

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

Court File No.: 10-PR-16-46

In the Matter of:
Estate of Prince Rogers Nelson,
Decedent.

**MEMORANDUM OF LAW IN SUPPORT
FRANK K. WHEATON'S MOTION FOR
APPROVAL OF PAYMENT FROM THE
ESTATE FOR SERVICES THAT
BENEFITTED THE ESTATE
AS A WHOLE**

INTRODUCTION

Frank K Wheaton (“Attorney”) served as counsel of record for Alfred Jackson (“Jackson”) beginning April 23, 2016 through March 23, 2017. During that time, Attorney performed a substantial amount of work that benefitted the Estate of Prince Rogers Nelson (“Estate”) as a whole. Pursuant to Minn. Stat. § 524.3-720, Attorney hereby submits this memorandum in support of his Motion To Approve Attorney Fees From February 1, 2017 Through December 31, 2017 (“Motion”).

FACTUAL BACKGROUND

In April 2016, Client retained Attorney to represent his interests in the legal proceedings of his late brother’s Estate. Client was named in the initial petition along with two of his half siblings as a maternal half sibling of the decedent. Three other persons were named as half siblings related to decedent through his father’s side. On May 18, 2017, this court issued an order Determining Intestacy, Heirship & McMillan Matter. This order named Jackson as well as the other five persons (“The Heirs”) mentioned above as legal heirs to the Estate.

While serving as counsel for Mr. Jackson, Attorney worked collaboratively with the

Personal Representative, Comerica Trust as well as other counsel for the determined Heirs on an abundant amount work related to the Estate. This work benefitted the Estate as a whole and not just Jackson individually. Attorney also spent a significant amount of time working on maintaining relationships between the Legal Heirs, the Special Administrator, the Personal Representative and The Court. In addition, given the complexity of this estate and the incredible amount of estate administration work done during these first ten months, Attorney invested a substantial amount of time on issues and undertakings that benefitted the Estate as a whole and all of its beneficiaries, as opposed to Alfred Jackson individually. True and accurate copies of invoices related the Attorney's fees for which Attorney seeks payment from the Estate as part of this Motion are attached as Exhibit A to the Affidavit of Frank Wheaton, which is being filed contemporaneously. In sum, Attorney seeks a total payment from the Estate of \$114,120.00. Examples of some of the types of services for which Attorneys seek reimbursement from the Estate, which benefitted the Estate as a whole as opposed to any individual beneficiary, included but were not limited to the following.

- Working with both the prior Special Administrator, Bremer Trust and the newly hired Personal Representative, Comerica Trust, in order to achieve the most efficient transition possible.
- Advising, analyzing and making recommendations on the Consultancy Agreement related to the [REDACTED]
- Assisting the Personal Representative with formulating arguments regarding appeals undertaken by numerous parties.
- Providing services related to Special Administrator's accounting, fees, discharge, and overall Estate administration.
- Managing and advising the Estate, its representatives and its advisors to ensure Estate assets were managed in the best interest of the Estate and all its beneficiaries;
- Working to determine the rightful heirs of the Estate and other heirship related issues. Including petitioning the Court for the final determination of heirs.
- Working to provide legal services related to researching legal issues raised within the course of the Estate Administration.

- Providing services related to entertainment deals and working with advisors from the Estate on the execution of these deals.
- Services relating to preparation for and appearances in Court and Court Calls for Estate related matters.
- Other general matters which benefitted the Estate as a whole.

Based on the above mentioned work, Attorney took a conservative approach because he is mindful of the fact that it can be difficult for the Court, to differentiate between the types of legal services that benefitted the Estate as a whole versus those that benefitted an individual beneficiary. For that reason, Attorney is not seeking payment from the Estate for services that arguably may have benefitted Jackson individually, as opposed to the Estate as a whole. For example, Attorney is not seeking payment from the Estate for most of the time spent corresponding or meeting with Jackson individually or any other legal matters Attorney performed specifically for Jackson. Attorney, in keeping with his conservative billing agenda, could have requested fees from The Estate for hundreds of more hours but chose not to do so in order to assist the court in differentiating between hours spent benefiting The Estate as a whole compared to work done for the sole benefit of Jackson.

ARGUMENT

A. Legal Basis

Minnesota law allows for the payment of attorney's fees from the Estate for services rendered on behalf of the Estate where "the services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person." Minn. Stat. § 524.3-720. In such cases, the "attorney shall be paid such compensation from the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services." *Id.*; see also *In re Estate of Van Den Boom*, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999) ("Van Den Boom [a remainder beneficiary], as an interested person, acted for the benefit of the estate by keeping a major asset intact. His

attorney is entitled to fees.”). *In re the Estate of Kane*, No. A15-1033, 2016 WL 1619248, at *7 (Minn. Ct. App. April 25, 2016). Minn. Stat. § 524.3-720 allows compensation for attorneys representing interested persons in four circumstances:

1. An “interested person . . . successfully opposes the allowance of a will”;
2. If “after demand, the personal representative refuses to prosecute or pursue a claim or asset of the estate . . . and any interested person . . . by a separate attorney prosecute[s] or pursue[s] and recover[s] such fund or asset for the benefit of the estate”;
3. If “a claim is made against the personal representative on behalf of the estate and any interested person . . . by a separate attorney prosecute[s] or pursue[s] and recover[s] such fund or asset for the benefit of the estate”; and
4. If “the services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person.”

In the Matter of the Estate of Prince Rogers Nelson, Decedent, No. A17-0880, 2018 WL 492639, at *3 (Minn. Ct. App. Jan. 22, 2018). In the first circumstance, the interested person “is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys’ fees incurred.” *Id.* (citing Minn. Stat. § 524.3-720). In the second, third, and fourth circumstances, the attorney representing an interested person “shall be paid such compensation from the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services.” *Id.*

1. *The Court of Appeals Established Five Factors to Aid the District Court in Awarding Fees pursuant to Minn. Stat. § 524.3-720.*

In “ruling on an interested person’s attorney’s motion for compensation in a probate case,” this Court is obligated to “make findings that allow for meaningful appellate review.” *Nelson*, 2018 WL 492639, at *4. When addressing the fee appeal from this case the Minnesota Court of Appeals established five factors to aid the Court in ruling on requested attorneys’ fees. These five factors are intended to allow the Court “to resolve the significant issues in a complex case with somewhat broader strokes, rather than with a more granular analysis.” *Id.*, at *7. These five factors are;

Statutory Basis, Measuring Benefit of Attorney Fees, Benefit to The Estate For Pre-Existing Categories of Service, Quantifying Personal Benefit to The Heirs and Estimate Value of The Estate.

(1) Statutory Basis

First, the Court should consider “the particular statutory basis of the services performed by an attorney for an interested person.” *Nelson*, 2018 WL 492639, at *6. According to the Minnesota Court of Appeals, “[t]his distinction is significant because compensation for an interested person’s attorney is more likely to be just and reasonable in the second circumstance than in the other three circumstances.” *Id.*

Attorney has a statutory basis to request fees pursuant to the second, third and fourth prong of Minn. Stat. § 524.3-720 described by the Court of Appeals.

2. If “after demand, the personal representative refuses to prosecute or pursue a claim or asset of the estate . . . and any interested person . . . by a separate attorney prosecute[s] or pursue[s] and recover[s] such fund or asset for the benefit of the estate”;
3. If “a claim is made against the personal representative on behalf of the estate and any interested person . . . by a separate attorney prosecute[s] or pursue[s] and recover[s] such fund or asset for the benefit of the estate”; and
4. If “the services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person.”

In the Matter of the Estate of Prince Rogers Nelson, Decedent, No. A17-0880, 2018 WL 492639, at *3 (Minn. Ct. App. Jan. 22, 2018).

Under these prongs Attorney should be compensated for his work in regards to any other work that sought an overall benefit to the Estate.

(2) Measuring Benefit of Attorneys’ Fees

Second, the Court should “measure benefits in terms of the reasonable amount of attorney fees for the assumed tasks.” *Nelson*, 2018 WL 492639, at *6. The five-factor test for resolving

motions for attorneys' fees contained in Minn. Stat. § 525.515(b) "does not apply to a motion for compensation brought by an attorney for an interested person." *Id.*, at *3 n.2. However, the Minnesota Court of Appeals states three of the factors "[m]ay be helpful": (1) the time and labor required; (2) the experience and knowledge of the attorney; and (3) the complexity and novelty of problems involved. *Id.*, at *6; Minn. Stat. § 525.515(b) (1), (2), (3).

Based on these factors, the Court should approve payment of Attorney's requested fees. During the period of February 1, 2017 through March 23, 2017 Attorney, along with his c-counsel, was the only Attorney working on behalf of either The Estate or any individual heir remaining from the original initiation of these proceedings and thus his experience and knowledge from dealing with the complex issues involved and relationships built were integral to the work performed and the results achieved. Without Attorney's specific experience and intimate knowledge of the Estate the learning curve for all newly retained representatives would have been much greater and more costly.

(3) Benefit to Estate for Pre-Existing Categories of Services

Third, the Court should "make findings concerning the extent to which the estate benefitted from the services of all heirs' attorneys with respect to each of the six pre-existing categories of services that the district court identified by letter codes." *Nelson*, 2018 WL 492639, at *6. In quantifying this, "the district court need not employ a line-by-line method of determining compensation," unless in its discretion it "deems such a method to be helpful or appropriate." *Id.* at *2. The pre existing categories are (1) Services relating to entertainment deals (E), (2) Services relating to Paisley Park (PP), (3) Services relating to the determination of heirs (H), (4) Services relating to the selection of a Personal Representative (PR), (5) Services relating to legislation (PA), and (6) Services relating to a tribute concert (T). *Nelson*, 2018 WL 492639, at *2. These categories were determined based on the first submitted request for fees from April 26, 2016 through January 31, 2017. In measuring based on these pre-existing categories, the Court may

measure benefits in terms of an increase in the Estate's assets, or a decrease in the Estate's liabilities or expenses. *Id.*, at *6. The Court should make findings concerning the relative proportions of the quantified benefits for which each law firm or attorney is responsible. *Id.*

Because Attorney is only seeking payment for less than two months past his initial fee request, Attorney does not feel that it would be efficient to separate the fees into categories but has only submitted requested fees for time incurred benefitting the Estate as a whole. All work done by attorney had a commensurate overall value to The Estate as a whole. Attorney should thus be compensated for work he performed.

(4) Quantifying Personal Benefit to the Heirs

Fourth, the Court "should consider whether any benefit to the estate is also a benefit to the heir," and if that is the case, "quantify the heir's personal benefit." *Nelson*, 2018 WL 492639, at *6. However, quantifying this benefit does not include "benefits to the heir that are derivative of benefits to the estate." *Id.* The question is whether a benefit to one heir "is not shared by all other heirs," and if that is the case "it should be accounted for separately so that its proper effect on [the heirs'] compensation may be ascertained." *Id.*

Although Jackson received derivative benefits from Attorney's work, these benefits were shared by the Estate as a whole and thus the Court should not discount any fees awarded to Attorney. Further Attorney has already removed from his invoices all fees that were incurred as a separate individual benefit to Jackson and because of this Attorney is not seeking any payment for fees relating to communicating and meeting with Jackson or fees incurred when handling issues that were solely for the benefit of Jackson himself.

(5) Estimated Value of the Estate

Fifth, the Court "should consider the big picture." *Nelson*, 2018 WL 492639, at *6. This includes a consideration of "whether compensation paid to the heirs' attorneys for benefits to the estate is appropriate in light of the fees paid to the special administrator and the personal

representative and their attorneys and other agents.” *Id.*

Attorney’s work for this Estate has helped it save potentially millions of dollars in litigation costs as well as helped identify millions of dollars more in claims the Estate has against other parties. Also without Attorney’s work trying to maintain positive working relationships with all parties, this Estate would likely be even more divided and contentious, thus costing a substantially more amount of money in legal and administrative costs.

Further, the fees requested and received by both the Special Administrator and the Personal Representative for administration of this Estate are well in excess of ten million dollars and the requested amount submitted by Attorney are a fraction of that.

2. *Judge Solum’s October 4, 2018 Order Established Four Elements for Consideration in Awarding Fees pursuant to Minn. Stat. § 524.3-720.*

Judge Solum also established four additional elements for the Court to consider. (*See* Order on Remanded Fees filed October 4, 2018 (“Remanded Fees Order”).)

(1) Duplication

The Court should not award duplicative fees, and instead should look to the entity that conducted the work. The fees being requested for work done by Attorney all involve complex wide ranging legal issues that multiple attorneys’ knowledge and expertise were essential to effectuate the best possible results. Without Attorney’s work he is seeking compensation for and without his collaboration with other Heirs’ counsel the results achieved would not have been possible.

(2) “Benefit” and “Commensurate”

Judge Solum found that given the complexity of the matters involved, it is difficult to quantify a benefit to the Estate in purely monetary terms:

All these benefit-measuring difficulties are compounded by the nature of the Estate, **its value being materially measured by the value of intangible rights to music and related contractual undertakings**—about which benefits can derive from

efforts to make contractual terms for favorable to the estate, by efforts to minimize potential losses or future expenses in respect to contractual arrangements, and the like, **such benefits largely not being susceptible to monetary quantification.**

(*Id.* at 8-9, emphasis added.) Judge Solum acknowledged that declining to award fees for objections to the Special administrator would leave them without challenge, “dis- incent[s] any challenge to estate-harmful positions or excessive fees of fiduciaries,” and robs the Estate of “the necessary adversarial process so important to judicial management of the estate and related judicial decision-making.” (*Id.*) This is particularly true in “a large and complex estate as here.” (*Id.*)

Judge Solum laid out the following way for the Court to quantify a seemingly unquantifiable benefit: “consider whether there is a benefit to the Estate (and in turn all of the heirs) inherent (i) in the therapeutic consequences (respecting a genuine issue necessitating judicial determinations as well as future work and fees) from such challenges themselves, whether or not successful, and (ii) in the preservation of a future challenge, whether before a trial court or on appeal.” (*Id.*)

Although some of Attorney’s work is monetarily unquantifiable his work provided a necessary check to the Special Administrator and the Personal Representative. Without specific challenges and the threat thereof to actions taken by the Special Administrator and Personal Representative there would be no way to insure that the Estate was being run as cost effectively as possible and in the most beneficial way toward the Estate as a whole and not just the Special Administrator’s and Personal Representative’s individual interests.

(3) “Big Picture”

Like the Court of Appeals, Judge Solum emphasized a consideration of the value of the Estate compared to the value of the fees requested. (*Id.* at 10 (“The estimated value of the Prince Estate, while somewhat speculative and materially dependent on intangible rights to music—some of which music being largely unheard, appears to be substantial, and the fees requested here are a small fraction of any such value.”).) Judge Solum also highlighted that during its administration,

the Special Administrator requested and was awarded six million dollars in fees and this was without the analyses of what the Personal Representative has also received, which amount to millions of dollars more. The amount of fees Attorney is requesting pales in comparison to the amount the Special Administrator and Personal Representative has already received.

Additionally, as Judge Solum recognized, the “big picture” administration of the Estate necessitates input from the Heirs. *Id.* (“The mere fact that counsel to the heirs was invited by the Court to make submissions presupposes some benefit to the Estate and its judicial management, as well as some likely reduction in fees by the corporate fiduciaries and their counsel in limiting what otherwise could be expensive contests unnecessarily depleting of the Estate’s assets.”). This shows that work done regarding input from the heirs should be deemed a benefit to the Estate as a whole and Attorney is just in his request for compensation for fees incurred in this regard.

(4) Time Entries and “Broader Strokes”

Finally, Judge Solum followed the Court of Appeals’ guidance and declined to review the invoices line-by-line. (*Id.* at 11.) Instead, Judge Solum considered the fees contained in each category, multiplied the number of hours by the average hourly rate, and awarded compensation by category. (*Id.* at 11-12.) The arithmetic sum of the awarded compensation for each category constituted the total attorneys’ fees award. (*Id.* at 12.)

B. Attorney is Entitled to an Award of the Requested Fees Pursuant to Minn. Stat. § 524.3-720 and the Law of the Case.

In its’ first fee petition to the Court the Special Administrator stated: “The Court is well aware of the unique and extraordinary nature of this proceeding and legal work performed on behalf of the Estate. The scope and sophistication required to represent the Estate may be unlike any other estate administration proceeding in Minnesota’s history.” (Mem. in Support of Motion to Approve Payment of Special Administrator’s Fees and Costs, Attorney’s Fees and Costs, and to Establish a Procedure for Review and Approval of Future Fees and Costs, dated July 29, 2016, p. 3.)

Nearly two years after the Estate proceeding commenced, the Minnesota Court of Appeals held “it is apparent that Prince’s state is atypical because his commercial pursuits were relatively complex and he died with considerable financial assets.” *Nelson*, 2018 WL 492639, at *1. And as recently as October 2018, Judge Solum emphasized the “size and complexity of the estate” and held “the nature of the Estate” makes it difficult to quantify a benefit in monetary terms. (Remanded Fees Order at 8, 10.)

The uniqueness, complexity, and public nature of the Estate has created unforeseen problems that the Heirs and their counsel have had to work through and attempt to mitigate. The Court of Appeals recognized as much in stating “the heirs have taken a keen interest in the work of the special administrator and have actively participated in the probate proceedings, with the assistance of their counsel.” *Nelson*, 2018 WL 492639, at *1. Judge Solum also recognized “there were many instances in which the Court, presumably because of the size and complexity of the estate and the complicated monetization of Estate assets, sought input from the heirs’ counsel so as (1) to have a wider input of interests and expertise as to matters concerning intangible values and related contractual rights about which any court would have limited expertise, and (2) to seek input and potential consensus among the heirs so as to avoid litigation costly to the Estate.” (Remanded Fees Order at 10.)

The fees Attorney is requesting have been scrutinized and are extremely reasonable based on the overall benefit his work provided to The Estate as a whole. Following the Court of Appeals decision as well as Judge Solum’s findings in the Remanded Fees Order, Attorney is entitled to the fees requested.

CONCLUSION

For all the foregoing reasons, Attorney respectfully requests that the Court authorize and direct the Personal Representative to pay a total of \$114,120.00 in attorney fees for work incurred by Attorney from February 1, 2017 through March 23, 2017. The work done by Attorney significantly benefitted The Estate as

a whole compared to Jackson individually.

Dated: March 10, 2019

Respectfully Submitted,

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