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STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In re: Estate of Prince Rogers Nelson, Decedent.	Court File No. 10-PR-16-46 Honorable Kevin W. Eide **ALFRED JACKSON'S OBJECTION TO AND MOTION FOR CLARIFICATION OF THE COURT'S OCTOBER 17, 2018 ORDER**

TO THE HONORABLE COURT:

Alfred Jackson, as heir to the Estate of Prince Rogers Nelson (the "Estate"), by and through his counsel, and Omarr Baker and Tyka Nelson, pro se heirs of the Estate, hereby file this Objection to, and Motion for clarification of language of the Court's October 17, 2018 Amended Order & Memorandum Granting Bremer Trust, N.A.'S Motion To Lift Stay Of Discharge and Approve Payment Of Attorneys' Fees And Costs (the "October 17, 2018 Order"). Mr. Jackson specifically objects to paragraph 2 of the Order which states the following:

> *The portion of the Court's March 27, 2017 Order stating the Bremer Trust and its agents are hereby discharged from any and all liability to the Estate of Prince Rogers Nelson associated with its Special Administration of the Estate is hereby reinstated.*

Mr. Jackson objects to this provision and seeks clarification to the extent that this provision releases Bremer from liability for actions taken during its administration of the Estate, because a total release from liability would violate Minnesota law. In support of this Objection and Motion, Mr. Jackson respectfully shows the Court as follows:

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INTRODUCTION AND BACKGROUND

On April 27, 2016 this Court appointed Bremer Trust, N.A. ("Bremer") as Special Administrator of the Estate. *See* Order of Formal Appointment of Special Administrator at 2. In its Order of Formal Appointment of Special Administrator, the Court indicated that it would issue Letters of Special Administration ("Letters") subject to certain limitations, including limiting the scope of Bremer's authority to managing and supervising the Decedent's assets and limiting the time of Bremer's authority to the "lesser of 6 months or until…a Personal Representative is appointed." *Id.* In its Letters, the Court indicated that Bremer's term as Special Administrator expired on November 2, 2016. *See* Letters of Special Administration. This Court subsequently extended Bremer's initial term to January 12, 2017 to allow for the appointment of a mutually agreeable Personal Representative. *See* Order Extending Appointment of Special Administrator.

Throughout Bremer's Special Administration of the Estate, multiple heirs expressed their suspicion of, lack of confidence in and general unhappiness with Bremer's conduct and decisions related to the Estate, in which the heirs have interest. In fact, even Bremer acknowledged the mounting tensions and lack of trust between itself and the heirs. In its September 27, 2016 letter to the Court, with barely five months acting into its tenure as Special Administrator to the Estate, Bremer admitted that "the mutual trust and confidence that is so critical to the relationship between the [Bremer] and the heirs appears to have substantially eroded" and noted that the fractured relationship between Bremer and the heirs hampered Bremer's "ability to act in the best interest of the Estate." *See* Special Administrator's Letter to Judge Eide re Petition for Successor Special Administrator at 4. Bremer also asserted that it would neither seek an extension of its current term nor object to the appointment of a new Special administrator prior to the expiration of Bremer's term. *Id.*

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Some of the heirs continued to be dissatisfied with and distrusting of Bremer. On December 6, 2016, Tyka Nelson filed a Petition for Appointment of Special Administrator asserting her lack of confidence in Bremer and requested the Court replace Bremer immediately. *See* Petition for Appointment of Successor Special Administrator at ¶¶ 12-15. In a letter to the Court, Bremer reminded the Court that "[it] was not interested in continuing as Special Administrator after its current term expires" but objected to Ms. Nelson's request to replace Bremer prior to the expiration of its term, despite previously indicating that it was not opposed to the same. *See* Special Administrator's Letter to Judge Eide re Petition for Successor Special Administrator at 3-4.

On December 16, 2016, Bremer petitioned the Court for the following: (1) approval of the accountings for its administration from April 27, 2016 through December 31, 2016; (2) authorization to pay its legal fees through its termination date/date of the January 12, 2017 hearing to appoint a successor; (3) **discharge of Bremer and its agents from any and all liability associated with pending claims against the Estate;** (4) authorization to reserve $1,000,000 from Estate assets for professional and legal fees associated with the transfer of the Estate administration to a successor **and the discharge of Bremer and its agents from any and all liability associated with the administration of the Estate**; (5) a finding that Bremer's term as Special Administrator has terminated; (6) **discharge of Bremer and its agents from any and all liability associated with its Special Administration of the Estate through December 31, 2016**; (7) authorization and distribution of the balance of Estate assets, less the amount Bremer needed to pay Petitioner's legal fees and less the $1,000,000 reserve, to the Court-appointed successor Special Administrator or Personal Representative upon discharge of Bremer and its agents through December 31, 2016; (8) approval of the accountings from January 1, 2017

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through the termination date of Petitioner's Special Administration, submitted by Bremer; (9) authorization to pay its professional and legal fees incurred after January 1, 2017, submitted by Bremer as Special Administrator; (10) **discharge of Bremer and its agents from any and all liability associated with its Special Administration of the Estate from January 1, 2017 through the date of its termination within a reasonable time after receipt by the Court of the stub accounting**; (11) authorization to distribute the balance of the $1,000,000 reserve, after payment of professional and legal fees, to the Court-appointed successor Special Administrator or Personal Representative upon discharge of Bremer through the termination date of Bremer's Special Administration; and (12) granting such other relief as may be proper. *See* Petition for Order Approving Accounting Distribution of Assets and Discharge of Special Administrator at ¶¶ 1-12.

On December 20, 2016, Omarr Baker, as heir, filed his Petition for Appointment of Special Administrator, also asserting his lack of confidence in Bremer and requested that the Court replace Bremer immediately, rather than at the expiration of its extended term. *See* Petition for Appointment of Successor Special Administrator at ¶¶ 1-15. Bremer did not respond to Mr. Baker's Petition.

On January 4, 2017 Bremer filed the first of many "final accounting" documents, all of which, included substantial professional fees. *See* Final Accounting Through 11-30-16. The heirs objected to each one and reiterated their suspicion of, lack of confidence in and unhappiness with Bremer's conduct and decisions. Specifically, on January 19, 2017, heirs Tyka Nelson and Omarr Baker objected to the first of Bremer's final accountings, including Bremer's request for payment of professional fees to, among others, Stinson Leonard Street, LLP, asserting that the "request seeks compensation from the Estate that is not just and reasonable [n]or commensurate

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with the benefit [to] the Estate." *See* Omarr Baker and Tyka Nelson's Objection to Special Administrator's Request for Legal Fees Through December 31, 2016. On January 30, 2017, Mr. Baker filed an Objection to Bremer's request for fees and cost and attorneys fess through December 31, 2016, arguing that "Bremer had not established that the requested fees and costs are reasonable or benefitted the Estate." *See* Omarr Baker's Objection to Special Administrator's Request for Fees and Costs and Attorney's Fees Through December 31, 2016. On March 13, 2017, Mr. Baker and Tyka Nelson filed their objections to Bremer and its counsels' March 3, 2017 final accounting and fees, again reiterating their displeasure with Bremer and reasserting objections that fees were not reasonable and/or not incurred for the benefit of the estate. *See* Omarr Baker and Tyka Nelson's Objections to Stinson Leonard Street LLP's Fee Statements Through January 31, 2017. And on April 7, 2017, Mr. Baker and Alfred Jackson, as heir, filed objections to additional Bremer final accounting seeking approval of fees; objecting that such fees were not made for the benefit of the Estate. *See* REDACTED Omarr Baker and Alfred Jackson's Supplemental Objections to Bremer Trust National Associations Final Accounts through January 31, 2017.

On March 27, 2017 the Court issued an Order stating that it had reviewed the relevant fee applications and objections and (1) denying discovery or an evidentiary hearing regarding the allowance of the fees of the Special Administrator and its attorneys, and approval of the Final Accounts; (2) approving the Special Administrator's Fees and Costs through January 31, 2017; (3) approving the Special Administrator's Attorney's Fees and Costs through January 31, 2017; (4) ordering payment within 30 days of the Order; (5) approving Bremer's Final Accounting; (6) approving the Original Inventory as filed on January 4, 2017; (7) **discharging Bremer and its agents from any and all liability associated with its Special Administration of the Estate;**

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and (8) directing Comerica Bank to perform certain tasks. This Order, in part, mirrored the language of Bremer's December 16, 2016 petition and request. *See* Petition for Order Approving Accounting Distribution of Assets and Discharge of Special Administrator at ¶¶ 1-12.

On April 11, 2017, the Court issued an Order Staying the Discharge of Special Administrator (Bremer), on the ground that it had "learned that litigation may be forthcoming which may relate to actions taken by the Special Administrator" and staying only paragraph 7 of its above-referenced March 27, 2017 Order, which discharged Bremer and its agents of liability. *See* Order Staying Discharge of Special Administrator. Since that time, the heirs and Bremer have been engaged in sprawling dispute regarding the appropriateness of the fees incurred by Bremer and its agents and the scope of Bremer and its agents' discharge.

On October 17, 2018 this Court issued an Order reinstating paragraph 7 of its March 27, 2017 Order and "discharged [Bremer and its Agents] from **any and all liability** to the [Estate] associated with its Special Administration of the Estate" and approving the payment of additional professional fees incurred by Bremer.

Alfred Jackson, joined by Omarr Baker and Tyka Nelson, object to the language of the Court's October 17, 2018 Order on the grounds that it is ambiguous as to the phraseology of paragraph 2 of the Order, including all references to paragraph 7 of the Court's March 27, 2017 Order contained therein, because, as phrased, such language releases Bremer and its agents from any and all liability. To the extent that the aforementioned language purports to release Bremer and its agents from liability to the heirs for transactions, acts, or omissions occurring before the Court's discharge of Bremer, such language is improper and in direct contravention of the Minnesota Probate Code. Accordingly, and Mr. Jackson, joined by Mr. Baker and Ms. Tyka Nelson move this court to clarify its intentions regarding the scope of Bremer's discharge and

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adopt the clarifying language offered herein.

ARGUMENT AND AUTHORITIES

The language of Minnesota's probate code is clear that "[t]ermination [of the appointment of a personal representative] does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the representative of the duty to preserve assets subject to the representative's control, to account therefor, and to deliver the assets." Minn. Stat. Ann. § 524.3-608 (2002); *see also In re Estate of Stewart*, No. A04-808, 2005 WL 44462, at *4 (Minn. Ct. App. Jan. 11, 2005) (articulating that "[u]nder Minnesota law, the discharge of a personal representative terminates the representative's authority to represent the estate in pending or future proceedings, but it ***does not*** discharge the personal representative from liability for transactions occurring before the termination.")[1] Moreover, Minnesota law clearly provides that "[i]f a personal representative breaches his fiduciary duty of acting in the estate's best interests, the beneficiaries may hold the representative responsible." Minn. Stat. Ann. §§ 524.3–703(a), 524.3–712 (1994); *see also Goldberger v. Kaplan, Strangis & Kaplan, P.A.*, 534 N.W.2d 734, 739 (Minn. Ct. App. 1995). And that "if the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of fiduciary duty to the same extent as a trustee of an express trust." Minn. Stat. Ann. § 524.3-712. Thus, "a discharge only terminates the authority to represent the estate in any pending or future proceeding" and does not serve to terminate liability for conduct during the personal representative's term. *Id.* Minn. Stat. Ann. § 524.3-608 (2002).

[1] Mr. Jackson acknowledges that unpublished opinions are not precedential, and pursuant to Minn. Stat. Ann. § 480A.08, attaches a copy of this case hereto, and suggests that the Court look to it for instructive purposes given the limited published case law available interpreting Minn. Stat. Ann. § 524.3-608.

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Here, Bremer sought and was granted an Order discharging Bremer and its agents "from any and all liability to the [Estate] associated with its Special Administration of the Estate." This is improper and contrary to Minn. Stat. Ann. § 524.3-608 because it does not limit the scope of Bremer and its agents' discharge and may be interpreted as a release of Bremer and its agents from liability for transactions and omissions that occurred during its time as Special Administrator as to the heirs. As described in detail above, the heirs of the Estate have expressed numerous concerns with, and objected to Bremer's conduct as Special Administrator. Though this Objection and Motion for Clarification does not seek to address the substance of these concerns and objections, some of the heirs wish to preserve their objections should a challenge of the same become necessary. In light of the contentious relationship between Bremer and the heirs it is plausible that the heirs may assert claims against Bremer that they are entitled to pursue under Minn. Stat. Ann. §§ 524.3–703(a), 524.3–712 (1994); *see also Goldberger v. Kaplan, Strangis & Kaplan, P.A.*, 534 N.W.2d 734, 739 (Minn. Ct. App. 1995). Accordingly, Alfred Jackson, joined by Omarr Baker and Tyka Nelson object to the October 17, 2018 Order's language as contrary to Minnesota law and request that this Court clarify its October 17, 2018 Order to limit the scope of the discharge granted to Bremer and its agents.

CONCLUSION AND PRAYER

For the foregoing reasons, Alfred Jackson, joined by Omarr Baker and Tyka Nelson object to the Court's October 17, 2018 Order. Alfred Jackson, joined by Omarr Baker and Tyka Nelson further ask the Court to clarify the scope of the paragraph 2 of its October 17, 2018 Order and all references to its March 27, 2017 Order contained therein, and proposes that the October 17, 2018 Order be amended to strike and replace the entirety of paragraph 2 with the following language:

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In accordance with Minn. Stat. Ann. § 524.3-608, this Court hereby discharges Bremer Trust, N.A. and its agents from liability to the Estate of Prince Rogers Nelson for transactions and omissions occurring after October 17, 2018. Nothing in this Order is intended to limit or restrict the rights of the heirs of the Estate to pursue claims against Bremer Trust, N.A. or its agents.

Alfred Jackson, joined by Omarr Baker and Tyka Nelson further request any such other and further relief, at law or in equity to which Mr. Jackson, Mr. Baker, and/or Ms. Nelson may show themselves justly entitled.

DATE: November 8, 2018

Respectfully submitted,

WHITE WIGGINS & BARNES, LLP

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2005 WL 44462
Only the Westlaw citation is currently available.

Court of Appeals of Minnesota.

In re ESTATE OF Janet Pauline STEWART, a/k/a Janet P. Stewart.

No. A04-808.
|
Jan. 11, 2005.

Washington County District Court, File No. P3-01-400306.

Attorneys and Law Firms

Rodney J. Mason, Jack D. Nelson, Chandler & Mason, Ltd., St. Paul, MN, for appellant Eleanor Stewart.

Timothy J. Pramas, Felhaber, Larson, Fenlon & Vogt, P.A., St. Paul, MN, for respondent Mia Stewart.

Considered and decided by KALITOWSKI, Presiding Judge; WRIGHT, Judge; and CRIPPEN, Judge. *

UNPUBLISHED OPINION

WRIGHT, Judge.

***1** Eleanor Stewart, former personal representative of the estate of Janet Stewart, challenges the district court's decision requiring her to repay the estate $11,658.51 that she spent on attorney fees, on the ground that the expense had not been approved in the final account. Eleanor Stewart argues that a previous district court order reserving for further consideration only the distribution of "remaining funds" deprived the district court of "jurisdiction" to order the repayment of the $11,658.51. Eleanor Stewart also argues that, even if the district court had jurisdiction, Mia Stewart waived her right to challenge the expenditure by failing to object. Alternatively, Eleanor Stewart argues that her discharge as personal representative extinguished any claim the estate might otherwise have had against her for the wrongful expenditure of estate funds. We affirm.

FACTS

Janet Stewart died in September 2001, leaving a will in which she nominated Eleanor Stewart as her personal representative and bequeathed her entire estate to her daughter Mia Stewart. The initial petition for formal probate was filed in November 2001, and the district court approved the final account in September 2003. The final account reserved $12,000 for the payment of fees and listed the total amount on hand for distribution as $102,970.23.

In December 2003, Mia Stewart moved to compel Eleanor Stewart to transfer all estate assets to her. On the morning of the hearing on the motion, Eleanor Stewart advised Mia Stewart that she had paid $11,658.51 for attorney fees and that, as a result, only $91,311.72 of the $102,970.23 originally approved for distribution remained for distribution.

At the hearing, Mia Stewart's counsel stated on the record that, although the parties had been able to resolve most of their differences, there remained a dispute "regarding the remaining funds, [namely,] whether the personal representative [or] her attorney or accountants [were] entitled to additional expenses above and beyond those already authorized by the court." Mia Stewart's counsel further advised that Eleanor Stewart had agreed to resign as personal representative and that Mia Stewart had agreed to replace her. The parties also agreed that Eleanor Stewart would transfer all remaining available funds into a trust account and that $80,000 would be distributed to Mia Stewart from that account. Finally, the parties agreed that they would try to resolve their dispute over the expenditure of funds not approved in the final account. To that end, Eleanor Stewart agreed to provide Mia Stewart the documentation necessary to assess the propriety of the challenged expenditures. If the parties were unable to reach an agreement, however, they agreed to submit the issue to the district court for consideration without oral argument.

The district court directed Mia Stewart's counsel to put the parties' stipulation in writing. On January 26, 2004, the district court signed the stipulation and entered it as an order. In relevant part, the district court's order provided as follows:

***2** 5. The parties shall attempt to resolve their differences concerning distribution of the *remaining funds.* If an agreement is reached, a signed Stipulation and proposed Order will be submitted to the court, closing the estate and providing for distribution of the *remaining funds.*

6. If no agreement is reached, the parties will serve and file briefs and affidavits, if desired, by February 10.... If briefs and affidavits are not served by February 10, the Court may issue an Order closing the Estate[,] and the *remaining funds* in the Trust Account may be distributed to Mia Stewart.

....

9. Eleanor A. Stewart and her counsel will provide to Mia Stewart's counsel any time records and expense records needed to assess the reasonableness and propriety of any expenditures by the Estate funds since August 1, 2003.

(Emphasis added.)

The parties were unable to resolve their differences regarding the $11,658.51 expenditure. Accordingly, they submitted the issue to the district court for consideration. In March 2004, the district court issued an order finding that the $11,658.51 expenditure had not been approved in the final account and requiring Eleanor Stewart to reimburse the estate for the expenditure. This appeal followed.

DECISION

I.

Eleanor Stewart argues that the district court "divested itself of jurisdiction" [1] to consider the propriety of the $11,658.51 expenditure by issuing an order reserving for consideration only the distribution of "remaining funds." Eleanor Stewart claims that the $11,658.51 expenditure was not part of the "remaining funds" because it had been paid before the court issued its order. This argument is unavailing.

District courts have jurisdiction over "all subject matter relating to estates of decedents, including construction of wills and determination of heirs and successors of decedents." Minn.Stat. § 524.1-302(a) (2002). Accordingly, a district court is authorized to "make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it." Minn.Stat. § 524.1-302(b) (2002). The district court's authority to administer an estate formally terminates when the district court issues a decree of distribution or an order for complete settlement and

the personal representative transfers all property to the persons entitled to the property and otherwise fully discharges the duties of a personal representative. Minn.Stat. § 524.3-1001 (2002) (governing formal proceedings terminating administration of an estate). District courts also have broad discretion in issuing appropriate relief during the pendency of the court-supervised administration of an estate. Minn.Stat. § 524.3-505 (2002) ("Interim orders approving or directing partial distributions, sale of property, or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.").

***3** The district court's January 2004 order did not formally terminate the district court's authority to continue to administer the estate because the order was not a final decree of distribution and Eleanor Stewart had not transferred all property to Mia Stewart or otherwise discharged her duties as a personal representative. *See* Minn.Stat. § 524.3-1001. Accordingly, the supervised administration of the estate continued, and the district court retained authority to issue interim orders, including orders granting relief for the wrongful distribution of estate funds. *See* Minn.Stat. § 524.3-505.

Even assuming that the district court could divest itself of jurisdiction to administer an estate by issuing an order narrowing the issues remaining for consideration, the district court's January 2004 order had no such effect. In its order, the district court recognized that a dispute remained between the parties and made alternative provisions for the resolution of the dispute. The only dispute remaining after the stipulation was the dispute over the $11,658.51 expenditure, an expenditure that was over and above the $12,000 reserved for fees in the final account. The district court ordered Eleanor Stewart to provide Mia Stewart the documentation necessary for her "to assess the reasonableness and propriety of any expenditures by the Estate funds since August 1, 2003." The $11,658.51 expenditure was made after this date. The district court did not, therefore, "divest itself of jurisdiction" to consider the propriety of the expenditure. On the contrary, it expressly reserved authority to resolve the issue if the parties were unable to reach an agreement.

Eleanor Stewart's claim that the district court lacked the authority to consider the expenditure because the $11,658.51 were not part of the "remaining funds" lacks merit. The "remaining funds" to which the parties and the court alluded at the hearing and in the stipulated order were clearly the $102,970.23 on hand for distribution in the final account. A different interpretation of the term "remaining funds" would render meaningless the stipulated order's provisions reserving the $11,658.51 expenditure for the district court's consideration should the parties be unable to resolve the dispute. The district court, therefore, properly considered the issue surrounding the expenditure pursuant to the stipulated order.

II.

Eleanor Stewart argues that even if the district court retained "jurisdiction" to consider the $11,658.51 expenditure, Mia Stewart waived her right to challenge the expenditure by failing to object to it. But the transcript of the January hearing establishes that Mia Stewart's counsel expressly stated on the record that there still was a dispute over Eleanor Stewart's claim for expenses "above and beyond" those approved in the final account. And the January 2004 stipulated order made alternative provisions for the resolution of the disputed claim and required Eleanor Stewart to provide Mia Stewart "any time records and expense records needed to assess the reasonableness and propriety of any expenditures by the Estate funds since August 1, 2003." By stipulating to alternative ways of resolving the dispute and by seeking records from Eleanor Stewart needed to assess the propriety of the expenditure, Mia Stewart properly preserved her objection to the expenditure. Accordingly, we conclude that Eleanor Stewart's claim to the contrary is inconsistent with both the stipulated order and the hearing transcript.

III.

***4** Eleanor Stewart also argues that her discharge as the personal representative extinguished any claim Mia Stewart might have had against her for the wrongful expenditure of estate funds. We disagree.

Under Minnesota law, the discharge of a personal representative terminates the representative's authority to represent the estate in pending or future proceedings, but it *does not* discharge the personal representative from liability for transactions occurring before the termination.

> Termination [of the appointment of a personal representative] does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the representative of the duty to preserve assets subject to the representative's control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates the authority to represent the estate in any pending or future proceeding.

Minn.Stat. § 524.3-608 (2002). Relying on Minn.Stat. § 524.3-1001(a)(4), Eleanor Stewart argues that the discharge of a personal representative extinguishes claims that might have existed against the personal representative at the time of the discharge. The statute contains no language to that effect, however, and cannot be reasonably construed to extinguish such claims.

Section 524.3-1001 governs formal proceedings to terminate court administration of an estate. The statute authorizes a personal representative or any interested person to petition for an order of complete settlement of the estate and to apply for a decree or order of distribution. Minn.Stat. § 524.3-1001(a)(1), (2). The provision on which Eleanor Stewart relies provides: "When a decree or order for distribution is issued, the personal representative shall not be discharged until all property is paid or transferred to the persons entitled to the property, and the personal representative has otherwise fully discharged the duties of a personal representative." *Id.* (a)(4). This provision does not extinguish claims against the personal representative for transactions occurring before the termination and cannot reasonably be read to extinguish such claims.

As Mia Stewart correctly points out, the statutory interpretation Eleanor Stewart proposes would place beneficiaries in the untenable position of having to allow a personal representative to continue in that position-and thereby risk further depletion of the estate's assets-in order to preserve a claim against the personal representative for the wrongful expenditure of funds before the termination. The legislature could not have intended such an absurd result. The statute simply requires that the district court, in the course of ending court-supervised administration of an estate, refrain from discharging the personal representative before his or her duties are fully discharged and all property has been distributed. Thus, Minn.Stat. § 524.3-1001(a)(4) did not extinguish Mia Stewart's claim against Eleanor Stewart for the wrongful expenditure of estate funds.

***5 Affirmed.**

All Citations

Not Reported in N.W.2d, 2005 WL 44462

Footnotes

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

1 We note at the outset that the United States Supreme Court has recently cautioned against the misuse of the word "jurisdictional." *Kontrick v. Ryan,* 540 U.S. 443, ----, 124 S.Ct. 906, 915 (2004). The *Kontrick* court noted: "Courts, including this Court, ... have more than occasionally [mis]used the term 'jurisdictional[.]' ... Clarity would be facilitated if courts and litigants used the label 'jurisdictional' ... only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and

the persons (personal jurisdiction) falling within a court's adjudicatory authority." *Id.; see also Bode v. Minn. Dep't of Natural Res.,* 594 N.W.2d 257, 259-60 (Minn.App.1999) (similarly cautioning against misuse of term jurisdictional), *aff'd,* 612 N.W.2d 862 (Minn.2000). Because when Eleanor Stewart uses the term "jurisdictional" she refers neither to the class of cases nor the persons falling within the district court's adjudicatory authority, this term is misused.

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