Rights Society: BMI

Reviews

Add Review

Release [r5931519]

Edit Release
New Submission

Add to Collection | Add to Wantlist

Marketplace

Search for **Father's Song**

Sell CD

☆☆☆☆☆ Share

Statistics

Have: 2
Want: 35
Avg Rating: 5.0 / 5
Ratings: 1
Last Sold: Never
Lowest: --
Median: --
Highest: --

Videos Edit

Add a Video

Lists

Add to List

Contributors

BenDover69, funkympls, DevilDinosaur, chantalauclair751966

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EXHIBIT 7

Homegoing Service

In Loving Memory of

Duane Joseph Nelson, Sr

August 18, 1958 - March 4, 2011

Order of Service

Pastor Art Erickson - Central Church

Processional.....Minister and family

Family - Words of Grace and Prayer.....Pastor Art Erickson

Congregational Hymn.....Blessed Assurance p.369
Martial Besombes

Scripture.....1 Cor 15:34-44
and Prayer Pastor Art Erickson

Selection.....Hamony Nelson

Obituary.....Breanna Nelson

Selection.....Tyka Phillips

Remarks.....Friends and Family (2 minute each)

Eulogy.....Pastor Art Erickson

Commital .....Pastor Art Erickson

Selection During Recessional.....Martial Besombes
Ministers and Family

Repast.....Park Avenue United Methodist
Church - Gathering Hall

Obituary

DUANE JOSEPH NELSON, SR. was born in Minneapolis, Minnesota on August 18, 1958. He was the son of John L. and Vivian Nelson and the father of Duane Joseph Nelson, Jr. They precede him in death .

Duane has a daughter Brianna Nelson, a grandchild, Victoria Nelson and a host of nieces, nephews, cousins, aunts, uncles and a loving friend, Carmen Weatherall.

Duane has two brothers; John R. and Prince Nelson. He has three sisters; Norrine and Sharon Nelson and Tyka Phillips. His sister Lorna Lee Nelson precede him in death.

Duane was known for his beautiful smile and dimples. He made many friends, one of which is Lowery Johnson.

Duane loved basketball and football. He received a basketball scholarship to the University of Wisconsin in Milwaukee and received a bachelor's degree in criminal justice. Duane was a bus driver for Metro Transit, a financial worker for Hennepin County Economic Assistance and toured with Prince for 11 years serving in many capacities.

Duane loved to write songs, sing, and play the keyboard.

Duane was saved and confessed Jesus Christ as his Personal Savior. He hoped to be called to preach the gospel. Duane went to be with the Lord March 4, 2011. He will truly be missed by all.

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EXHIBIT 8

Interviews

CENTRAL HIGH SCHOOL (1976)

(What follows is a transcript of Prince's very first interview. It appeared in his high school newspaper on February 16, 1976. It is accompanied by a picture of a young afro-clad Prince sitting at a piano.)

Nelson Finds It "Hard To Become Known"

"I play with Grand Central Corporation. I've been playing with them for two years," Prince Nelson, senior at Central, said. Prince started playing piano at age seven and guitar when he got out of eighth grade.

Prince was born in Minneapolis. When asked, he said, "I was born here, unfortunately." Why? "I think it is very hard for a band to make it in this state, even if they're good. Mainly because there aren't any big record companies or studios in this state. I really feel that if we would have lived in Los Angeles or New York or some other big city, we would have gotten over by now."

He likes Central a great deal, because his music teachers let him work on his own. He now is working with Mr. Bickham, a music teacher at Central, but has been working with Mrs. Doepkes.

He plays several instruments, such as guitar, bass, all keyboards, and drums. He also sings sometimes, which he picked up recently. He played saxophone in seventh grade but gave it up. He regrets he did. He quit playing sax when school ended one summer. He never had time to practice sax anymore when he went back to school. He does not play in the school band. Why? "I really don't have time to make the concerts."

Prince has a brother that goes to Central whose name is Duane Nelson, who is more athletically enthusiastic. He plays on the basketball team and played on the football team. Duane is also a senior.

Prince plays by ear. "I've had about two lessons, but they didn't help much. I think you'll always be able to do what your ear tells you, so just think how great you'd be with lessons also," he said.

"I advise anyone who wants to learn guitar to get a teacher unless they are very musically inclined. One should learn all their scales too. That is very important," he continued.

Prince would also like to say that his band is in the process of recording an album containing songs they have composed. It should be released during the early part of the summer.

"Eventually I would like to go to college and start lessons again when I'm much older."

TOP

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EXHIBIT 9

In re Estate of Palmer

Supreme Court of Minnesota

March 20, 2003, Filed

C7-02-182

Reporter
658 N.W.2d 197; 2003 Minn. LEXIS 124

In re: Estate of James A. Palmer, Deceased.

Prior History: [**1] Court of Appeals. Office of Appellate Courts.
In re Estate of Palmer, 647 N.W.2d 13, 2002 Minn. App. LEXIS 698 (2002)

Disposition: Affirmed.

Core Terms

Parentage, decedent, purposes, paternity, probate, intestate succession, district court, probate code, convincing, statutes, appeals

Case Summary

Procedural Posture

The district court held that use of ″may″ in *Minn. Stat. § 524.2-114(2)* (2002) created the inference that the Parentage Act, *Minn. Stat. § 257.51 to 257.74*, was not the exclusive means of establishing paternity for the purposes of intestate succession and granted appellee son's petition for distribution of his father's estate, denying appellant deceased's wife's objections. The Court of Appeals of Minnesota affirmed. The wife appealed.

Overview

The wife argued that the court of appeals erred by not requiring paternity for the purposes of intestate succession to have been decided under the Parentage Act, and by focusing on the word ″may″ in *§ 524.2-114(2)*, of the Probate Code, *Minn. Stat. § 524.1-101 et. seq.*, without analyzing its relation to the preceding phrase in the same sentence: ″a person is the child of the person's parents regardless of the marital status of the parents.″ The Supreme Court of Minnesota held that the word ″may″ was permissive and that both courts had correctly interpreted *§ 524.2-114* as permitting, but not requiring, that parentage in a probate proceeding be determined in accordance with the dictates of the Parentage Act. Had the legislature wanted parentage for probate purposes to have been determined exclusively under the Parentage Act, it could have so provided. The son provided clear and convincing evidence of his parentage including, that the deceased visited the son two to three times per week and the son consistently called him ″dad.″ The deceased also attended family outings, graduations and other events as the son's father, including participating his wedding as father of the groom.

Outcome

The judgment of the trial court was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Appeals > Standards of Review > De Novo Review

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > General Overview

Family Law > Paternity & Surrogacy > General Overview

Family Law > Paternity & Surrogacy > Establishing Paternity > General Overview

Family Law > ... > Proof of Paternity > Types of Evidence > General Overview

Governments > Legislation > Interpretation

HN1 Statutory construction is a question of law, subject to de novo review by the Supreme Court of Minnesota. When interpreting a statute, whenever possible, no word, phrase or sentence should be deemed superfluous, void, or insignificant.

Estate, Gift & Trust Law > Estate Administration > Claims Against Estates > General Overview

Family Law > Paternity & Surrogacy > General Overview

HN2 See *Minn. Stat. § 524.2-114*.

Estate, Gift & Trust Law > Estate Administration > Claims Against Estates > General Overview

Family Law > Paternity & Surrogacy > General Overview

Family Law > Paternity & Surrogacy > Establishing Paternity > General Overview

Family Law > Paternity & Surrogacy > Establishing Paternity > Uniform Parentage Act

HN3 *Minn. Stat. § 524.2-114(2)*, is similar to Uniform Probate Code § 2-114(a), which provides, ″The parent and child relationship may be established under the Uniform Parentage Act.″ Unif. Probate Code § 2-114 (amended 1993), 8 U.L.A. 91 (Supp. 2002).

Estate, Gift & Trust Law > Estate Administration > Claims Against Estates > General Overview

Estate, Gift & Trust Law > ... > Probate > Probate Proceedings > General Overview

Family Law > Paternity & Surrogacy > General Overview

HN4 The word ″may″ is permissive. *Minn. Stat. § 645.44 , subd. 15* (2002). Indeed, the statute's statement that, ″a person is the child of the person's parents regardless of the marital status of the parents,″ highlights the fact that the legislature has sought to remove the distinctions between marital and nonmarital issue in inheritance claims. *Minn. Stat. § 524.2-114*.

Civil Procedure > ... > Pleadings > Time Limitations > General Overview

Civil Procedure > ... > Pleadings > Time Limitations > Extension of Time

Estate, Gift & Trust Law > Estate Administration > Claims Against Estates > General Overview

Family Law > Paternity & Surrogacy > General Overview

HN5 The legislature specifically provided that the Parentage Act, *Minn. Stat. §§ 257.51 to 257.74*, does not extend the time limit for asserting a right of succession. *Minn. Stat. § 257.58, subd. 2* (2002).

Estate, Gift & Trust Law > Estate Administration > Claims Against Estates > General Overview

Family Law > Child Support > Support Obligations > General Overview

Family Law > Paternity & Surrogacy > General Overview

Family Law > Paternity & Surrogacy > Establishing Paternity > General Overview

HN6 The Parentage Act, *Minn. Stat. §§ 257.51 to 257.74*, and the Probate Code, *Minn. Stat. 524.1 -101 et. seq.*, are independent statutes designed to address different primary rights. The purpose of the Parentage Act is to establish ″the legal relationship between a child and the child's natural or adoptive parents, incident to which the law confers or imposes rights, privileges, duties, and obligations.″ Child support is the major concern under the Parentage Act. The purpose of the Probate Code, on the other hand, is to determine the devolution of a decedent's real and personal property. The different purposes the two statutes serve, help to explain why the legislature contemplated different periods of limitations for filing claims under those statutes. The distinct

purposes of probate and family law justify the legislature's decision not to make the Parentage Act the sole means of establishing paternity for the purposes of probate.

Estate, Gift & Trust Law > Estate Administration > Claims Against Estates > General Overview

Family Law > Paternity & Surrogacy > General Overview

Family Law > Paternity & Surrogacy > Establishing Paternity > General Overview

HN7 The Probate Code, *Minn. Stat. 524.1-101 et. seq.*, through the use of the term ″may″ explicitly provides that the Parentage Act, *Minn. Stat. §§ 257.51 to 257.74*, is not the exclusive means of determining parentage for the purposes of intestate succession. *Minn. Stat. § 524.2-114(2)*.

Syllabus

Minnesota Statutes § 524.2-114 (2002) does not require that parentage for purposes of intestate succession be established under the Parentage Act, *Minn. Stat. §§ 257.51 and 257.74* (2002). Parentage for purposes of intestate succession may also be established by clear and convincing evidence.

Judges: Gilbert, J.

Opinion by: GILBERT

Opinion

Heard, considered, and decided by the court en banc.

[*197] GILBERT, Justice.

The issue raised by this appeal is whether parentage for the purposes of intestate succession may be established by clear and convincing evidence apart from the *Parentage Act* and its time limitation on bringing actions to determine paternity. We conclude it may and affirm the decision of the court of appeals.

The facts of this case are undisputed and were stipulated to pursuant to *Minn. R. Civ. App. P. 110.04*. James A. Palmer **[*198]** (decedent) died on September 22, 1999. He was survived by appellant Marie Palmer, his wife of 51 years. No children were born to decedent and his wife. At the time of his death decedent owned a one-half **[**2]** interest in his home located in Ramsey County, which he inherited upon the death of his father in 1983. Absent respondent Michael J. Smith's challenge, Marie Palmer would receive decedent's entire interest in the home in fee simple, pursuant to *Minn. Stat. § 524.2-402(a)(1)* (2002). If respondent were found to be decedent's issue, Marie Palmer would receive a life estate in decedent's interest in the home with the remainder interest going to respondent. *Minn. Stat. § 524.2-402(a)(2)*.

Michael J. Smith (Smith) was born on September 7, 1957, to Beverly A. Smith. On January 26, 1959, decedent was charged with the crime of illegitimacy, relating to the birth of Smith. On January 28, 1959, decedent pleaded guilty to that charge. On February 10, 1959, Smith's birth certificate was revised to indicate James A. Palmer as the father with a written note stating, ″adjudication of paternity report.″ There is no evidence that decedent consented to the revision of the birth certificate. [1]

[3]** Decedent never acknowledged fathering Smith to his wife or to his closest friend. Smith never visited decedent's home nor did he bring any proceeding to adjudicate paternity before

[1] Respondent argues that decedent's 1959 guilty plea to an illegitimacy charge and the subsequent revision of Michael J. Smith's birth certificate to list him as the child's father should be dispositive in determining whether Smith should inherit from decedent. The district court did not base its decision on the criminal adjudication. Having found in respondent's favor on other grounds, we need not decide the effect of the 1959 adjudication.

April 16, 2001. Nonetheless, decedent and Smith did have an ongoing relationship. Decedent visited Smith two to three times per week at the Smiths' home during childhood. He helped Smith's mother move into her home. He referred to Smith as his son and Smith consistently called him dad. He taught Smith auto mechanics, and the two hunted, golfed and made numerous trips to a lake cabin together. He gave numerous gifts to Smith throughout his life, including a ring purchased during his military service. He also divided a $ 2.00 bill in half for each of them to keep; Smith still has his half of the bill. Decedent and Beverly Smith were close and participated in many family activities. He also attended family outings, graduations and other events as Smith's father, including participating in Smith's wedding as father of the groom. Several pictures were presented to the district court showing decedent's attendance at Smith's family gatherings.

This matter came up for hearing before the Ramsey County District **[**4]** Court. The district court issued an order and memorandum granting Smith's petition for summary assignment/distribution and denying Marie Palmer's objections. The court concluded that the use of the term ″may″ in *Minn. Stat. § 524.2-114(2)* (2002) created the inference that the *Parentage Act* is not the exclusive means of establishing paternity for the purposes of intestate succession. The court went on to hold that since the statute does not mandate the exclusive use of the *Parentage Act* to determine paternity, parentage may also be established in a probate court proceeding by clear and convincing evidence. [2] The district court then found that Michael J. Smith had established by clear and convincing evidence, unrefuted at trial, the **[*199]** existence of the parent-child relationship. Marie Palmer appealed the decision.

The court of appeals affirmed the district court's **[**5]** decision, concluding that parentage for the purposes of intestate succession may be established by clear and convincing evidence apart from the *Parentage Act* and its time limitation on bringing proceedings to establish paternity. *In re Estate of Palmer, 647 N.W.2d 13, 16 (Minn. App. 2002)*. Marie Palmer petitioned this court for review of the court of appeals' decision. We granted review.

HN1 Statutory construction is a question of law, subject to de novo review by this court. *Doe v. Minnesota State Bd. of Med. Exam'rs, 435 N.W.2d 45, 48 (Minn. 1989)*. When interpreting a statute, whenever possible, ″no word, phrase or sentence should be deemed superfluous, void, or insignificant.″ *Amaral v. St. Cloud Hosp., 598 N.W.2d 379, 384 (Minn. 1999)*.

Appellant argues that the court of appeals erred by not requiring paternity for the purposes of intestate succession to be decided under the *Parentage Act*. Appellant claims the lower courts erred by focusing on the word ″may″ in *Minn. Stat. § 524.2-114(2)*, without analyzing its relation to the preceding phrase in the same sentence: ″a person is the child of the person's **[**6]** parents regardless of the marital status of the parents.″

Minnesota Statutes § 524.2-114 states:

HN2 If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

* * * *

(2) In cases not covered by clause (1) [addressing adoption], a person is the child of the person's parents regardless of the marital status of the parents and the parent and child relationship may

[2] Ramsey County Probate Court is a division of district court. Minn. Stat. § 2.722, subd. 3 (2002).

be established under the Parentage Act, sections 257.51 and 257.74. [3]

HN4 The word "may" is permissive. Minn. Stat. § 645.44 **[**7]** , subd. 15 (2002). The district court and court of appeals both correctly interpreted Minn. Stat. § 524.2-114 as permitting, but not requiring, that parentage in a probate proceeding be determined in accordance with the dictates of the Parentage Act. Palmer, 647 N.W.2d at 16. Appellant's argument that, within the context of the statute, the word "may" is in fact mandatory is not convincing. Indeed, the statute's statement that, "a person is the child of the person's parents regardless of the marital status of the parents," highlights the fact that the legislature has sought to remove the distinctions between marital and nonmarital issue in inheritance claims. Minn. Stat. § 524.2-114; *see* Voss v. Duerscherl, 425 N.W.2d 828, 830 n.7 (Minn. 1988).

Had the legislature wanted parentage for probate purposes to be determined exclusively under the Parentage Act, it could have so provided. [4] But, there exists sound rationale for the legislature's decision to use permissive language. The New Jersey Supreme Court was faced with a similar situation in Wingate v. Estate of Ryan, 149 N.J. 227, 693 A.2d 457 (N.J. 1997), **[**8]** where a 31-year-old claimant sought to prove parentage for the purposes of intestate succession **[*200]** under New Jersey's Parentage Act, which provided a 23-year statute of limitations. In *Wingate,* the court held that the New Jersey Parentage Act's statute of limitations did not bar the probate claim. *Id.* at 465. The court explained the differences between the Parentage Act and the Probate Code under New Jersey law.

HN6 The Parentage Act and the Probate Code are independent statutes designed to address different primary rights. The purpose of the Parentage Act is to establish "the legal relationship * * * between a child and the child's natural or adoptive parents, incident to which the law confers or imposes rights, privileges, duties, and obligations." Child support is the major concern under the Parentage **[**9]** Act. The purpose of the Probate Code, on the other hand, is to determine the devolution of a decedent's real and personal property. The different purposes the two statutes serve, help to explain why the Legislature contemplated different periods of limitations for filing claims under those statutes.

Id. at 463 (citations omitted). The New Jersey court's rationale is applicable to our law. The distinct purposes of probate and family law justify the legislature's decision not to make the Parentage Act the sole means of establishing paternity for the purposes of probate.

In support of the proposition that the Parentage Act's statute of limitations bars Smith's probate claim, appellant cites *Witso v. Overby,* a paternity case where we stated, "The MPA [Parentage Act] provides the exclusive bases [sic] for standing to bring an action to determine paternity." 627 N.W.2d 63, 65-66 (Minn. 2001) (citing Morey v. Peppin, 375 N.W.2d 19, 22 (Minn. 1985)). However, ***HN7*** the probate code through the use of the term "may" explicitly provides that the Parentage Act is not the exclusive means of determining parentage for the purposes of intestate succession. **[**10]** Minn. Stat. § 524.2-114(2). Accordingly, we affirm the court of appeals.

Affirmed.

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[3] The section of the Minnesota Probate Code at issue here, Minn. Stat. § 524.2-114(2), ***HN3*** is similar to Uniform Probate Code § 2-114(a), which provides, "The parent and child relationship may be established under [the Uniform Parentage Act] [applicable state law] [insert appropriate statutory reference]." Unif. Probate Code § 2-114 (amended 1993), 8 U.L.A. 91 (Supp. 2002).

[4] ***HN5*** The legislature specifically provided, for example, that the Parentage Act does not extend the time limit for asserting a right of succession. Minn. Stat. § 257.58, subd. 2 (2002).