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State of Minnesota
9/24/2018 9:53 PM

EXHIBIT B

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF CARVER **FIRST JUDICIAL DISTRICT**

Jobu Presents, LLC,

Plaintiff,

vs.

Charles Koppelman, CAK Entertainment, Inc., Londell McMillan, and NorthStar Enterprises Worldwide, Inc.,

Defendants,

vs.

Estate of Prince Rogers Nelson,

Intervenor.

Court File No.: 10-cv-17-368
Case Type: Contract

NOTICE OF INTERVENTION

Please take notice, pursuant to Minnesota Rule of Civil Procedure 24.03, the Estate of Prince Rogers Nelson ("the Estate"), by and through its counsel the Second Special Administrator, pursuant to the Order of the Honorable Kevin W. Eide dated June 14, 2018, In re the Estate of Prince Rogers Nelson, Deceased, 10-PR-16-46, hereby submits notice that it is intervening in the above captioned case. In the absence of objections by any named party within 30 days, such intervention shall be deemed accomplished. Attached hereto is a pleading setting forth the nature and extent of the claims upon which intervention is sought.

The Estate was previously a party to this lawsuit. The Estate never filed an Answer or otherwise pled in this lawsuit. With the filing of its Second Amended Complaint, Plaintiff voluntarily dismissed the Estate on or about July 26, 2017. Between January and May of 2018, the Second Special Administrator conducted an independent investigation into the Jobu

transaction and determining if the Estate had viable claims against the parties involved. Those parties are the same as those involved in this action. On June 14, 2018, Judge Kevin W. Eide of Carver County District Court approved the Estate, through the Court appointed Second Special Administrator, to pursue litigation for claims related to the Jobu transaction. That transaction and surrounding circumstances form the bases of the Estate's action in this case.

A party shall be permitted to intervene when disposition of an action will impair or impede the intervenor's ability to protect its interest. Minn. R. Civ. P. 24.01. The relief the Estate seeks implicates the Estate's ability to obtain relief from Plaintiff and Defendants as alleged in the attached pleading. Specifically, the Estate's fraud claims have the possibility of collaterally estopping the Estate from seeking certain damages from either Plaintiff (if the fraud claim is successful) or, potentially in part, Defendants (if the fraud claim is unsuccessful). In either event, the interests of the Estate in pursuing its claims against those same parties will be affected and therefore intervention as a matter of right is proper.

In the event of an objection by a named party within 30 days, the Second Special Administrator will move this Court for an order granting intervention.

Date: August 9, 2018

LARSON · KING, LLP

By *s/ Peter J. Gleekel*
Peter J. Gleekel (0149834)
Bradley R. Prowant (0396079)
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Tel: (651) 312-6500
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Second Special Administrator to the Estate of Prince Rogers Nelson

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EXHIBIT F

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STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:

Estate of Prince Rogers Nelson,

Decedent,

and

Tyka Nelson,

Petitioner.

Court File No. 10-PR-16-46

Filed Under Seal

ORDER GRANTING IN PART THE SPECIAL ADMINISTRATOR'S MOTION TO APPROVE RECOMMENDED DEALS

The above entitled matter came on before the Court on September 29, 2016 at the Carver County Government Center. By agreement of the parties, and without objection, a very short briefing schedule was used to give the parties as much time as possible to negotiate a resolution of the issues. The Court has considered all of the written submissions as well as the two hours of oral argument. Appearances were noted on the record. During the hearing, the Court received Exhibit 1 consisting of the written form of the recommended deals, and Exhibits 2 and 3 which are graphs showing the pre- and post-death Prince music downloads.

For this hearing, the Court considered the Notice of Motion and Motion filed by Bremer Trust on September 27, 2016; the Notice of Motion and Motion filed by the non-excluded heirs on September 27, 2016; the Memoranda filed by Bremer Trust on September 27, 2106 and September 28, 2016; the Memoranda filed by the non-excluded heirs on September 27, 2106 and September 28, 2016; the Affidavits of Craig Ordahl, Charles Koppelman, Irving Azoff, L. Londell McMillan, Traci Bransford, Laura Halferty (with exhibits filed as documents 634, 635 and 636 in MNCIS), Serona Elton, Steven J. Silton and Omarr Baker filed September 27, 2016; the Declarations of Kenneth Abdo and Adam Gislason filed September 28, 2016; and the Affidavit of David Given

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filed September 28, 2016. The term "non-excluded heirs" has been used by the parties and the Court to refer to those heirs that were: (1) not excluded by the Court's Order of July 29, 2016 and (2) were not excluded though genetic testing results received by the Special Administrator.

Pursuant to the Court's Order of August 26, 2016, the Special Administrator moved the Court for approval of seven significant recommended deals. The Court finds that six of these deals are in the bests interests of the Estate in accordance with the Special Administrator's fiduciary duties. Accordingly, based upon this Court's review of the motion, the Court grants the Special Administrator's motion and **ORDERS** that:

1. Exhibits 1, 2 and 3 from the September 29, 2016 hearing are received and shall be filed under seal.

2. The Special Administrator is authorized to enter into six of the seven recommended deals detailed in the Special Administrator's Motion to Approve Recommended Deals and supporting materials filed on September 27, 2016 (filed under seal). The Court understands that these are "short-form deals" and that further drafting, and perhaps negotiation, need to take place before the parties can execute a "long-form deal."

3. The Special Administrator is not authorized to enter into the recommended deal with Warner Brothers as described in the summary set forth on page 15, and described more fully on page 22, of the Memorandum in Support of Motion to Approve Recommended Deals filed September 27, 2016 by Bremer Trust.

4. The Special Administrator is authorized to enter into an agreement with Warner Brothers to release a compilation recording of Prince's music and a deluxe reissue of Prince's Purple Rain recording.

5. Counsel for the non-excluded heirs shall appoint up to two counsel or entertainment industry experts to negotiate, along with L. Londell McMillan and Charles Koppelman (hereinafter

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McMillan and Koppelman) and the Special Administrator, "long-form deals" from the "short-form deals" which are being approved by the Court today. It is the intent of the Court that the (up to) two persons appointed by the heirs will be able to offer input into the "long-form deals" and assist in negotiating quid pro quo amendments to the deals if all can agree. If the persons appointed by the heirs ultimately disagree with McMillan and Koppelman and the Special Administrator, the terms most consistent with the "short-form deals" being approved today by the Court shall be approved.

6. The Court confirms that the Special Administrator's Motion to Approve Recommended Deals and supporting materials shall be FILED UNDER SEAL pursuant to Minnesota Rule of Civil Procedure 11.06(c) and kept under seal indefinitely.

7. The Memorandum attached hereto shall be considered the Court's Findings and Conclusions and the Court reserves the right to amend the Memorandum through the date of October 17, 2016.

Dated: September 30, 2016

Kevin W. Eide
Judge of District Court

MEMORANDUM

The Court conducted a telephone conference hearing with the parties regarding a proposed contract with Warner Brothers on August 30, 2016. After hearing the argument of the parties, the Court declined to Order that the Special Administrator could enter into that agreement. That agreement would have resulted in the payment of a $15,000,000 advance to the Estate that, the Special Administrator argued, could be used to pay down the Estate's pending tax obligations as well as the other expenses of the Estate. Of significant concern to the heirs and the Court was that

the $15,000,000 would likely be earned by the Estate in any event, due to the 2014 Agreement (hereinafter the "2014 Agreement') that Prince Rogers Nelson entered into with Warner Brothers. While the new agreement would result in an acceleration of the receipt of funds under the 2014 Agreement, due to the advance, it would result in a 10% commission being paid to McMillan and Koppelman or a loss of $1,500,000 to the Estate.

Among the seven deals proposed by the Special Administrator summarized on page 15 of the Memorandum in Support of Motion to Approve Recommended Deals filed September 27, 2016 by Bremer Trust is a deal recommended to be done with Warner Brothers. As described in the previous paragraph, the Court found that the Estate would be entitled to royalties under the 2014 Agreement with Warner Brothers over time. The Amendment proposed to the Court on August 30, 2016 brought cash in quicker due to $15,000,000 advance on royalties, but it resulted in $1,500,000 of this advance being paid to McMillan and Koppelman where this commission would not be paid if the royalties were paid in due course during the term of the 2014 Agreement. At the hearing on August 30, 2016, the non-excluded heirs argued that $6,000,000 in royalties had already been earned through the second quarter of 2016 and was due to the Estate. They describe this as "already in the pipeline." If the Court allowed the amendment to the 2014 Agreement, McMillan and Koppelman would be entitled to 10% of those royalties. Further, McMillan and Koppelman would be entitled to 10% of future royalties paid to the Estate even if those royalties would already be due to the Estate under the 2014 Agreement.

At the September 29, 2016 hearing, the Special Administrator informed the Court that the new proposed deal with Warner Brothers removed the $6,000,000 that was in the pipeline as of the end of the 2nd quarter of 2016 from the $15,000,000 advance that was offered by Warner Brothers. No commission would be paid to McMillan and Koppelman on the $6,000,000. The new deal offered the Estate a $9,000,000 advance. The Court is concerned that the $9,000,000 is

already in the pipeline in the sense that future royalties are already owing to the Estate under the 2014 Agreement and, again, while a new deal would bring cash in quicker due to $9,000,000 advance on royalties, it would result in $900,000 of this advance being paid to McMillan and Koppelman where this commission would not be paid if the royalties were paid in due course during the term of the 2014 Agreement.

The Special Administrator also argued that a new deal was necessary with Warner Brothers to allow the production and distribution of a compilation (best of) recording to be distributed by the holiday season, 2016, and a deluxe reissue of the Purple Rain recording by the anniversary of the death of Prince Rogers Nelson in the spring of 2017. The heirs argue persuasively that Warner Brothers already has the right to release these recordings under the 2014 Agreement. To the extent that some additional authority is needed from the Special Administrator to allow this to proceed, the Court is hereby granting that authority.

K.W.E.

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EXHIBIT G

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7/13/2017 4:15 PM
Carver County, MN

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

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
Judge Kevin W. Eide

ORDER & MEMORANDUM GRANTING MOTION TO APPROVE RESCISSION OF EXCLUSIVE DISTRIBUTION AND LICENSE AGREEMENT

The above-entitled matter came before the undersigned for a hearing on June 13, 2017, pursuant to Personal Administrator Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement. Appearances were as noted in the record. Based on the memoranda of law, declarations, and exhibits submitted to the Court, the arguments of counsel at the hearing and by letter brief thereafter, and all of the files, records, and proceedings herein, the Court makes the following:

ORDER

1. The Personal Administrator's Motion to Approve Rescission of Exclusive Distribution and License Agreement is GRANTED and the Rescission Agreement, submitted as Exhibit U to the Declaration of Joseph J. Cassioppi, is APPROVED.

BY THE COURT:

Eide, Kevin
2017.07.13 16:04:08
-05'00'

Dated: July 13, 2017

The Honorable Kevin W. Eide
District Court Judge

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

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MEMORANDUM

On January 31, 2017, the Estate and NPG Records, Inc. and UMG Recordings, Inc. ("UMG") entered into an Exclusive Distribution and License Agreement (the "UMG Agreement"). The UMG Agreement was negotiated by the former Special Administrator of the Estate, Bremer Trust National Association ("Special Administrator") with the assistance of its entertainment advisors, L. Londell McMillan ("McMillan") and Charles Koppelman ("Koppelman"). Shortly after the UMG Agreement was signed, Warner Bros. Records, Inc. ("WBR") claimed the Special Administrator sold rights to UMG that WBR already held through previous agreements with Decedent. All prior Warner Bros. Records, Inc. agreements are hereinafter referred to as the "WBR Agreements". As a result of WBR's claims and after its own review, the Personal Representative argues it cannot unequivocally assure either UMG or the Court that no overlap exists between the rights granted under the UMG Agreement or the rights held by WBR. The Personal Representative has therefore moved the Court for an Order allowing it to enter into a Rescission Agreement with UMG.

In connection with the Personal Representative's motion, the Court has reviewed a multitude of submissions filed in advance of the hearing including, but not limited to:

1. Comerica Bank & Trust, N.A.'s Notice of Motion and Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1678 on May 17, 2017;

2. Comerica Bank & Trust, N.A.'s Memorandum in Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1685 on May 17, 2017;

3. Declaration of Joseph J. Cassioppi in Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1686 on May 17, 2017;

4. UMG Recordings, Inc.'s Joinder in Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution License Agreement filed as document number 1709 on May 30, 2017;

5. CAK Entertainment, Inc.'s Limited Objection to Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution License Agreement filed as document number 1729 on June 6, 2017;

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6. Omarr Baker's Response in Support of Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1730 on June 6, 2017;

7. Memorandum of Law in Opposition to Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution License Agreement filed as document number 1735 on June 6, 2017;

8. Affidavit of Sharon L. Nelson filed as document number 1736 on June 6, 2017;

9. L. Londell McMillan's Memorandum of Law in Response to Comerica's Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1747 on June 6, 2017;

10. Declaration of L. Londell McMillan in Response to Comerica's Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1749 on June 6, 2017;

11. Declaration of Virgil Roberts in Response to Comerica's Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1751 on June 6, 2017;

12. Affidavit of Steven H. Silton in Support of Omarr Baker's Response in Support of Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1768 on June 8, 2017;

13. Omarr Baker's Reply in Support of Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1773 on June 9, 2017;

14. Affidavit of Steven H. Silton in Support of Omarr Baker's Reply in Support of Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1775 on June 9, 2017;

15. UMG Recordings, Inc.'s Reply in Support of Its Joinder in Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1782 on June 9, 2017;

16. Comerica Bank & Trust, N.A.'s Reply in Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1786 on June 9, 2017;

17. Supplemental Declaration of Joseph J. Cassioppi in Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1785 on June 9, 2017; and

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18. Exhibits A and B to the Supplemental Declaration of Joseph J. Cassioppi in Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1787 on June 9, 2017.

The hearing on the Personal Representative's motion was held on June 13, 2017. Though the crux of the motion involves a presumed conflict between the WBR Agreements and the UMG Agreement, the WBR Agreements had not been reviewed by UMG because it contains a confidentiality clause. On June 15, 2017, the Court ordered the WBR Agreements be provided to the Court and UMG's counsel on an attorneys-eyes-only basis. The Court hoped that disclosure of the WBR Agreements would resolve UMG's conflict concerns and, with such an important decision to make, the Court felt it necessary for UMG's attorneys to see the WBR contract so they were not operating based upon speculation or what may have been leaked to them. Unfortunately, upon review of the WBR Agreements, counsel for UMG in a letter filed June 26, 2017 as document 1849 determined, "Our thorough review has only confirmed that rescission is necessary..."

In response to the UMG letter confirming its position on the necessity of rescission, the Court received a number of additional submissions including:

1. A letter from Attorney Steven H. Silton on behalf of Omarr Baker filed as document number 1851 on June 28, 2017;

2. A letter and attachments from Attorney Nathaniel A. Dahl on behalf of Sharon Nelson, Norrine Nelson and John Nelson filed as document number 1856 on June 28, 2017;

3. A letter from Attorney Alan I. Silver on behalf of L. Londell McMillan filed as document number 1868 on June 28, 2017;

4. A letter from Attorney Scott Edelman on behalf of UMG filed as document number 1876 on June 30, 2017;

5. A letter from Attorney Robin Ann Williams on behalf of L. Londell McMillan filed as document number 1878 on July 3, 2017;

6. A letter and exhibits from Attorney Joseph J. Cassioppi on behalf of the Personal Representative filed as document numbers 1884 and 1885on July 5, 2017;

This Court has attempted to thoroughly and thoughtfully interpret the contract terms in the 2014 WBR Agreements and the 2017 UMG Agreement. The Court notes that Sharon, Norrine and John Nelson and Mr. McMillian focus on the term "pressing and distribution" in the critical phrase "pressing and distribution of Records" from the 2014 WBR Agreements, whereas Comerica

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focuses on the term "Records." Comerica ably argues that the term "Records" can include the digital download or streaming rights to published work. Mr. McMillian argues that the term "pressing and distribution" generally and customarily means physical copies of records and this interpretation is supported by the expert Affidavit of Virgil Roberts.

Sharon, Norrine and John Nelson and Mr. McMillian argue that this Court should allow for additional discovery and the submission of expert testimony regarding the interpretation of the Agreements. This Court believes that all relevant agreements have been provided to the parties and that experts can be found to support the position of each party.

In the end, this Court is reminded that it cannot make a final and binding decision with respect to the interpretation of these contracts. The right to interpret these contracts is venued with the courts of the States of New York and California under the terms of the WBR Agreements and the UMG Agreement respectfully. Under the most complicated of scenarios, Universal could seek to void the UMG Agreement in California and, after protracted litigation and if the Estate were successful, WBR could then seek declaratory relief as to their Agreements in New York.

It has been suggested that UMG is bluffing and they really wouldn't file suit in the State of California if this Court does not rescind the contract. In light of UMG's letter of June 26, 2016, and after their attorneys had an opportunity to view the WBR Agreements, this does not appear to be a bluff. More importantly, this Court must proceed cautiously to preserve the assets of the Estate. If litigation is commenced in New York or California, the exploitation of a substantial portion of the Prince music catalog may be lost for years.

On page 2 of Comerica Bank & Trust, N.A.'s Reply Memorandum filed June 9, 2017, the Estate sets forth the factual reality it faces when it has to consider whether the rescission of the UMG Agreement is in the best interest of the Estate. The Court must reluctantly accept this reasoning. The Estate further points out that, under the UMG Agreement, if the Estate were unsuccessful in litigation and the UMG Agreement was ultimately voided, the Estate could be held liable for extensive attorneys' fees and costs over and above the distribution advances.

The Court also needs to address the issue of whether the UMG Agreement can be preserved through the application of Paragraph 1.8 of the Agreement. That paragraph provides generally that if the Estate is not able to deliver due to rights claimed by a third party, the Estate can elect to return 110% of all Distribution Advances and other costs previously paid by Universal with respect

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to the applicable Label Product, and the term with respect to such Label Product shall be deemed terminated.

This paragraph has been interpreted by counsel for some of the parties to allow the Estate and UMG to parse out the value of the UMG Agreement which purportedly overlaps with the WBR Agreements, allow the Estate to return 110% of that value to UMG, and permit the parties to move forward with the remainder of the UMG Agreement. The Court does not believe that this is a viable manner of proceeding for the following reasons:

(1) UMG has argued that the UMG Agreement was consummated as a result of fraudulent misrepresentation or mutual mistake. If this were proven, UMG argues, the Agreement would be void *ab initio* and Paragraph 1.8 would not serve as a remedy.

(2) UMG argues the Paragraph 1.8 is not intended to serve as a mechanism to preserve the larger contract by allowing the Estate to return funds to UMG for rights to music that the Estate could not convey. Rather, UMG argues that this clause addresses the allocation of consideration between Prince Rogers Nelson (now his Estate) and NPG records.

(3) If Paragraph 1.8 would be read to allow the Estate to return the value of music rights that are alleged to overlap with the WBR Agreements, there is no provision in the UMG Agreement as to what that value might be. The UMG Agreement does have a provision requiring the parties to meet and confer and to try to resolve disagreements. However, there is no provision for arbitration of the dispute, thus leaving the matter open for protracted and expensive litigation even if Paragraph 1.8 was implemented as a remedy.

(4) This Court has no authority to resolve these arguments or disputes as they must be addressed in the State of California. Therefore, a declaration by this Court that Paragraph 1.8 provides a mechanism for the severability of the UMG Agreement upon the return of certain funds by the Estate would be meaningless to the parties.

As previously noted, this Court believes that the Estate must proceed in a cautious manner to preserve the assets of the Estate. While the rescission of the UMG Agreement may certainly be seen as proceeding with a lack of caution, the Court believes that the other option of long and potentially expensive litigation while tying up the music rights owned by the Estate makes the other option more treacherous.

K.W.E.

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EXHIBIT I

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:

Estate of Prince Rogers Nelson,

Deceased.

and

Tyka Nelson,

Petitioner.

Court File No. 10-PR-16-46
Honorable Kevin W. Eide

ORDER APPOINTING SECOND SPECIAL ADMINISTRATOR

The above-entitled matter came before the undersigned regarding the appointment of a special administrator to investigate the circumstances under which the Estate of Prince Rogers Nelson ("Estate") entered into the Exclusive Distribution and License Agreement dated January 31, 2017, between the Estate and NPG Records, Inc., on the one hand, and UMG Recordings, Inc. ("UMG"), on the other (the "UMG Agreement"). The Court held a telephone conference on July 28, 2017 with counsel for: (1) the personal representative Comerica Bank & Trust, N.A. ("Comerica"); (2) the former special administrator, Bremer Trust, N.A. ("Bremer"); (3) Tyka Nelson, Omarr Baker, Alfred Jackson, Sharon Nelson, Norrine Nelson, and John Nelson (collectively, the "Heirs"); (4) L. Londell McMillan/Northstar Enterprises Worldwide, Inc.; (5) and Charles Koppelman/CAK Entertainment, Inc. During the telephone conference, the Court set a deadline of August 4, 2017 for the parties to submit filings regarding the scope of the special administrator's appointment, and a deadline of August 8, 2017 for responses to those filings.

The Personal Representative cannot or should not act to investigate the circumstances leading to the rescission of the UMG Agreement due in part to its Common Interest Agreement with the former Special Administrator.

Therefore, pursuant to Minnesota Statutes Section 524.3-614(2), the Court appoints a Second Special Administrator as follows:

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ORDER

1. Peter J. Gleekel and the law firm Larson King, LLP is hereby appointed the Second Special Administrator of Decedent's estate. Pursuant to Minn. Stat. §524.3-617, the Second Special Administrator 's authority is limited to performing the following:

   a) Conducting an independent examination of the facts, circumstances and events relating to the rescission of the UMG Agreement including, but not limited to, the negotiations and considerations in respect of the UMG Agreement and all those persons and entities involved and/or aware of said negotiations and determining whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the rescission;

   b) Analyze and report in writing to the undersigned with respect to whether pursuing any such claim(s) related to the rescission of the UMG Agreement is in the best interest of the Estate, considering factors including, but not limited to:

      i. The strength of the evidence supporting any such claims and the likelihood of success on the merits;

      ii. The potential damages that could be recovered on any such claims;

      iii. The cost of pursuing any such claims (attorneys' fees plus other direct financial costs of the lawsuit);

      iv. The opportunity cost of pursuing any such claims (any potential revenue or opportunities that the Estate would forego);

      v. Any other impact on the Estate in pursuing any such claims (for example, harm to Prince's brand, harm to the Estate's relationship with current or potential entertainment partners, impact on willingness of other entities to do future business with Estate, increased tension or disagreement among Heirs); and

      vi. The policy implications for this Estate, or other estates, of prosecuting a claim against the person or entity and whether that improperly incentivizes claims on future transactions.

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c) The Second Special Administrator shall conduct its investigation privately, being mindful of the expense to the Estate of conducting the investigation, and shall have complete independence in conducting the investigation and may undertake those actions it believes in good faith are appropriate to perform the investigation. The Second Special Administrator's power and authority to gather facts and evidence from individual witnesses and obtain documents shall be consistent with the powers of a general personal representative. To the extent that the Second Special Administrator determines the need for additional grants of powers to effectuate the duties described herein, he shall seek such additional specific grants of powers from the Court.

d) The Second Special Administrator shall have the power to compel and take evidence from parties and non-parties and, if deemed appropriate, retain an expert(s). The Second Special Administrator shall keep track of all documents it reviews, individuals it interviews, and any other information it considers.

e) Within the constraints of this Order and Minnesota law, the Second Special Administrator has flexibility to devise an efficient investigation.

2. The Second Special Administrator shall endeavor to complete the report mentioned in paragraph 1(b) and submit it to the undersigned under seal by December 15, 2017.

3. The Court expects all parties to this matter, especially those interested parties who participated in the motion regarding rescinding the UMG Agreement including their agents and experts, to cooperate with the Second Special Administrator's investigation and requests for access to documents and witnesses.

4. If the report finds that the pursuit of any such claim is in the best interest of the Estate, and this Court approves the pursuit of that claim, the Second Special Administrator's appointment may be expanded by order to include prosecution of the claim.

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5. Alternatively, if the report concludes that there is no reasonable basis for claims relating to the rescission of the UMG Agreement, or that it is in the best interest of the Estate not to pursue any reasonable claim that exists, the Court will decide whether to accept that recommendation.

6. Any objections to the Second Special Administrator based on conflict of interest or competence must be filed under seal within 7 days of this Order.

7. The Second Special Administrator shall submit its fees and costs directly to the Court for approval on a monthly basis. The Second Special Administrator shall provisionally be entitled to receive compensation at a rate of $430 per hour for Peter Gleekel, $400 per hour for Patrick H. O'Neill, Jr., and the rate of $200 per hour for associates working with them. When submitting the Special Administrator Fee Affidavit, the Second Special Administrator shall serve unredacted copies to counsel for Comerica and the Heirs (redacting only those items necessary to preserve the attorney-client privilege and work-product doctrine). The Court shall conduct an initial review and may provisionally approve Comerica's payment of the submitted fees and costs. Comerica and the Heirs shall have 14 days after service to submit written objections. The Court will consider all submissions made by the parties and will order the Second Special Administrator to reimburse the Estate in an amount that the Court determines to be reasonable and appropriate if the Court believes that there was an overpayment of compensation, attorneys' fees, costs, or expenses. Comerica and the Heirs shall maintain the confidentiality of the Second Special Administrator Fee Affidavits and all associated filings, and any submission of unredacted billing statements or supporting details to the Court, Comerica, or the Heirs shall not be deemed to constitute a waiver of confidentiality, the attorney-client privilege, or work product doctrine.

8. The Second Special Administrator shall not be required to post a bond.

9. The appointment of the Special Administrator, unless extended by further order of this Court, shall terminate on December 31, 2017.

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BY THE COURT:

Dated: August 16, 2017

Kevin W. Eide
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

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EXHIBIT N

10-PR-16-46

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT
PROBATE DIVISION
FIRST JUDICIAL DISTRICT

In Re:

Estate of Prince Rogers Nelson,
Decedent.

Court File No. 10-PR-16-46

ORDER EXPANDING AUTHORITY OF THE SECOND SPECIAL ADMINISTRATOR

The above-entitled matter came before the undersigned pursuant to the Motion to Expand the Authority of the Second Special Administrator brought by Omarr Baker, heir in the Estate of Prince Rogers Nelson (the "Estate").

On January 20, 2017, this Court held that Bremer Trust, N.A. would cease to serve as Special Administrator of the Estate after January 31, 2017. (*See* Order for Transition from Special Administrator to Personal Representative, filed Jan. 20, 2017, p. 1.) The Order for Transition mandated the Personal Representative and the Special Administrator to enter into a Common Interest Agreement. (*Id.*, p. 3.) This Court approved the Common Interest Agreement and stated that as a condition of the transfer from Special Administrator to Personal Representative, the two entities cannot be adverse to each other:

> As a result of the Common Interest Agreement, Bremer Trust, Patrick A. Mazorol, and Stinson Leonard Street, LLP, on the one hand, and Comerica and Fredrikson & Byron, P.A., on the other hand, cannot, at any time, be adverse to each other in connection with this Estate.

(*Id.*, p. 4 ¶ 9) (emphasis added.) The Personal Representative and the Special Administrator signed the court-approved Common Interest Agreement.

On April 5, 2017, the Court directed the Personal Representative to "investigate and make an informed decision regarding whether any action should be pursued for the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents." (Order Granting Special Administrator's Request to Approve Payment of Special Administrator's and Attorneys' Fees and Costs through January 31, 2017 and Final Accounts and Inventory, dated April 5, 2017 at p. 5.)

On August 21, 2017, the Court appointed Peter J. Gleekel and the law firm Larson King, LLP (the "Second Special Administrator") pursuant to Minn. Stat. §§ 524.3-614(2) and 524.3-617. As the Court found in its order dated August 21, 2017, "[t]he Personal Representative cannot or should not act to investigate the circumstances leading to the rescission of the UMG Agreement

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due in part to its Common Interest Agreement with the former Special Administrator." (*See* Order Appointing Special Administrator, dated Aug. 21, 2017, at p. 1.) Therefore, the Court appointed the Second Special Administrator to investigate the circumstances leading to the rescission of the UMG Agreement.

As with the investigation regarding the rescission of the UMG Agreement, pursuant to the Common Interest Agreement, the Personal Representative cannot and should not act to investigate and make an informed decision regarding whether any action should be pursued for the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents.

Therefore, pursuant to Minnesota Statutes Section 524.3-614(2), the Court expands the authority of the Second Special Administrator as follows:

ORDER

1. The authority Peter J. Gleekel and the law firm Larson King, LLP as the Second Special Administrator of Decedent's estate is expanded, pursuant to Minn. Stat. §524.3-617, to include the following:

    a. Conducting an independent examination and making an informed decision regarding whether any action should be pursued for the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents; and determining whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the Jobu Presents agreement;

    b. Analyze and report in writing to the undersigned with respect to whether pursuing any such claim(s) related to the Jobu Presents agreement is in the best interest of the Estate, considering factors including, but not limited to:

        i. The strength of the evidence supporting any such claims and the likelihood of success on the merits;

        ii. The potential damages that could be recovered on any such claims;

        iii. The cost of pursuing any such claims (attorneys' fees plus other direct financial costs of the lawsuit);

        iv. The opportunity cost of pursuing any such claims (any potential revenue or opportunities that the Estate would forego);

        v. Any other impact on the Estate in pursuing any such claims (for example,

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harm to Prince's brand, harm to the Estate's relationship with current or potential entertainment partners, impact on willingness of other entities to do future business with Estate, increased tension or disagreement among Heirs); and

vi. The policy implications for this Estate, or other estates, of prosecuting a claim against the person or entity and whether that improperly incentivizes claims on future transactions.

c. The Second Special Administrator shall conduct its investigation privately, being mindful of the expense to the Estate of conducting the investigation, and shall have complete independence in conducting the investigation and may undertake those actions it believes in good faith are appropriate to perform the investigation. The Second Special Administrator's power and authority to gather facts and evidence from individual witnesses and obtain documents shall be consistent with the powers of a general personal representative. To the extent that the Second Special Administrator determines the need for additional grants of powers to effectuate the duties described herein, he shall seek such additional specific grants of powers from the Court.

d. The Second Special Administrator shall have the power, if deemed appropriate, to retain an expert(s). The Second Special Administrator shall keep track of all documents it reviews, individuals it interviews, and any other information it considers.

e. Within the constraints of this Order and Minnesota law, the Second Special Administrator has flexibility to devise an efficient investigation.

2. The Second Special Administrator shall endeavor to complete the report mentioned in paragraph 1(b) and submit it to the undersigned under seal by April 2, 2018.

3. The Court expects all parties to this matter, especially those interested parties who participated in hearings before the Court regarding the Jobu Presents agreement including their agents and experts, to cooperate with the Second Special Administrator's investigation and requests for access to documents and witnesses.

4. If the report finds that the pursuit of any such claim is in the best interest of the Estate, and this Court approves the pursuit of that claim, the Second Special Administrator's appointment may be expanded by order to include prosecution of the claim.

5. Alternatively, if the report concludes that there is no reasonable basis for claims relating to the Jobu Presents agreement, or that it is in the best interest of the Estate not to pursue any

10-PR-16-46

reasonable claim that exists, the Court will decide whether to accept that recommendation.

6. Any objections to the Second Special Administrator based on conflict of interest or competence must be filed under seal within 7 days of this Order.

7. The Second Special Administrator shall submit its fees and costs directly to the Court for approval on a monthly basis. The Second Special Administrator shall provisionally be entitled to receive compensation at a rate of $430 per hour for Peter Gleekel, $400 per hour for Patrick H. O'Neill, Jr., and the rate of $200 per hour for associates working with them. When submitting the Special Administrator Fee Affidavit, the Second Special Administrator shall serve unredacted copies to counsel for Comerica and the Heirs (redacting only those items necessary to preserve the attorney-client privilege and work-product doctrine). The Court shall conduct an initial review and may provisionally approve Comerica's payment of the submitted fees and costs. Comerica and the Heirs shall have 14 days after service to submit written objections. The Court will consider all submissions made by the parties and will order the Second Special Administrator to reimburse the Estate in an amount that the Court determines to be reasonable and appropriate if the Court believes that there was an overpayment of compensation, attorneys' fees, costs, or expenses. Comerica and the Heirs shall maintain the confidentiality of the Second Special Administrator Fee Affidavits and all associated filings, and any submission of unredacted billing statements or supporting details to the Court, Comerica, or the Heirs shall not be deemed to constitute a waiver of confidentiality, the attorney-client privilege, or work product doctrine.

8. The Second Special Administrator shall not be required to post a bond.

9. The appointment of the Special Administrator, unless extended by further order of this Court, shall terminate on April 30, 2018.

10. Other than to expand the authority of the Special Administrator as detailed above, nothing in the above Order supersedes or otherwise eliminates the Court's order dated August 21, 2017 regarding the Second Special Administrator.

Eide, Kevin
Kevin W. Eide 2018.02.02
14:58:27 -06'00'

Dated: February 2, 2018

Kevin W. Eide
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

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State of Minnesota
9/24/2018 9:53 PM

EXHIBIT P

10-PR-16-46

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re: Estate of:

Prince Rogers Nelson,

Deceased.

Court File No. 10-PR-16-46

ORDER FOR HEARING

The Court has received the reports of the Second Special Administrator filed December 15, 2017 and May 15, 2018. Those reports make various recommendations which would be best addressed by an in-person hearing. Therefore, the Court makes the following:

ORDER

1. The recommendations stemming from the Second Special Administrator's Reports filed December 15, 2017 and May 15, 2018 shall be heard on June 14, 2018, beginning at 10:00 a.m.

BY THE COURT:

Eide, Kevin
Kevin W. Eide 2018.05.25
16:17:49 -05'00'

Date: May 25, 2018

Kevin W. Eide
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

Filed in District Court
State of Minnesota
9/24/2018 9:53 PM

EXHIBIT Q

10-PR-16-46

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Estate of Prince Rogers Nelson,

Decedent.

Court File No. 10-PR-16-46
Judge Kevin W. Eide

ORDER & MEMORANDUM APPROVING LITIGATION

The above-entitled matter came on before the undersigned on June 14, 2018, to address recommendations stemming from the Second Special Administrator's Reports filed December 15, 2017 and May 15, 2018. Appearances were noted on the record.

Based on the Second Special Administrator's Reports, the arguments of counsel, and all of the files, records, and proceedings herein, the Court makes the following:

ORDER

1. The Second Special Administrator is authorized to pursue, on behalf of the Estate, all claims recommended in its reports filed December 15, 2017 and May 15, 2018.

2. This authorization is contingent upon the negotiation of a satisfactory fee agreement between the Second Special Administrator and the Estate, and final approval of the Court.

3. The Second Special Administrator shall withdraw from pursuing any claims where it may become advisable to do so in the best interest of the Estate.

4. Any expansion of claims to be pursued by the Second Special Administrator, either through causes of action not addressed in the reports or against parties not identified in the reports, shall be subject to prior authorization of the Court.

BY THE COURT:

Eide, Kevin
2018.06.14 15:15:00 -05'00'

Dated: June 14, 2018

Kevin W. Eide
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

10-PR-16-46

MEMORANDUM

The Court and the Heirs are relying significantly on the analysis of the causes of action set forth in the Reports of the Second Special Administrator dated December 15, 2017 and May 15, 2018. This Court has a fiduciary duty to the Estate to attempt to preserve the assets and to pursue claims of wrongdoing against the Estate. While all litigation is fraught with uncertainty, the Court has requested and paid for an extensive analysis of the legal claims that may be brought on behalf of the Estate and any counterclaims that may be brought against it. The Second Special Administrator has informed the Court that a straight contingent fee arrangement will not be possible but that the retainer agreement could provide some terms that would limit the liability of the Estate if a claim is unsuccessful. The Court hopes that an agreement to proceed in this manner can be negotiated.

K.W.E.

Filed in District Court
State of Minnesota
9/24/2018 9:53 PM

EXHIBIT Z

10-PR-16-46

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ADMITTED IN MINNESOTA,
U.S. DISTRICT COURT OF MN
8TH CIRCUIT COURT OF APPEALS

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September 14, 2018

BY E-FILING

The Honorable Kevin W. Eide
Judge of the District Court
Carver County Justice Center
604 East Fourth Street
Chaska, MN 55318

Re: *In re Estate of Prince Rogers Nelson*, Court File No. 10-PR-16-46

Dear Judge Eide:

We write on behalf of CAK Entertainment, Inc. and Charles Koppelman (together, "CAK") to respectfully request an adjournment, until after a forthcoming mediation among the parties, of the hearings, currently scheduled for October 2, 2018, on: (i) the August 2, 2018 motion (the "Fee Motion") filed by the Second Special Administrator ("SSA") on behalf of the Estate of Prince Rogers Nelson (the "Estate"), seeking an order for the return of purportedly "excessive compensation"; and (ii) CAK's September 12, 2018 motion seeking an order recusing Your Honor from considering the Fee Motion (the "Recusal Motion," and together with the Fee Motion, the "Motions").[1]

When the SSA scheduled the hearing for the Fee Motion, the Estate and CAK, among others, were in the process of scheduling a mediation to potentially resolve all of the disputes addressed in the SSA's December 15, 2017 Report and Recommendation Concerning the Rescission of the Universal Music Group Agreement and May 15, 2018 Report and Recommendation of the Second Special Administrator Concerning the Jobu Presents Agreement,

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[1] When counsel for CAK called Your Honor's chambers to schedule a hearing date for the Recusal Motion, counsel and Your Honor's clerk discussed whether the Recusal Motion should be brought in front of Your Honor or Chief Judge Messerich. Your Honor's clerk informed counsel for CAK that Chief Judge Messerich advised that the Recusal Motion should be brought in front of Your Honor in the first instance. Thus, CAK noticed the Recusal Motion for October 2 before Your Honor.

10-PR-16-46

as required by the June 16, 2016 Advisor Agreement.[2] The mediation has now been scheduled, and will go forward on October 16 and 17.

Given that a mediation will take place in mid-October and could potentially moot the Motions, CAK believes that it would be in the interest of all parties to postpone the hearing and consideration of the Motions until after the mediation has been completed. The mediation will provide the parties the opportunity to resolve their disputes in a mutually acceptable manner, and if they do so, all parties, including the Estate, would avoid incurring significant and unnecessary costs associated with the Motions. Similarly, if the mediation is successful, the Court would also not be burdened with hearing and deciding the Motions.

Indeed, because, as noted, the Advisor Agreement requires that "all disputes" between the Estate and CAK "first be subject to non-binding mediation," the filing of the SSA Motion -- and any hearing concerning that motion -- prior to the completion of the scheduled mediation is a breach of the Advisor Agreement by the Estate. As CAK has advised the SSA, CAK intends to seek to recover from the Estate its costs in connection with the Fee Motion as a result of the Estate's breach of the agreement. Therefore, adjourning the hearings on the Motions would have the added benefit of reducing the amount of damages CAK suffers as a result of the Estate's breach of the Advisor Agreement since CAK would not have to incur costs in opposing the Fee Motion and attending the hearing prior to the mediation.

Further, whether or not both of the Motions are adjourned until after the upcoming mediation, CAK also requests that the hearing on the Fee Motion be adjourned until after the Recusal Motion has been decided, and, if necessary, all of CAK's appeals have been exhausted. Given the issues raised in the Recusal Motion, CAK believes that it would be most efficient to resolve that motion and any appeals before Your Honor is burdened with hearing and deciding the Fee Motion.

Accordingly, CAK respectfully requests that the Court (i) adjourn the hearing date for both of the Motions until a date after the parties complete their contractually-required mediation (which is scheduled for October 16-17); and (ii) at a minimum, adjourn the hearing date for the Fee Motion until after the Recusal Motion is decided and any appeals thereof are exhausted.

---

[2] Section 15(f) of the Advisor Agreement provides in relevant part that "all disputes pursuant to this Agreement shall first be subject to non-binding mediation." Contrary to the SSA's prior assertions to counsel for CAK, the Fee Motion is indisputably subject to the requirement to mediate, as it concerns a dispute regarding compensation paid and received pursuant to the Advisor Agreement.

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BERENS & MILLER, P.A.

We advised the SSA, L. Londell McMillan, and counsel to NorthStar Enterprises Worldwide, Inc. ("NorthStar") of our intent to make this request for adjournment. Mr. McMillan and counsel for NorthStar consent to the request, and the SSA does not consent to the request.

Thank you for the Court's consideration of this request. We are available to discuss these or any other issues at the Court's convenience.

Very truly yours,

Erin K. F. Lisle

Erin K. F. Lisle

EKL:nam

cc: Peter J. Gleekel, Esq.
Alan I. Silver, Esq.
L. Londell McMillan, Esq.
Barbara P. Berens, Esq.
Erin K. F. Lisle, Esq.

Filed in District Court
State of Minnesota
9/24/2018 9:53 PM

EXHIBIT AA

10-PR-16-46

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ADMITTED IN MINNESOTA,
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8TH CIRCUIT COURT OF APPEALS

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August 28, 2018

By Electronic Filing

The Honorable Kevin E. Eide
Carvery County Courthouse
604 E. Fourth Street
Chaska, MN 55318

Re: In the Matter of the Estate of Prince Rogers Nelson, Court File No. 10-PR-16-46

Dear Judge Eide:

We write on behalf of CAK Entertainment, Inc. ("CAK") concerning the August 2, 2018 Notice of Motion and Motion (the "Motion") filed by the Second Special Administrator ("SSA") on behalf of the Estate of Prince Rogers Nelson (the "Estate"). As the Court is aware, the Motion seeks an order, pursuant to Minnesota Statute Section 524.3-721 (the "Statute"), directing CAK and NorthStar Enterprises Worldwide, Inc. ("NorthStar," and, together with CAK, the "Advisors") "to refund excessive compensation" purportedly received "related to the Jobu Presents and UMG transactions." Motion at 1. As set forth in more detail below, given Your Honor's prior recusal from the Jobu Litigation (defined below), CAK respectfully requests that Your Honor recuse himself from considering the Motion pursuant to Minnesota Rule of Civil Procedure 63 and Minnesota General Rule of Practice for the District Courts 106 (the "Minnesota Rules").[1]

In the Court's May 22, 2018 Order for Recusal & Reassignment (the "Recusal Order"), Your Honor recused himself from considering the separate litigation captioned *Jobu Presents, LLC v. CAK Entertainment, Inc., et al.*, Court File No. 10-CV-17-368 (the "Jobu Litigation"). The Court explained that it "d[id] not believe it can listen to the arguments advanced in connection with [the Jobu Litigation] without concern that its decisions might be perceived as clouded by the information" that the Court already had reviewed as part of the SSA's May 15, 2018 Report and Recommendation of the Second Special Administrator Concerning the Jobu Presents Agreement (the "Jobu Report"). (Recusal Order at 1.) We believe the very same reasoning applies here in connection with the Motion.

As reflected in the Jobu Report and the SSA's December 15, 2017 Report and Recommendation Concerning the Rescission of the Universal Music Group Agreement (the

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[1] The Motion is an improper use of the Statute and a breach by the Estate of the June 16, 2016 Advisor Agreement between the Advisors and the Estate. As a result, CAK demanded that the SSA withdraw the Motion, or CAK would seek to recover from the Estate its costs and fees for responding to the Motion as a result of the breach of the Advisor Agreement. The SSA refused to withdraw the Motion, and CAK reserves its rights to seek costs from the Estate.

10-PR-16-46

"UMG Report" and, together with the Jobu Report, the "SSA Reports"), the SSA has taken the position that the Advisors received compensation in connection with their work for the Estate that the SSA alleges the Advisors are not entitled to retain -- and that the Advisors are liable to the Estate for purported damages -- as a result of alleged breaches by the Advisors of the Advisor Agreement and purported fiduciary duties owed by the Advisors to the Estate.[2] Although the SSA has not served its legal memorandum in support of the Motion yet, the Motion -- which seeks an order directing the Advisors to return to the Estate the very same compensation addressed in the SSA Reports -- is undoubtedly based on the purported facts and allegations contained in the SSA Reports. Therefore, for the same reasons Your Honor recused himself from the Jobu Litigation, CAK believes that Your Honor should recuse himself from consideration of all aspects of the Motion.

Specifically, the SSA Reports include lengthy factual recitations and legal arguments concerning the facts and circumstances related to the "Jobu Presents and UMG transactions," Motion at 1, and thus the same concern set forth in the Recusal Order concerning Your Honor's familiarity with the purported facts and allegations in the SSA Reports applies equally here. Indeed, not only has the Court reviewed and considered the SSA Reports, it is CAK's understanding that the Court has also had communications with the SSA (and potentially others) without the Advisors being present concerning the facts, allegations, and recommended claims included in the SSA Reports. While CAK is not suggesting that there was anything improper about those *ex parte* communications, the fact that such discussions have taken place without the Advisors further confirms the need for recusal here. Accordingly, CAK respectfully submits that Your Honor should recuse himself from consideration of the Motion pursuant to the Minnesota Rules.

Thank you for your consideration of these issues. The SSA has advised CAK that the SSA does not agree that Your Honor should rescues himself from consideration of the Motion. We are available to discuss these or any other issues at the Court's convenience.

Very truly yours,

Erin K. F. Lisle

cc: Parties via E-Serve

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2 CAK disputes all of the allegations against the Advisors set forth in the SSA Reports.

Filed in District Court
State of Minnesota
9/24/2018 9:53 PM

EXHIBIT BB

10-PR-16-46

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Estate of Prince Rogers Nelson,

Decedent.

Court File No. 10-PR-16-46

ORDER DENYING REQUEST FOR RECUSAL

The above-entitled matter came on before the undersigned on August 31, 2018 based upon written submissions. By letter dated August 28, 2018, counsel for CAK Entertainment, Inc. ("CAK") requests that this Court recuse itself from considering a motion filed by the Second Special Administrator ("SSA") seeking a refund of alleged "excessive compensation" relating to two transactions involving Jobu Presents and Universal Music Group ("UMG"). On August 30, 2018, the SSA filed a letter memorandum in opposition to CAK's request.

Based on the submissions of the parties, the arguments of counsel, and all of the files, records and proceedings herein, the Court makes the following:

ORDER

Counsel for CAK Entertainment, Inc.'s request that this Court recuse itself from considering the motion filed by the Second Special Administrator ("SSA") seeking a refund of alleged "excessive compensation" relating to the Jobu Presents and UMG transactions is respectfully DENIED.

BY THE COURT:

Eide, Kevin
2018.08.31 11:15:41 -05'00'

Dated: August 31, 2018

Kevin W. Eide
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

10-PR-16-46

MEMORANDUM

On August 21, 2017, the Court appointed the SSA to conduct an independent examination of the facts, circumstances and events relating to the rescission of the Estate's agreement with UMG, and to analyze and report to the Court whether pursuing any claim(s) related to the rescission of the UMG agreement would be in the best interest of the Estate. On February 2, 2018, the Court expanded the authority of the SSA to conduct an independent examination and make recommendations regarding whether any action should be pursued for return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, or whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the Jobu Presents agreement. After a hearing and upon receipt and consideration of the SSA's reports filed December 15, 2017 and May 15, 2018, the Court issued its Order & Memorandum Approving Litigation filed June 14, 2018, authorizing the SSA to pursue, on behalf of the Estate, all claims recommended in its reports.

On August 2, 2018 the SSA filed a Notice of Motion and Motion for an Order directing the former Estate Entertainment Advisors NorthStar Enterprises Worldwide, Inc. (providing the services of L. Londell McMillan) and CAK Entertainment, Inc. (providing the services of Charles Koppelman) to refund excessive compensation received related to the Jobu Presents and UMG transactions. That motion is scheduled to be heard before the undersigned on October 2, 2018.

Counsel for CAK are now before the Court asking that the Court recuse itself for the same reasons it did so in connection with the civil litigation between Jobu Presents and CAK in Court File 10-CV-17-368. In its Order for Recusal and Reassignment of the Jobu litigation filed May 22, 2018, the Court stated, "This Court does not believe it can listen to the arguments advanced in connection with this proceeding without concern that its decisions might be perceived as clouded by the information contained within the SSA's report." CAK argues the same reasoning applies to the SSA's current motion.

In recusing itself from the litigation between Jobu Presents and CAK, the Court was most concerned with the possible appearance of bias based upon its knowledge of the contents of the SSA's reports which, at least at that point, were not part of the record in the civil matter. Those reports are part of the record in this matter. In addition, all of the relevant parties have been under

10-PR-16-46

the jurisdiction of the Court throughout the entire relevant period. Such is not the case with the Jobu civil proceeding.

This Court has been integrally involved in this Estate matter, including appointing Bremer Trust as Special Administrator on May 2, 2016; appointing Bremer's advisors, CAK/Koppelman and NorthStar/McMillan, on June 8, 2016; approving the UMG agreement on January 31, 2017; and approving the rescission of the UMG agreement on July 13, 2017. If there was a fraud upon the Court, or a violation of a fiduciary duty, it was a fraud or a violation of a duty on this Court. In a case of contempt, the contemnor is sanctioned by the judge before whom the contempt occurred—he or she is not entitled to a hearing before another judge. If the advisors are alleged to have been overcompensated for their work on behalf of the Estate, this Court is uniquely qualified to rule on that motion. As a result, the CAK's request that the Court recuse itself from consideration of the SSA's motion is respectfully DENIED.

Though denying CAK's request, the Court acknowledges there is a certain interplay between the SSA's motion and the Jobu Presents litigation. If the Court does order a return of the advisors' compensation relating to the Jobu matter, it would be the Court's intent to order that the fees be held in escrow until the end of the civil trial to make sure there are not inconsistent results.

K.W.E.

Filed in District Court
State of Minnesota
9/24/2018 9:53 PM

EXHIBIT CC

10-PR-16-46

LARSON • KING

PETER J. GLEEKEL
Direct Dial: 651-312-6555
E-Mail: pgleekel@larsonking.com

September 19, 2018

VIA E-FILE

Honorable Kevin W. Eide
District Court Judge
Carver County District Court
604 East Fourth Street
Chaska, Minnesota 55318

Re: Estate of Prince Rogers Nelson
Court File No.: 10-PR-16-46

Your Honor:

We write in our capacity as the Second Special Administrator ("SSA") to the Estate of Prince Rogers Nelson (the "Estate"). On behalf of the Estate, we object to the request of CAK Entertainment, Inc. and Charles Koppelman that Your Honor adjourn the October 2, 2018 motion that we filed seeking an Order for the return of the excessive compensation paid to the former Advisors, CAK Entertainment, Inc. and NorthStar Enterprises Worldwide, Inc.

We do not believe that it would be in the best interests of the Estate to postpone the hearing on the motion for the return of the excess compensation paid to the Advisors until after the mediation. While it is conceivable that mediation may moot the motion, given the number of parties and posturing that has occurred to date, we are not particularly optimistic that the claims of the Estate will be settled in mediation in acceptable amounts to the Estate, subject of course to Court approval.

The mediation is taking place in mid-October to comply with a provision in the Advisor Agreement requiring pre-suit mediation. The motion is not brought to address a dispute under the Advisor Agreement. The position taken by CAK that the bringing of the motion violates the Advisor Agreement, and the position articulated by CAK in earlier letters to us that the compensation received by the Advisors has already been approved by Your Honor are wrong.

The Advisor Agreement does not govern the reasonableness of compensation received by those performing services for the Estate such as the Advisors. The Advisor Agreement formed a contractual relationship between the Advisors and the Estate that permitted the Advisors to retain

10-PR-16-46

a certain percentage of revenue generated for the Estate as compensation for their services in monetizing assets. Through the Advisor Agreement, the Advisors recognized and agreed that "the power of the Administrator is limited by laws applicable to the Special Administration as well as orders of the Court." That is, the subject matter of the Agreement (e.g., compensation) was at all times subject to Court oversight; the Estate could not agree to something in contravention of the Probate Code. As dictated by statute, the reasonableness of compensation is within the discretion of this Court, not pursuant to any contractual agreement between the Estate and those acting on behalf of the Estate such as the Advisors. As long as jurisdiction exists, this Probate Court retains the power and discretion to determine the reasonableness of compensation and may direct refunds where necessary. Minn. Stat. § 524.3-721. Thus, the assertion that the Estate must first mediate is a misapprehension of the basis upon which the motion rests; it is statutory, not contractual.

Second, this Probate Court has not approved the Advisors' compensation for the failed Jobu and UMG transactions. While the Court approved the Advisor Agreement at the onset and the methodology by which compensation to the Advisors was to be calculated, the Court did not cede its power to order refund of "[a]ny person who has received excess compensation from the Estate" as long as the Court retains jurisdiction over the Estate. That this Court has not yet ordered CAK and/or NorthStar to retain excessive compensation received as part of the failed Jobu and UMG transactions, is not tacit approval of the reasonableness of their compensation with respect to the two transactions.

The Advisors have also earlier argued that a refund of any fees in respect of the UMG and/or Jobu failed transactions may be a collateral source for any relief obtained in the Estate's claims against Jobu and the Advisors and/or the Estate's claims arising out of the rescinded UMG Agreement. The argument does not undermine the basis upon which the motion is brought. The Advisors appear to continually misapprehend the distinction between the statutory power of a court and a cause of action. The motion for refund of fees is permitted by the Legislature and in the discretion of this Probate Court. It is not a cause of action for breach of contract or breach of fiduciary duty as the Advisors have suggested in earlier correspondence to us.

Finally, we assume the Advisors' request that the Court also adjourn their motion seeking an order recusing Your Honor from considering the motion for an order requiring the Advisors to refund excessive fees is moot in light of Your Honor's directive that all parties file any written arguments on the issue by September 21, 2018.

10-PR-16-46

Thank you for your time and attention.

Sincerely,

s/ Peter J. Gleekel

Peter J. Gleekel

PJG/jh

1744948

cc: Erin Lisle *(via e-file)*
Barbara Berens *(via email)*
Al Silver *(via e-file)*
L. Londell McMillan *(via email)*
Ken David *(via email)*
Justin Bruntjen *(via e-file)*
Tyka Nelson *(via U.S. Mail)*
Sharon Nelson *(via U.S. Mail)*
Norrine Nelson *(via e-file)*
John Nelson *(via e-file)*
Omarr Baker *(via e-file)*

Filed in District Court
State of Minnesota
9/24/2018 9:53 PM

EXHIBIT EE

2012 WL 2368896
Only the Westlaw citation is currently available.

Court of Appeals of Minnesota.

WRITING ASSISTANCE, INC., Respondent,
v.
AXIOM SOLUTIONS, LLP, et al., Appellants.

No. A11–1749.
|
June 25, 2012.

Hennepin County District Court, File No. 27–CV–11–3133.

Attorneys and Law Firms

Kevin D. Hofman, Natalie Wyatt–Brown, Halleland Habicht PA, Minneapolis, MN, for respondent.

Charles J. Schoenwetter, Roshan N. Rajkumar, Bowman and Brooke LLP, Minneapolis, MN, for appellants.

Considered and decided by CLEARY, Presiding Judge; STAUBER, Judge; and COLLINS, Judge. *

UNPUBLISHED OPINION

CLEARY, Judge.

***1** Appellants Axiom Solutions, Frank Saya, and Larry Nealy challenge a district court order granting summary judgment against them. Appellants argue that the breach-of-contract claim of respondent Writing Assistance against Axiom should have been submitted to mediation and arbitration and that respondent's breach-of-contract claim against Saya and Nealy should have been stayed pending that mediation and arbitration. Appellants also argue that the granting of summary judgment was unfair and violated due process by denying them an opportunity to raise defenses or counterclaims. Respondent has filed a notice of related appeal and challenges the district court's award of costs, disbursements, and attorney fees. We reverse and remand.

FACTS

Axiom is a limited liability partnership that provides tax-credit-consulting services. Saya and Nealy are partners of Axiom. Respondent is a corporation that provides writers to organizations as independent contractors to work on writing projects.

Effective April 5, 2010, respondent and Axiom entered into a consulting services agreement wherein respondent agreed to furnish writers to Axiom for tax-credit projects. This agreement provides that the writers would work on an "[o]ngoing as needed" basis and that Axiom would pay respondent for the writing services pursuant to specified compensation rates. The agreement contains an arbitration clause which states:

> If a dispute arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the disputes by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. Any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be resolved before a single arbitrator in accordance with binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If all parties to the dispute agree, a mediator involved in the parties' mediation may be asked to serve as the arbitrator.

Axiom fell behind on its payments to respondent, and on July 1, 2010, Saya and Nealy signed a personal guaranty that states:

> In consideration of the performance of services or the extension of credit by [respondent], to or for the benefit of [Axiom] in which the undersigned have a material financial interest, the undersigned, jointly and severely [sic], do hereby personally, unconditionally and irrevocably guarantee to [respondent], its successors or assigns, the prompt payment and performance of all of the obligations of Axiom to [respondent].

The term "obligations" includes "any and all sums now or hereafter due and owing [respondent] whether on open account or evidenced by a writing or other instrument." The personal guaranty is to be a "continuing guaranty which will not be discharged unless and until payment in full of all sums due and owing [respondent]." The personal guaranty provides that respondent "can proceed directly against the undersigned without first proceeding against Axiom." The personal guaranty also states that Saya and Nealy "agreed to pay to [respondent] all cost of collection and enforcement, including, without limitation, reasonable attorney's fees, incurred by [respondent] in enforcing any of the rights against Axiom or the undersigned." Lastly, the personal guaranty declares that "[t]he undersigned consent to the jurisdiction of the state and federal courts located in Hennepin County, State of Minnesota and agree that any dispute or proceedings shall be venued in such Minnesota Courts. The undersigned expressly waive any right to a trial by jury."

***2** Axiom fell behind on its payments to respondent again, and on September 13, 2010, the parties entered into an agreement (payment terms agreement), which states that it "is for the final settlement of payment terms for writing services provided to Axiom by [respondent]." This agreement sets up a payment plan for the outstanding amount Axiom owed to respondent. All of these agreements were drafted by respondent.

Thereafter, respondent filed a complaint against appellants for breach of the payment terms agreement, breach of the personal guaranty, and quantum meruit. Respondent sought a monetary judgment and interest, plus the costs, disbursements, and attorney fees incurred in litigation. Appellants filed a motion to dismiss or, in the alternative, to stay proceedings and compel mediation and/or arbitration. Appellants argued that the parties' entire relationship arose out of the consulting services agreement and, pursuant to that agreement, respondent's claims were required to be mediated and arbitrated, so the district court lacked subject-matter jurisdiction to consider them.

Respondent then filed a motion for summary judgment, claiming that undisputed facts showed that appellants had not paid the amount due to respondent and had therefore breached the payment terms agreement and personal guaranty. Respondent argued that the payment terms agreement and personal guaranty were unambiguous and fully integrated contracts, and that the arbitration clause in the consulting services agreement did not apply to claims arising out of the two later contracts. Respondent also moved for an award of attorney fees and costs. Appellants filed a memorandum in opposition to summary judgment, maintaining that the district court lacked subject-matter jurisdiction over the matter and that the motion for summary judgment was premature because appellants had not yet filed an answer and their motion had not yet been ruled on.

Following a hearing, the district court issued an order that denied appellants' motion to dismiss or stay proceedings and granted respondent's motion for summary judgment. The court determined that the payment terms agreement and personal guaranty "are unambiguous contracts in and of themselves" that altered the arrangements made in the consulting services agreement. Because neither of the later contracts includes an arbitration clause, references arbitration, or incorporates the arbitration clause or any other terms of the consulting services agreement, the court concluded that respondent's claims could be raised in court. The court then determined that appellants had not raised any genuine issue as to their liability under the payment terms agreement and personal guaranty, and awarded respondent judgment against appellants. The court also awarded respondent an amount for costs, disbursements, and attorney fees. This appeal and cross-appeal follow.

DECISION

Appellants argue that the district court erred by denying their motion to dismiss or stay proceedings because

respondent's claim against Axiom was required to be mediated and arbitrated pursuant to the consulting services agreement, and respondent's claim against Saya and Nealy should have been stayed pending mediation and arbitration. Respondent argues that the court properly determined that this dispute was not subject to mediation or arbitration.

***3** The interpretation of a contract is a question of law subject to de novo review. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn.2009). "Determining whether a party has agreed to arbitrate a particular dispute is a matter of contract interpretation." *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn.1995). A district court's determination that the parties did not agree to submit a dispute to arbitration is reviewed de novo. *Id.*

"When considering a motion to compel arbitration, the court's inquiry is limited to (1) whether a valid arbitration agreement exists, and (2) whether the dispute falls within the scope of the arbitration agreement." *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn.App.1993). When evaluating whether parties agreed to arbitrate a particular dispute, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Johnson,* 530 N.W.2d at 795. "Generally, the law favors arbitration because it is recognized as a speedy, informal, and relatively inexpensive procedure for resolving controversies." *Amdahl,* 497 N.W.2d at 322 (quotation omitted).

However, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Johnson,* 530 N.W.2d at 795 (quotation omitted). "[A]rbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration." *Id.* at 795–96. "The party opposing arbitration bears the burden of proving that the dispute is outside the scope of the agreement." *Onvoy, Inc. v. SHAL, LLC,* 669 N.W.2d 344, 349 (Minn.2003).

I. Respondent's claim against Axiom for breach of the payment terms agreement should have been submitted to mediation and, if necessary, arbitration.

The district court determined that respondent's claim against Axiom for breach of the payment terms agreement did not require mediation or arbitration.

> Where several instruments are made as part of one transaction, they will be read together, and each will be construed with reference to the other. This is true, although the instruments do not in terms refer to each other. So if two or more agreements are executed at different times as parts of the same transaction they will be taken and construed together.

Fleisher Eng'g & Constr. Co. v. Winston Bros. Co., 230 Minn. 554, 557, 42 N.W.2d 396, 398 (1950) (quotation omitted); *see also Am. Nat'l Bank of Minn. v. Hous. & Redevelopment Auth. for Brainerd,* 773 N.W.2d 333, 337 (Minn.App.2009) ("A contract and several writings relating to the same transaction must be construed with reference to each other."); *Anda Constr. Co. v. First Fed. Sav. & Loan Ass'n, Duluth,* 349 N.W.2d 275, 278 (Minn.App.1984) ("It is well settled that where several instruments are executed as part of one transaction, and they are all consistent with each other, they will be read and construed together even if their terms do not refer to each other."), *review denied* (Minn. Sept. 5, 1984).

***4** In *Anda Constr. Co.*, a construction company had entered into a mortgage and loan agreement with a bank for the construction of an apartment building. 349 N.W.2d at 276. When the bank later initiated a foreclosure action, the parties entered into a stipulation and the bank provided an additional loan to the construction company. *Id.* The stipulation stated that the loan proceeds were to be used to pay the costs and expenses of completing the construction of the apartment building. *Id.* Six months later, the parties entered into a second mortgage agreement and the bank provided a third loan to the construction company. *Id.* at 277. When the construction company later breached the terms of the second mortgage agreement and the bank initiated another foreclosure action, the construction company argued that it had not authorized money to be disbursed from the third loan. *Id.* at 277–78. This court upheld the trial court's determination that, through the stipulation, the construction company had authorized disbursement of all loan proceeds for the construction of the apartment building. *Id.* at 277–78. Although the construction company claimed that the second mortgage

agreement was an integrated contract that superseded the earlier stipulation and stripped it of force or effect, this court stated that the construction company's "integration theory is incorrect," and determined that all of the contracts were part of the same transaction, were consistent with one another, and were to be considered together. *Id.* at 278.

As in *Anda Constr. Co.*, the consulting services agreement and payment terms agreement here relate to the same transaction, that is, respondent providing writing services to Axiom and Axiom incurring financial responsibility for those services. These two contracts can be read consistently and should be construed together. The arbitration clause in the consulting services agreement states that "[i]f a dispute *arises from or relates to this Agreement* or the breach thereof, and if the dispute cannot be settled through direct discussions," then it will be submitted to mediation, and to binding arbitration if necessary. (Emphasis added.) Axiom's alleged breach of the payment terms agreement by failing to make payments for the writing services is a dispute that relates to the consulting services agreement, which provided for the writing services from the beginning. Respondent's breach-of-contract claim against Axiom should have been submitted to mediation and, if necessary, binding arbitration. This result comports with the principle stated above that any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, as well as the principle that, where the intent of the parties is doubtful, a contract should be construed against the drafting party. *See Turner v. Alpha Phi Sorority House,* 276 N.W.2d 63, 66 (Minn.1979). The district court erred by holding that mediation and arbitration were not required. The judgment awarded against Axiom is therefore reversed and respondent's claim against Axiom should be referred to mediation and, if necessary, arbitration.

II. Respondent's claim against Saya and Nealy for breach of the personal guaranty may be pursued in court.

***5** The district court determined that respondent's claim against Saya and Nealy for breach of the personal guaranty need not be mediated and arbitrated or stayed pending mediation and arbitration. "A contract must be interpreted in a way that gives all of its provisions meaning." *Current Tech. Concepts, Inc. v. Irie Enters., Inc.,* 530 N.W.2d 539, 543 (Minn.1995). "[A]ny interpretation which would render a provision meaningless should be avoided on the assumption that the parties intended the language used by them to have some effect." *Indep. Sch. Dist. No. 877 v. Loberg Plumbing & Heating Co.,* 266 Minn. 426, 436, 123 N.W.2d 793, 799–800 (1963). The personal guaranty contains a provision stating that, "The undersigned consent to the jurisdiction of the state and federal courts located in Hennepin County, State of Minnesota and agree that any dispute or proceedings shall be venued in such Minnesota Courts. The undersigned expressly waive any right to a trial by jury." Therefore, respondent's claim against Saya and Nealy under the personal guaranty may be litigated in court, rather than being mediated and arbitrated.

Appellants argue that, pursuant to Minn. R. Civ. P. 12.02, they could not file a pleading until their motion to dismiss for lack of subject matter jurisdiction was heard. Consequently, they assert that they were denied fundamental fairness and due process when the district court granted summary judgment against them before they had the opportunity to serve an answer, raise affirmative defenses, or file counterclaims. Minn. R. Civ. P. 12.01 provides time periods during which an answer must be served and states:

> The service of a motion permitted under this rule alters [the time period during which an answer must be served] as follows unless a different time is fixed by order of the court: (1) If the court denies the motion ... the responsive pleading shall be served within 10 days after service of notice of the court's action...."

Appellants were unable to serve their answer within ten days after the district court's action on their motion, pursuant to rule 12.01, due to the fact that the district court simultaneously denied appellants' motion to dismiss or stay proceedings and issued summary judgment against them. By doing so, the court denied appellants a fair opportunity to file an answer, raise any defenses or counterclaims, and meaningfully oppose respondent's motion for summary judgment. The judgment awarded against Saya and Nealy is therefore reversed due to this procedural error. Respondent may pursue its claim against Saya and Nealy in court, independently of its claim against Axiom, once appellants are allowed to

timely file their answer, affirmative defenses, and any counterclaims. [1]

Because we reverse and remand, we need not reach the cross-appeal challenging the award of costs, disbursements, and attorney fees.

Reversed and remanded.

All Citations

Not Reported in N.W.2d, 2012 WL 2368896

Footnotes

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

1 The personal guaranty states that respondent "can proceed directly against [Saya and Nealy] without first proceeding against Axiom." As appellants argue, staying the claim against Saya and Nealy pending mediation and arbitration of the claim against Axiom would be efficient and prevent inconsistent results. However, given the language of the personal guaranty, we decline to stay the claim against Saya and Nealy.

Filed in District Court
State of Minnesota
9/24/2018 9:53 PM

EXHIBIT FF

2014 WL 3615672 (N.Y.Sup.), 2014 N.Y. Slip Op. 31925(U) (Trial Order)
Supreme Court, New York.
New York County

CITIDENTAL OF HARLEM P.C. and Dr. Marina Shraga, Plaintiffs,
v.
C&G DENTAL PLLC, d/b/a East Harlem Community Dental,
Dr. Oleg Goncharov and Dr. Dwayne T. Culotta, Defendants.

No. 652819/2013.
July 22, 2014.

Decision and Order

Hon. Anil C. Singh, J.

***1** In this action for fraudulent inducement and breach of contract, defendants C&G Dental, PLLC d/b/a/ East Harlem Community Dental, Dr. Oleg Goncharaov ("Defendants") move for an order pursuant to CPLR 7503 compelling arbitration. Defendant Dr. Dwayne T. Culotta ("defendant Culotta") moves for an order pursuant to CPLR 3211(a)(7) dismissing plaintiffs Citidental of Harlem P.C. and Dr. Marina Shraga's ("plaintiffs") verified complaint on the basis that it fails to state a cause of action. Plaintiffs oppose the motion.

In resolving a motion to dismiss "on the ground that the action is barred by documentary evidence, such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law". (*Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002]).

Defendants argue these claims must be arbitrated under the arbitration clause in the purchase agreement which states, "[t]he parties agree to submit all unresolved disputes pursuant to this agreement to Arbitration through the American Arbitration Association, New York County, New York. This requirement to seek arbitration shall not include the enforcement of the restrictive covenant in the event of a claim of breach by the Seller." Plaintiffs argue that defendants engaged in a fraudulent scheme when they sold their dental practice to plaintiffs which permeates the entire agreement thus making the agreement, including the arbitration clause, void and litigation proper.

A broad arbitration clause in New York is separable from substantive provisions of an agreement and, even if there is fraud in the inducement of substantive provisions, all issues including claim of fraud, are to be determined by arbitrators. (*Weinrott v Carp*, 32 NY2d 190, 198 [1973]). Thus as here where plaintiff alleges fraudulent inducement of the purchase agreement, the claim will be reviewed in arbitration.

Courts will invalidate the arbitration clause in a few discrete fact patterns. The arbitration clause will only be set aside where plaintiff was fraudulently induced to enter into the arbitration clause itself or a fraudulent scheme permeated the entire agreement resulting in an absence of arm's length negotiation. (*Housekeeper v Lourie*, 39 AD2d 280, 284 [1st Dept 1972]). Plaintiffs have not alleged any facts of fraud in the execution. The fraud alleged by plaintiff is that defendants acted in violation of Medicare and Medicaid kick back statutes by offering remuneration in exchange for patient referrals.

This fraud is unrelated to the parties bargaining power and to the procurement of the purchase agreement itself. The remuneration fraud defendants are alleged to engage in with third parties does not vitiate the entire purchase agreement. *C.f. Moselev v Elec. & Missile Facilities, Inc.*, 374 US 167, 171 [1963] (finding fraud was against plaintiff thus constituting

a fraudulent scheme); *Oberlander v Fine Care, Inc.*, 108 AD2d 798, 799 [2d Dept 1985]. Therefore, the arbitration clause at issue is valid and enforceable.

***2** The final issue of arbitrability is whether the claims at issue fall under the arbitration clause. (CPLR 7503(a)). Here the arbitration clause is so broad to include "all unresolved disputes pursuant to this agreement" thus it encompasses the fraud in the inducement and breach of contract for misrepresentation claims since it relates to the warranties contained in the agreement and the fraud used to enter into the agreement.

Pursuant to the language of the purchase agreement, a claim for breach of the non-compete clause is not subject to arbitration. Defendants argue that this claim should be removed to small claims court because the amount in controversy is only $2,500. However, "where arbitrable and nonarbitrable claims are inextricably interwoven, the proper course is to stay judicial proceedings pending completion of the arbitration, particularly where the determination of issues in arbitration may well dispose of nonarbitrable matters" (*Anderson St. Realty Corp. v New Rochelle Revitalization, LLC*, 78 AD3d 972, 975 [2d Dept 2010]). Accordingly, the third cause of action for breach of contract is severed and stayed.

Lastly, defendant Culotta moves to dismiss the claims against him under CPLR 3211(a)(7) on the basis that plaintiffs' verified complaint fails to state a cause of action. Defendant Cullotta cannot be held liable for breach of contract for a contract to which he is not party. (*VisionChina Media Inc. v Shareholder Representative Services, LLC*, 109 AD3d 49, 58 [1st Dept 2013]). Plaintiffs have not alleged any acts of defendant Cullotta to which they relied upon or with the sufficient particularity to sustain a fraudulent inducement claim. (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]). Furthermore, defendant Culotta cannot be held personally liable through his membership of C&G Dental PLLC under New York's professional relationship and liabilities statute since plaintiffs' claim do not arise from defendant Culotta rendering his professional services. (Limited Liability Company Law § 1205). Accordingly defendant Cullotta's motion to dismiss is granted.

ORDERED that the motion of defendant Cullotta to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

***3** ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that the remaining defendants' motion to compel arbitration and to stay this action is granted; and it is further

ORDERED that plaintiffs shall arbitrate their first cause of action for fraud in the inducement and their second cause of action for breach of contract for the seller's warranties against defendants in accordance with the purchase agreement; and it is further

ORDERED that all proceedings in this action are hereby stayed including plaintiffs' third cause of action for breach of contract of the non-compete clause, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the arbitration.

Date: July 22, 2014

New York, New York

<<signature>>

Anil C. Singh

End of Document

Filed in District Court
State of Minnesota
9/24/2018 9:53 PM

EXHIBIT GG

2016 WL 3659293
Only the Westlaw citation is currently available.

Court of Appeals of Minnesota.

Robert MARTIN, et al., Appellants,
v.
A'BULAE, LLC, et al., Respondents.

No. A15–1993.
|
July 11, 2016.
|
Review Denied Sept. 28, 2016.

Ramsey County District Court, File No. 62–CV–15–1939.

Attorneys and Law Firms

Charles E. Keenan, Christoffel & Elliott, P.A., St. Paul, MN, for appellants.

David L. Hashmall, Christopher S. Hayhoe, Felhaber Larson, Minneapolis, MN, for respondents.

Considered and decided by LARKIN, Presiding Judge; SCHELLHAS, Judge; and SMITH, JOHN, Judge. *

UNPUBLISHED OPINION

LARKIN, Judge.

***1** Appellants, assignees of the claims of a commercial landlord, challenge the district court's dismissal of their breach-of-contract, equitable-estoppel, promissory-estoppel, and unjust-enrichment claims against respondents, a commercial tenant and its chief manager and president, for failure to state a claim upon which relief can be granted. We affirm.

FACTS

Appellants Robert Marvin and David Brooks are former members of 9 & 19 LLC (9 & 19) and assignees of its claims. [1] In September 2012, 9 & 19 entered into a ten-year commercial-lease agreement with respondent A'BULAE LLC to lease a portion of a building that 9 & 19 owned in St. Paul (the property) to A'BULAE. Paragraph 36 of the lease states that "Landlord shall deposit $1,500,000.00 and Tenant shall deposit $300,000.00 in an escrow account to be used to fund ... Tenant Improvements." The lease defines "Tenant Improvements" as "all alterations, improvements and additions to the Leased Premises performed by Landlord or its agents, or Tenant, excluding movable equipment and furniture owned by Tenant," as set forth in an attachment to the lease. In accordance with paragraph 36 of the lease, 9 & 19 contributed $1,500,000, and A'BULAE contributed $300,000, for tenant-improvement costs.

Paragraph 33(f) of the lease provides that:

> All negotiations, considerations, representations, and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

In March 2015, appellants sued respondents A'BULAE and Timothy George, its chief manager and president, asserting breach-of-contract, equitable-estoppel, promissory-estoppel, and unjust-enrichment claims. Appellants alleged that as the tenant improvements progressed, respondents requested construction changes that increased the costs of the improvements. Appellants further alleged that 9 & 19 agreed to the changes, 9 & 19 informed respondents that they would be required to pay for those changes, respondents orally agreed to pay for the increased costs, and that respondents failed to pay for increased costs in the amount of $576,011.54.

Respondents moved to dismiss under Minn. R. Civ. P. 12.02(e), for failure to state a claim upon which relief can be granted. The district court granted respondents' motion to dismiss, and this appeal follows.

DECISION

A pleading must "contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. A pleading may be dismissed under Minn. R. Civ. P. 12.02(e) if it "fail[s] to state a claim upon which relief can be granted." A pleading should be dismissed under rule 12.02(e) "only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn.2010) (quotation omitted); *see also Walsh v. U.S. Bank, N.A .*, 851 N.W.2d 598, 603 (Minn.2014) ("A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded.").

***2** An appellate court reviews an order to dismiss under Minn. R. Civ. P. 12.02(e) de novo. *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn.2013). We consider "only the facts alleged in the complaint, accepting those facts as true." *Id.* (quotation omitted). However, we are "not bound by legal conclusions stated in a complaint." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn.2008).

Appellants rely on several contentions in support of reversal. We address each in turn. [2]

I.

Appellants contend that "the district court erred as a matter of law when it dismissed [their] equitable estoppel claim." "Equitable estoppel is a doctrine designed to prevent a party from taking unconscionable advantage of his own actions." *Bethesda Lutheran Church v. Twin City Constr. Co.*, 356 N.W.2d 344, 349 (Minn.App.1984), *review denied* (Minn. Feb. 5, 1985). Before a court will examine the conduct of a party sought to be estopped, the party seeking the application of equitable estoppel must show that the party suffered some loss through reasonable reliance on the other party's conduct. *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn.1980). "An essential element of equitable estoppel is reasonable reliance." *Anderson v. Minn. Ins. Guar. Ass'n*, 534 N.W.2d 706, 709 (Minn.1995). Equitable estoppel is generally not applicable to routine or typical transactions. *See, e.g., Sacred Heart Farmers Coop. Elevator v. Johnson*, 305 Minn. 324, 327–28, 232 N.W.2d 921, 923 (1975) (declining to apply equitable estoppel to a typical grain transaction between a seller and a grain elevator because doing so would "seriously weaken the force of the statute of frauds").

As to reasonable reliance, appellants argue that "it seems more than obvious that it would be natural and probable for 9 & 19 to act upon Respondents' representation that they would pay for the improvements outside of those agreed to in the Lease" because respondents had already "absolutely committed to, and paid $300,000 ." Appellants further argue that "[t]he detrimental reliance by 9 & 19 was reasonable under the circumstances." We are not persuaded.

9 & 19 and A'BULAE appear to be sophisticated commercial parties. They executed a written contract for a ten-year lease, providing for over $4 million in rent payments and $1.8 million in tenant-improvement payments. The written contract limited A'BULAE's responsibility for the costs of tenant improvements to $300,000. The written contract also provided that the terms of the contract could only be modified by a written agreement of the landlord and tenant. Under the circumstances, it was unreasonable, as a matter of law, for 9 & 19 to spend over $500,000 on additional tenant improvements based on an alleged oral promise to pay that was unenforceable under the terms of 9 & 19's written contract with A'BULAE.

Because there are no facts that could be introduced consistent with appellants' theory to establish that 9 & 19 reasonably relied on A'BULAE's alleged oral promise to pay an amount greater than $300,000 for improvements, the district court did not err by granting A'BULAE's motion to dismiss appellants' equitable-estoppel claim.

II.

***3** Appellants contend that "the district court erred as a matter of law when it dismissed [their] claim for oral modification of the lease." Paragraph 33(f) of the lease specifically provides that the lease "may be modified or altered only by agreement in writing between Landlord and Tenant." As support for their oral-modification

theory, appellants rely on a May 26, 2014 letter from George to Brooks, in which George allegedly "indicated ... that '[t]hroughout the buildout phase, I orally agreed to $141,294.00 of additional buildout costs' " and stated " 'I am fully performing on all commitments ... regarding the additional expenses to which I orally agreed.' "

The letter does not satisfy the contractual requirement for modification "only by agreement in writing between Landlord and Tenant." First, the letter does not describe an agreement between 9 & 19 and A'BULAE that A'BULAE would pay all costs of additional improvements. Instead, it describes A'BULAE's willingness to pay a fraction of those costs. Second, the letter is a one-way communication from George, in his capacity as A'BULAE's president, to Brooks; it is not a document signed by representatives of both 9 & 19 and A'BULAE acknowledging an agreement. In sum, the letter is not an "agreement in writing" sufficient to modify the lease under its own terms. [3]

Appellants also argue that "a court may consider parol evidence of subsequent conversations which alter the terms of a contract to determine if the parties have orally modified a contract." *See Nord v. Herreid,* 305 N.W.2d 337, 340 (Minn.1981) (allowing admission of parol evidence to clarify ambiguous term). But "evidence [of a subsequent oral modification] must be clear and convincing to justify setting aside a written contract and holding it as abandoned or substituted by a subsequent parol contract at variance with its terms." *Duffy v. Park Terrace Supper Club, Inc.,* 295 Minn. 493, 498–99, 206 N.W.2d 24, 28 (1973). Because the letter is inconsistent with the alleged oral agreement to pay for all increased tenant-improvement costs, the letter is not clear-and-convincing evidence of the alleged agreement.

III.

Appellants contend that "respondents and 9 & 19 entered into a separate and distinct oral agreement ... outside the terms of the lease." Appellants argue that "[t]here is no dispute among the parties that all of the conditions, including payment, relating to the tenant improvements described in Paragraph 36 of the Lease were satisfied" and that "the parties entered into a new oral contract for additional tenant improvements and payment thereof not contemplated by Paragraph 36 of the Lease."

Appellants' argument that 9 & 19 and respondents entered into a separate oral contract is inconsistent with the factual allegations in the amended complaint, which describe the additional improvements as "*changes* to the construction plan, which *increased* the costs of the Tenant Improvements far and above the $1,800,000 contemplated by [appellants]." (Emphasis added). The amended complaint describes the alleged oral agreement as arising from respondents' requests for those changes and notes that respondents have "failed or refused to pay for the *increased* costs" of tenant improvements. (Emphasis added). Although appellants' amended complaint also refers to a "separate oral contract between 9 & 19 and [respondents]," this statement is a legal conclusion, which is not binding on this court. *See Hebert,* 744 N.W.2d at 235 (noting that reviewing courts "are not bound by legal conclusions stated in a complaint"). Because evidence that could support the claim that 9 & 19 and respondents entered into a separate and distinct oral contract would be inconsistent with the factual allegations in the pleading, the district court did not err by dismissing that claim. *See Bahr,* 788 N.W.2d at 80 ("[A] pleading will be dismissed ... if it appears to a certainty that no facts, which could be introduced *consistent with the pleading,* exist which would support granting the relief demanded." (emphasis added) (quotation omitted)).

IV.

***4** Appellants contend that "the district court erred by not applying the doctrine of part performance." Because appellants did not raise this argument in district court, it is not properly before this court, and we do not consider it. *See Thiele v. Stich,* 425 N.W.2d 580, 582 (Minn.1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (quotation omitted)).

V.

Appellants contend that "the district court erred as a matter of law when it dismissed [their] promissory estoppel claim." "Promissory estoppel is an equitable doctrine that implies a contract in law where none exists in fact." *Martens v. Minn. Mining & Mfg. Co.,* 616

N.W.2d 732, 746 (Minn.2000) (quotation omitted). "[A]n express contract covering the same subject matter will preclude the application of promissory estoppel." *Greuling v. Wells Fargo Home Mortg., Inc.*, 690 N.W.2d 757, 761 (Minn.App.2005). Because there is an express contract covering A'BULAE's financial responsibility for the costs of tenant improvements, appellants are not entitled to relief under the doctrine of promissory estoppel. *See id.; see also U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn.1981) ("[E]quitable relief cannot be granted where the rights of the parties are governed by a valid contract.").

Moreover, no facts exist that could establish that the alleged oral promise must be enforced to prevent injustice. "To state a claim for promissory estoppel, the plaintiff must show that (1) there was a clear and definite promise, (2) the promisor intended to induce reliance and such reliance occurred, and (3) the promise must be enforced to prevent injustice." *Park Nicollet Clinic v. Hamann,* 808 N.W.2d 828, 834 (Minn.2011). For purposes of rule 12 .02(e), whether facts alleged in a complaint rise to the level of promissory estoppel presents a question of law. *Martens,* 616 N.W.2d at 746. Whether a promise must be enforced to prevent an injustice is "a legal question for the court, as it involves a policy decision." *Cohen v. Cowles Media Co.,* 479 N.W.2d 387, 391 (Minn.1992).

9 & 19 and A'BULAE expressly agreed that the provisions of the lease may only be modified "by [an] agreement in writing" between 9 & 19 and A'BULAE. Application of promissory estoppel to enforce A'BULAE's alleged oral promise to pay more than $300,000 for tenant improvements would require a conclusion that, despite an express provision in the lease requiring all modifications to be in writing, the alleged oral promise must be enforced to prevent injustice.

We do not discern an injustice justifying application of promissory estoppel. As discussed above, appellants could not, as a matter of law, reasonably rely on A'BULAE's alleged oral promise to pay more than A'BULAE was required to under the written contract between 9 & 19 and A'BULAE where that contract requires that an agreement to modify the contract must be in writing. Because A'BULAE's financial responsibility for the costs of tenant improvements is limited to $300,000 under the written contract between 9 & 19 and A'BULAE and because no facts exist that could establish that the alleged oral agreement must be enforced to prevent injustice, the district court did not err by granting A'BULAE's motion to dismiss appellants' promissory-estoppel claim. *See Walsh,* 851 N.W.2d at 603.

VI.

***5** Appellants contend that "the district court erred as a matter of law when it dismissed [their] unjust enrichment claim." "Unjust enrichment is an equitable doctrine that allows a plaintiff to recover a benefit conferred upon a defendant when retention of the benefit is not legally justifiable." *Caldas v. Affordable Granite & Stone, Inc.,* 820 N.W.2d 826, 838 (Minn.2012). Unjust enrichment "does not apply when there is an enforceable contract that is applicable." *Id.* "Thus, to prevail on a claim of unjust enrichment, a claimant must establish an implied-in-law or quasi-contract in which the defendant received a benefit of value that unjustly enriched the defendant in a manner that is illegal or unlawful." *Id.*

Appellants' unjust-enrichment claim fails as a matter of law because the commercial lease governs A'BULAE's financial responsibility for the costs of tenant improvements. *See Colangelo v. Norwest Mortg.,* 598 N.W.2d 14, 19 (Minn.App.1999) ("Where the rights of the parties are governed by a valid contract, a claim for unjust enrichment must fail ...."), *review denied* (Minn. Oct. 21, 1999).

Moreover, "unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others...." *First Nat'l Bank of St. Paul v. Ramier,* 311 N.W.2d 502, 504 (Minn.1981). And there are no facts that could be introduced to establish that A'BULAE was enriched in a manner that was illegal or unlawful.

For these reasons, the district court did not err by granting A'BULAE's motion to dismiss appellants' unjust-enrichment claim.

VII.

Appellants contend that "[a]t minimum, any claim for breach of contract relating to George for the additional tenant improvements should survive Rule 12.02(e)." Appellants argue that "[they] allege that George directly,

along with A'Bulae, agreed to pay for the increased costs to the tenant improvements separate and apart from those described in paragraph 36 of the Lease." Respondents argue that because "[t]he amended complaint makes no allegation that George did anything other than act as A'BULAE's chief manager and president," all claims against him are meritless.

The amended complaint states that "Abulae and George orally accepted financial responsibility for the increased costs of the changes to the Tenant Improvements" and that "Abulae and George have acknowledged that they orally agreed to pay for all increased costs to the Tenant Improvements." However, the amended complaint does not identify a legal theory supporting a claim of personal liability against George. For example, the complaint does not indicate whether George is liable for the costs of additional improvements because he separately entered into an oral agreement to pay for such costs or because he personally guaranteed A'BULAE's performance of the alleged oral agreement. The only allegation regarding George in the amended complaint is the description of George's letter to Brooks. But George signed the letter in his capacity as president of A'BULAE. The letter therefore does not provide support for appellants' claim that George is individually liable. *See* Minn.Stat. § 322B.303, subd. 1 (2014) ("[A] member, governor, manager, or other agent of a limited liability company is not, merely on account of this status, personally liable for the acts, debts, liabilities, or obligations of the limited liability company.").

***6** Because appellants' legal theory regarding George's personal liability is unclear from the amended complaint and the letter described in the amended complaint does not suggest personal liability, the district court did not err by dismissing the claims against George. *See* Minn. R. Civ. P. 8.01 (requiring a "plain statement of the claim showing that the pleader is entitled to relief").

Affirmed.

All Citations

Not Reported in N.W.2d, 2016 WL 3659293

Footnotes

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

1 The case caption in the district court identifies this appellant as "Robert Martin" and that name is used in the caption on appeal. However, the amended complaint and respondents' brief identify this appellant as "Robert Marvin." The caption on appeal must match the caption used in the district court's decision, *see* Minn. R. Civ.App. P. 143.01, but we use "Robert Marvin" in the body of this opinion.

2 Because paragraph 33(f) of the lease expressly provides that the lease may only be modified by an agreement in writing, we focus on that provision and do not discuss the parties' arguments regarding the possible application of the statute of frauds. *See* Minn.Stat. § 513.05 (2014) (providing that a lease of more than one year's duration must be in writing); *Alexander v. Holmberg,* 410 N.W.2d 900, 901 (Minn.App.1987) (noting that any modification of a lease of more than one year's duration must generally be in writing).

3 Respondents argue that George's letter is a statement made in compromise negotiations and therefore inadmissible under Minn. R. Evid. 408. *See* Minn. R. Evid. 408 ("Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible."). Because the letter does not satisfy the written modification requirement, we do not determine whether rule 408 precludes consideration of the letter.

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EXHIBIT HH

2001 WL 569118
Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

In re Estate of Otto F.
MORAVETZ, a/k/a Otto Moravetz.

No. C3-00-1888.
|
May 29, 2001.

Attorneys and Law Firms

John E. Mack, Mack & Daby, P.A., New London, MN, for appellant, Nancy Sitek.

Gerald R. Boulton, Qualley Boulton Vinberg, Canby, MN, for respondent, John E. Qualley.

Considered and decided by RANDALL, Presiding J., SCHUMACHER and KLAPHAKE, JJ.

UNPUBLISHED OPINION

SCHUMACHER.

***1** Appellant Nancy Sitek challenges the district court's denial of her motions in connection with the final account of the Estate of Otto F. Moravetz, a/k/a Otto Moravetz. Sitek contends that (1) the district court erred in declining to disallow the legal fees charged by the estate's representative-attorney; (2) the district court erred in declining to remove the estate's representative-attorney; and (3) the district court erred in determining that the representative-attorney properly refused to cancel a contract for deed on behalf of the estate. We affirm.

FACTS

Otto F. Moravetz properly executed a will on August 21, 1981, leaving a specific devise of cash to a church and the residue of his estate to the children of his brother and of his sister. In the will, Moravetz nominated respondent John E. Qually as executor, i.e., personal representative. Qually, an attorney at the firm Qually, Boulton & Vinberg, had drafted the will.

Moravetz died in February 1999, leaving Sitek along with three other individuals as the devisees of the residue of his estate. Qually was appointed personal representative of the estate and performed work in the dual role of personal representative and attorney. Sitek objected to the final account on various grounds, including that Qually charged excessive fees and Qually did not "cancel the contract for deed between Otto Moravetz and Thomas Briggs." Sitek also moved that Qually be removed as personal representative.

At the subsequent hearing, Qually explained that he charged the estate $75 per hour for work which would typically be completed by a personal representative, and $125 per hour for work which would typically be completed by an attorney. Qually testified that he felt this arrangement had been fair to the estate.

Further, during the hearing, it was disclosed that Moravetz had entered into a contract for deed with Thomas Briggs, whereby Briggs was to pay the sum of $136,000 in installments in exchange for the deed to a plot of Moravetz's property. The contract required that buyer or seller must notify the other of any assignments of their respective interests in the property. The contract also provided that the purchaser should not permit liens to accrue against the property "which constitute a lien or claim against Seller's interest in the Property." Qually testified that Thomas Briggs later assigned his interest in the land to his mother, Patricia Briggs, and that an attorney in Qually's firm had sent Moravetz a letter of notification concerning the assignment. Subsequently, Thomas Briggs obtained a loan from a bank, purporting to secure the loan with the Moravetz property. Also, Qually testified that an attorney for his own firm was currently representing Briggs in a bankruptcy case, and that Qually had previously done legal work for Briggs's father Ronald concerning a trust.

Qually testified that he had not received a request to cancel the contract for deed and indeed would have refused to do so if he had received such a request, as there were no grounds for cancellation and to do so would be a waste of the estate's money. Qually explained that Briggs no longer held an interest in the property at the time of the mortgage.

Also, Qually opined that a buyer's act of mortgaging his own interest in the property at issue would not affect the seller's interest in the property, and thus the terms of the contract for deed were not violated. Finally, Qually noted that the Briggs family was likely to have the means to pay off the contract and that to cancel the contract would constitute a poor use of estate funds. Qually also testified that his firm's handling of Briggs's bankruptcy would have no effect on his continuing representation of the Moravetz estate.

***2** The district court found that the contract for deed between Moravetz and Briggs was dated August 26, 1996 and that Briggs assigned his interest in the contract for deed to Ronald and Patsy Briggs on July 20, 1998. The contract for deed did not require that either party grant permission before a valid assignment could occur. Moravetz was notified of the assignment, as required by the contract for deed, on August 10, 1998.

The district court found that, on March 23, 1999, Thomas Briggs took out a mortgage on the real estate that was the subject of the contract for deed. The district court determined that the validity of this mortgage and the legal ramifications of the bankruptcy of Thomas Briggs did not establish significant loss, risk of loss, or material expense to the estate. Thus, the district court held that the "personal representative acted appropriately in not canceling the contract for deed between the deceased and Thomas Briggs."

As for the issue of a member of Qually's firm representing Briggs, the district court found that the bankruptcy action would not affect the estate and thus no financial loss could occur because of any perceived conflict.

The district court reduced the fees charged for Qually's roles as personal representative and attorney for the estate. The district court reduced the hourly rate for Qually's role as personal representative to $35 per hour and transferred some of Qually's attorney-charged hours to fees for duties as personal representative. The court thereby reduced the personal representative's fee from $8,676 to $4,655 and reduced the legal fees from $16,835 to $14,670.

DECISION

1. Sitek argues that Qually should not be permitted to act in the dual role of representative-attorney for the estate. In the alternative, Sitek argues that Qually should not be permitted to receive compensation for his legal work on behalf of the estate.

Both parties cite *In re Palm's Estate,* 210 Minn. 77, 297 N.W. 765 (1941), stating that this case might suggest that the dual representative-attorney role is permissible in some cases. *In re Palm's Estate,* however, involved a conflict-of-interest situation where a personal representative also acted as attorney for a guardian ad litem. *Id.* at 79-80, 297 N.W. at 767. In that case, the duties of the guardian ad litem included assuring that the personal representative administered the estate in a timely manner. *Id.* at 80, 297 N.W. at 767. This issue is distinguishable from that raised by Sitek in this case. Rather, the issue in the present case involves interpretation of relevant Minnesota statutes. Statutory construction is a question of law which a reviewing court examines de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey,* 584 N.W.2d 390, 393 (Minn.1998).

Generally, in administering an estate, a personal representative may "employ persons, including attorneys * * * even if they are associated with the personal representative." Minn.Stat. § 524.3-715(21) (2000). The personal representative controls the selection of her own agents and attorneys hired for the purpose of administering the estate. *State ex rel. Seifert, Johnson & Hand v. Smith,* 260 Minn. 405, 417, 110 N.W.2d 159, 167 (1961). In addition,

> ***3** [i]f the lawyer for the estate * * * is the personal representative of the estate * * * the administration shall be supervised. * * * The lawyer should only serve as fiduciary at the unsolicited suggestion of the client and the lawyer must realize that there are legal, ethical and practical problems that must be overcome in order to perform the duties of a fiduciary and lawyer.

Minn.Gen.R.Prac. 414. Because Minn.Gen.R.Prac. 414 specifically contemplates the possibility that a personal representative may also act as attorney for the estate, it follows that there exists no per se rule against

the dual representative-attorney role. Obviously, judicial supervision is always available to cure any conflicts that may arise from this dual role.

The corollary issue raised by Sitek is whether a personal representative, having performed legal work for the estate, may receive separate fees for work performed in the capacities of both personal representative and attorney. The relevant statutory scheme does not specifically address this question. Nevertheless, a Minnesota statute mandates that a personal representative is entitled to reasonable compensation for services rendered. Minn.Stat. § 524.3-719(a) (2000). In determining what constitutes reasonable compensation, a court must consider (1) the time and labor required; (2) the complexity and novelty of the problems involved; and (3) the extent of the responsibilities assumed and the results obtained. Minn.Stat. § 524.3-719(b) (2000). Furthermore,

> the propriety of employment of any person by a personal representative including any attorney * * *, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for the personal representative services, may be reviewed by the court.

Minn.Stat. § 524.3-721 (2000). Because a personal representative has discretion to hire an attorney for the estate, and because the fees charged by the attorney are reviewable by the district court, we decline to hold that a representative-attorney cannot charge separate fees reflecting those dual capacities. Thus, we hold that the district court did not err in permitting Qually to charge separate fees in the present case. Nevertheless, as demonstrated by the present controversy, we note the inherent pitfalls of the representative-attorney dual role and suggest that this arrangement may not always be advisable.

2. "A person interested in the estate may petition for removal of a personal representative for cause at any time." Minn.Stat. § 524.3-611(a) (2000). Cause for removal exists when, for instance, "removal is in the best interests of the estate." Minn.Stat. § 524.3-611(b) (2000). The decision whether to remove a personal representative lies within the discretion of the district court. *See In re Munson's Estate,* 238 Minn. 366, 370, 57 N.W.2d 26, 29 (1953) (holding that "it was entirely within [the district court's] discretion" to approve removal of administrator where district court determined administrator had conflict of interest).

***4** Claiming that Qually should have been removed from his position as personal representative, Sitek relies primarily on the proposition that the representative-attorney dual role creates an inherent conflict of interest, requiring removal. As noted above, however, such a judicially-supervised dual role is permissible. It follows that a personal representative cannot be removed merely for assuming such a dual role, absent some showing that an actual conflict of interest arises therefrom. Instead, Sitek relies on her own assertion that the heirs of Moravetz "distrusted" Qually. Yet Sitek cites no legal authority for the proposition that such "distrust" rises to the level of a conflict of interest. Accordingly, we hold that the district court did not abuse its discretion in declining to remove Qually as personal representative.

3. Sitek argues that the district court erred in determining that Qually correctly refused to cancel a contract for deed between Moravetz and Briggs. The district court's findings of fact will not be set aside unless clearly erroneous. Minn.R.Civ.P. 52.01.

Here, the district court found that Briggs attempted to place a mortgage on the Moravetz land after having assigned his own interest in that land to another. This finding is supported by the evidence adduced at the hearing.

"A valid assignment generally operates to vest in the assignee the same right, title, or interest that the assignor had in the thing assigned." *State ex rel. Southwell v. Chamberland,* 361 N .W.2d 814, 818 (Minn.1985). It follows that the assignment extinguishes the assignor's rights in the thing assigned. *See id.* Thus, when Thomas Briggs assigned his vendee's interest in the contract for deed, he lost all rights in the Moravetz land. As Qually points out, based on the district court's findings, Thomas Briggs could not have given a valid mortgage to land for which he no longer held an interest. *See In re Bennett,* 115 Minn. 342, 350, 132 N.W. 309, 312 (1911) ("[S]ome estate or interest capable of being mortgaged, held by the mortgagor, is essential to the existence of a mortgage.").

Given the district court's findings, the district court properly determined that there had not been a breach of the contract for deed. Thus, the district court did not err in declining to instruct Qually to cancel the contract for deed.

Affirmed.

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NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

In re ESTATE OF John Alfred MEINERS, Deceased.

No. A07-0967.
|
June 10, 2008.

Crow Wing County District Court, File No. P4-03-2630.

Attorneys and Law Firms

Lewis A. Remele, Jr., David A. Turner, Mark D. Belinske, Bassford Remele, Minneapolis, MN, for appellant John G. Berg.

Jonathan P. Parrington, Pustorino, Tilton, Parrington & Lindquist, PLLC, Minneapolis, MN, for respondent Lisa Marie Tyson.

Considered and decided by PETERSON, Presiding Judge; TOUSSAINT, Chief Judge; and CRIPPEN, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge. *

*1 Appellant John G. Berg, formerly the personal representative and attorney of the John Alfred Meiner's estate, challenges the district court's determination that he was entitled to an award for fees of $28,000 on his claim for $120,599. Because the court's order is inadequately explained and rests on errors of law and conclusions that are not sustained by findings or the record, we reverse and remand for a redetermination of the fee claim.

FACTS

John Meiners was a real estate attorney, operating a solo practice from his Eden Prairie home. On December 29, 1997, Meiners executed a will leaving the whole of his estate to his former wife, respondent Lisa Tyson, and naming appellant, his friend, as his estate's personal representative. During December 2000, decedent orally renounced this will in a conversation with appellant, indicating that he would draft a new will; the old will was not destroyed.

Meiners died in January 2003. Shortly thereafter, on appellant's petition, appellant was appointed as special administrator of decedent's estate. Appellant stated that decedent's will had not been located. Uncontradicted testimony explains that appellant withheld the 1997 will because he believed, based on what decedent told him, that decedent had drafted another will.

Appellant then filed a petition for general administration in April 2003, naming respondent as an interested party. While this petition was pending, respondent petitioned for probate of the 1997 will. In June 2003 appellant was appointed general administrator of decedent's estate.

Respondent's probate petition was opposed by decedent's heirs and appellant. After the venue was changed from Hennepin County to Crow Wing County, the district court admitted the will to probate in March 2005, a decision affirmed by this court on appeal. *In re Estate of Meiners,* No. A05-971 (Minn.App. May 23, 2006), *review denied* (Aug. 15, 2006).

During the will contest, respondent filed a petition requesting that appellant be removed as administrator. But because the will contest appeal was then pending before this court, the district court denied respondent's petition on July 1, 2005. On April 20, 2006, respondent filed a second petition to remove appellant. The district court granted her petition in September 2006 because of its concern that appellant's interests were not neutral to the interests of the sole beneficiary under the 1997 will.

From January 1, 2003 until his removal on September 19, 2006, appellant billed the estate for 1,157.5 attorney hours, 235.5 personal representative hours, and 351.5 legal assistant hours (fees totaling approximately $240,000). During the administration, appellant paid $108,600 in these fees from the estate's funds. At the time of removal, appellant petitioned for an additional $135,222 .50 in fees. Pursuant to Minn.Stat. § 524.3-721 (2006), a trial was held in October 2006 to determine the reasonableness of appellant's fees. Appellant testified that the fees claimed

were both reasonable and necessary based on the tasks required by this estate. He explained that this was a "unique" estate with a variety of complications, including winding up decedent's solo law practice, the will contest, and defending a $301,366 claim from Hennepin County related to the decedent's father's hospital bills.

***2** Appellant and respondent each retained experts to testify regarding the reasonableness of appellant's fees. Both experts were attorneys with approximately 30 years of probate law experience. Respondent's expert testified that appellant's time entries appeared exaggerated, that attorney fee billings included services as personal representative, and that appellant billed for time on issues irrelevant to his roles. Appellant's expert recommended, and appellant agrees, that the fee claim be reduced by $14,622.50, leaving a balance of $120,599 in allegedly reasonable fees. The district court, accepting respondent's proposed findings, awarded appellant $28,000 [1] in fees.

DECISION

Allowance of personal representative and attorney fees is a matter largely within the discretion of the district court; the reasonable value of such services is a question of fact. *In re Estate of Baumgartner,* 274 Minn. 337, 346, 144 N.W.2d 574, 580 (1966). "When a district court has discretion, it will not be reversed unless it abused its discretion, exercised its discretion in an arbitrary or capricious manner, or based its ruling on an erroneous view of the law." *Posey v. Fossen,* 707 N.W.2d 712, 714 (Minn.App.2006) (quotation omitted). The court's findings of fact will not be set aside unless clearly erroneous and this court defers to the district court's credibility determinations. Minn. R. Civ. P. 52.01. But "[t]he district court must make sufficient findings to permit meaningful appellate review." *Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship,* 638 N.W.2d 214, 220 (Minn.App.2002), *review denied* (Minn. Feb. 4, 2002).

To determine what amount reasonably compensates a personal representative, "the [district] court shall give consideration to ... [t]he time and labor required; [t]he complexity and novelty of problems involved; and [t]he extent of the responsibilities assumed and the results obtained." Minn.Stat. § 524.3-719 (2006). Further, "[a]ny personal representative ... who defends or prosecutes any proceeding in good faith, whether successful or not ... is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred." Minn.Stat. § 524.3-720 (2006).

In all probate proceedings, "an attorney performing services for the estate at the instance of the personal representative ... shall have such compensation therefor out of the estate as shall be just and reasonable." Minn.Stat. § 525.515(a) (2006). To determine a "reasonable" attorney-fee award a district court considers the same factors stated for personal representatives, plus the "experience and knowledge of the attorney" and the "sufficiency of assets properly available to pay for the services." Minn.Stat. § 525.515(b) (2006).

a. General Considerations

The district court's fee determination first suffers from the fact that the court chose a "reasonable sum" without any comment to explain how it was determined that $28,000 was an appropriate award and that the remaining claim of over $90,000 should be denied. In addition, the findings of fact recite criticisms of the personal representative, perhaps suggesting breach of his duties or reasons for his removal, but without any evidence or findings that these recitations bear upon the value of the services he gave or the reasonable fees for those services. In the same light, the order is wholly silent as to the fruits of appellant's services and the resources at the estate's disposal to pay the fees.

***3** In addition, it is evident that the district court's decision was shaped to some extent by what it expressed as its "dim view" of the dual role of personal representative and counsel, but without any showing as to why that dual role was inappropriate in the circumstances of this case or how this consideration related to the reasonableness of the fees charged.

Finally, the court's lengthy order includes numerous particular errors, addressed in the remainder of this opinion.

b. Appellant's Actions While the Petition to Remove Him was Pending

The district court stated that while the petition to remove appellant was pending, appellant "improperly refused to stop working as a general administrator" because he "should [have] refrain[ed] from all activities relating to the

estate." Nothing in the order suggests whether or to what extent this topic relates to the reduction or denial of some of his fees. Insofar as this observation relates to fees, it is erroneous.

"[A]fter receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate." Minn.Stat. § 524.3-611(a) (2006). Appellant was not barred from all action during the pendency of a removal petition.[2]

The district court order recited a conclusion that appellant improperly charged the estate for defending a successful removal motion. There are no findings supporting that conclusion, no findings indicating the amount of related fees, and no explanation for the determination that the fees were inappropriate. Appellant's task as personal representative was to defend the estate; he is the instrument for the preservation of the estate. *Cf. In re Estate of Kotowski,* 704 N.W.2d 522, 530-31 (Minn.App.2005) (limiting "expenses of administration" to those of the personal representative; denying a claimant attorney fees following the claimant's successful petition to remove the personal representative), *review denied* (Minn. Dec. 21, 2005).

c. Appellant's Involvement in the Will Contest

Merely reciting the testimony of respondent's expert, without the district court's statement of fact on the subject, the court stated in its order that "[respondent's expert] was also critical of all the time [appellant] spent being an advocate against the 1997[w]ill. [Respondent's expert] believed a personal representative should either be neutral, or be an advocate for the [w]ill, not actively contest the [l]ast [w]ill." There is no finding on the extent of the fee reduction chargeable to this criticism. *Cf. Dean v. Pelton,* 437 N.W.2d 762, 764 (Minn.App.1989) (stating that merely reciting a party's claims is not making a finding of fact). Insofar as this recitation relates to fees, it does not conform with governing law.

> A personal representative is a fiduciary who shall observe the standards of care in dealing with the estate assets that would be observed by a prudent person dealing with the property of another.... A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and applicable law, and as expeditiously and efficiently as is consistent with the best interests of the estate.

***4** Minn.Stat. § 524.3-703(a) (2006).

"[A]n estate as an entity is benefited when genuine controversies as to the validity or construction of a will are litigated and finally determined." *In re Estate of Torgerson,* 711 N.W.2d 545, 555 (Minn.App.2006) (quotation omitted), *review denied* (Minn. June 20, 2006). And, "as a fiduciary for the estate's successors, a ... personal representative in a will that has not yet been probated is an interested person who may contest a will." *Id.* at 554. "[A] personal representative is under a duty to ensure that the estate's assets are not diverted from the course the testator prescribes." *Id.* at 555 (quotation omitted).

"Any personal representative ... who defends or prosecutes any proceeding in good faith, whether successful or not ... is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred." Minn.Stat. § 524.3-720 (2006). Respondent argues that appellant's actions must have benefited the estate to receive compensation under this statute. But Minn.Stat. § 524.3-720 only requires that the representative's role in the will contest be in good faith; it is not required that a benefit be conferred on the estate. *In re Estate of Evenson,* 505 N.W.2d 90, 92 (Minn.App.1993).

Respondent cites law from foreign jurisdictions in support of her argument that a personal representative is prohibited from participating in a will contest. The cited cases are not binding. *See Mahowald v. Minnesota Gas Co.,* 344 N.W.2d 856, 861 (Minn.1984). Moreover, they are unpersuasive. Respondent cites *In re Irvin's Estate* for the proposition that a personal representative is not entitled to fees related to his involvement in a will contest. 24 Misc.2d 799, 198 N.Y.S.2d 904 (Sur.Ct.1960). But the New York court relied on a state statute limiting fees to the personal representative who acts as a proponent of the will, and the personal representative opposed the will for his own personal benefit. *Id.* at 909-10. Respondent cites *In re Law's Estate* for the proposition

that the contest should have been left to the will contestors because they had reached the age of majority and were represented by counsel. 253 Iowa 599, 113 N.W.2d 233 (Iowa 1962). But the Iowa court's decision turned on the statutory requirement that the personal representative have just cause for his involvement. *Id.* at 235 ("When any person designated as executor in a will ... prosecutes any proceedings in good faith and with just cause for the purpose of having it admitted to probate, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements." (quoting Model Probate Code § 104) (emphasis omitted)). Minn.Stat. § 525.49, requiring just cause, was repealed in 1974. *Evenson,* 505 N.W.2d at 92 (explaining that after 1974 it is only required that a personal representative act in good faith).

Because it appears undisputed that appellant acted in good faith when he contested the will, the district court erred in denying appellant fees related to the will contest. [3]

D. Appellant's Winding up of Decedent's Law Practice

***5** The district court found that "[appellant] misrepresented ... that the [d]ecedent had an active law practice ... [and] that this estate was not a normal estate due to the law practice." Recounting respondent's expert's testimony, the court stated that

> [respondent's expert] questioned the numerous hours [appellant] claimed he spent closing out the one active file of the [d]ecedent and in returning the other files to clients. [Respondent's expert] believed it would not take much time to write to former clients and simply ask for them to pick up their files.

There is no finding indicating the extent to which work in cleaning up the law practice is included in appellant's claim for fees and the extent of fees denied by the district court on that basis. Other than the recitation of the expert's opinion, which was not specific as to services or fees, the court did not address the question of whether these fees were appropriate. Finally, the evidence does not sustain the findings of fact insofar as they imply that any of appellant's services in connection with cleaning up the estate were not necessary or not valuable.

Appellant introduced into evidence photographs of decedent's home, taken three days after his death. The house was in "complete shambles." Legal files were in "every room," some of which were covered in dog urine. Papers were piled on top of and underneath clothes; there was no organizational system. Appellant testified that decedent did not maintain a client list, billing records, or a trust account.

Moreover, the district court fails to note that respondent's expert admitted that (1) "it would be very difficult for me to judge what is reasonable, having not been involved in looking underneath the dirty sheets on the floor to see if there was a file or not"; (2) if there was a potential that the decedent had an active law practice, and potential liability for the estate, [4] it would protect the estate to determine the contents of decedent's files; and (3) given the state of the house, appellant could not have known how many active files decedent had and "with the benefit of hindsight" we now know decedent had few active files. As this testimony suggests, the district court erred even in its limited finding on appellant's characterization of the law practice problem; only in hindsight, and only because of appellant's work, it could be determined that decedent's files were on matters outside of the statutory period for filing malpractice claims.

e. Appellant's Time Spent Regarding the Change-of-Venue Issue

The district court recited the testimony of respondent's expert who "felt excessive time was spent researching the venue issue and that issue should have been left up to the litigants to research and brief as the issue was immaterial to the [e]state."

But appellant testified that the district court referee "asked that [he] perform an investigation and render a report to the Court on the issue of [decedent's] contacts with each of the counties." Thus, the record does not support a reduction for fees claimed on services related to the change of venue.

f. Appellant's Rate

***6** With no findings, only recitation of testimony, the district court stated that "[respondent's expert] felt the hourly rate of $75.00 for a personal representative was too

high and that $40.00 was the highest rate he had ever seen charged."

The court order fails to note that respondent's expert admitted he had no knowledge of personal representative fees in Hennepin County. And, if $75 per hour is a reasonable rate in Hennepin County, respondent's expert would not have expected appellant to lower his rate after the venue was transferred to Crow Wing County. Insofar as appellant's overall award was reduced due to the compensation rate, this reduction was not supported by the record.

g. Respondent's Expert on Short-Term Sale (Estate Sale)

Reciting testimony, without additional related findings, the district court stated:

> [Respondent's expert] was concerned that [appellant] improperly held an [e]state sale ... without notifying or seeking permission from Tyson, the sole devisee of the [l]ast [w]ill. [Respondent's expert] stated that a[s]pecial [a]dministration was only for emergency actions necessary to preserve the [e]state and that in any event, the sole devisee should be consulted to prevent problems if that person wanted to keep any of the items sold.

The court order fails to note that respondent's expert also conceded that appellant as special administrator had the authority to sell any assets of the estate except real property.

A special administrator has the same powers of a general personal representative. Minn.Stat. § 524.3-617 (2006). A personal representative "shall take possession or control of ... the decedent's property ... The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate." Minn.Stat. § 524.3-709 (2006). "Until termination of the appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate." Minn.Stat. § 524.3-711 (2006).

Thus, it was not improper to conduct a sale. In determining appellant's fees the district court should consider the "results obtained," but there appears to be no evidence that the property was sold at a loss to the estate. On this record, appellant would be entitled to reasonable fees related to the estate sale.

h. Appellant's Time Spent Regarding the Hennepin County Claim

The district court relied upon respondent's expert to conclude that "[appellant] should have just denied the claim which looked frivolous and misplaced against the Meiners' Estate and waited for Hennepin County to take action." There is no clear error in the district court's finding insofar as it goes, but the record includes no finding quantifying the extent to which charges were premised on that activity or fees were denied.

i. Characterization of Appellant's Expert's Opinion

***7** The district court characterized the testimony of appellant's expert as "agree[ing] that many time entries submitted by [appellant] were either unnecessary or were very exaggerated." This consideration is muted in its importance because the same witness quantified his observations as limited to a reduction of $14,622.50, which is conceded by appellant. Likewise, as stated earlier, respondent's expert is cited on the notion that appellant's fees were excessive. But without specification or explanation, this statement has limited importance.

The district court's determination of reasonableness is insufficiently and erroneously explained to such an extent that the matter must be reversed and remanded for a redetermination of the fee claim. Our decision does not preclude the reopening of the record if the district court deems this appropriate.

Reversed and remanded.

All Citations

Not Reported in N.W.2d, 2008 WL 2340695

Footnotes

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

1 Respondent argues that the $28,000 award was intended as a measure of all of appellant's fees, both those claimed now and previously paid, thus suggesting appellant may need to return excess fees. Appellant disagrees, arguing that this $28,000 figure represents the portion of the balance due that he was awarded. Although there is little in the order to suggest it deals with the topic of fees previously paid, it is not sufficiently clear which reading is consistent with the district court's intent.

2 The district court stated "[appellant] improperly billed the [e]state for trying to sell real estate." The findings do not indicate the amount of fees attributable to those negotiations. And negotiating a sale of real estate is not per se inconsistent with preserving the estate. *See* Minn.Stat. § 524.3-611(a).

3 We note that the district court failed to address the concession of respondent's expert that, even given his poor opinion of appellant's role in the will contest, it would have been proper for appellant to bill for physically searching for a new will and responding to discovery, interrogatory, and less-formal requests.

4 *See* Minn. R. Prof. Conduct 1.16(d) (requiring a lawyer to "take steps ... to protect a client's interests" following the termination of representation).

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EXHIBIT JJ

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Court of Appeals of Minnesota.

In re ESTATE OF Mary Ann REIMAN, Decedent.

No. A11–203.
|
Jan. 3, 2012.

Hennepin County District Court, File No. 27–PA–PR–08–1940.

Attorneys and Law Firms

Stuart E. Gale, Bloomington, MN, for appellants, Stuart E. Gale and Scott Holm.

Steven M. Press, Press Law Office, PLLC, St. Louis Park, MN, for respondent, Tammy Jo Reiman.

Considered and decided by KALITOWSKI, Presiding Judge; MINGE, Judge; and ROSS, Judge.

UNPUBLISHED OPINION

MINGE, Judge.

***1** Appellants, who served as the personal representative and attorney of the estate of decedent Mary Ann Reiman, challenge the district court's order reducing their fees. Appellants argue that the district court variously erred or abused its discretion by (1) failing to provide adequate findings to allow meaningful appellate review; (2) making findings contrary to the record; (3) denying their motions for amended findings and a new trial; and (4) declining to impose sanctions against respondent and her attorney. By notice of related appeal, respondent asserts that the district court erred by failing to award her attorney fees from the estate in her challenge to the final account. For the reasons discussed below, we affirm in part, reverse in part, and modify to increase attorney fees for appellants by $3,950.

FACTS

Mary Ann Reiman died testate on September 3, 2008. An informal probate was filed, and, based on decedent's will, appellant Scott Holm (decedent's grandson) was appointed personal representative. Respondent Tammy Jo Reiman (decedent's daughter and an heir) objected to Holm being a personal representative and demanded a formal probate. After a hearing in February 2009, the district court formally appointed Holm personal representative and ordered formal probate of decedent's will.

In March 2010, appellants petitioned for the complete settlement of the estate and a decree of distribution. The gross size of the estate was $113,384.10. The district court found that appellants sought $2,162.50 for compensation of the personal representative, $500 in estimated future representative fees, $16,043 in attorney fees for appellant Stuart Gale, and $2,000 for estimated future attorney fees. Respondent objected to the final account, alleging various improprieties by the personal representative and challenging the fees of both appellants as excessive in light of the size and complexity of the estate.

Trial and Initial Order

In June 2010, a trial was held on the final account and respondent's objections. The hearing almost exclusively concerned various claimed errors and improprieties, including paying a late-filed claim by a bank; reimbursing a late claim for payment of the funeral bill; improperly using decedent's checkbook and bank cards prior to and, in one instance, after decedent's death; disposing of a vehicle; not accounting for all items of decedent's personal property; and accepting an inadequate life-insurance payout. On the day of trial, voluminous time and billing records supporting the fees of the personal representative and attorney were provided to opposing counsel and introduced as exhibits. Although the personal representative testified to and answered questions about his work, there was no evidence or argument otherwise supporting or contesting the fees. The district court dissuaded attorney Gale from testifying about the personal representative's fees because of the difficulties it would pose for him continuing as an attorney in the trial. After the trial, the parties filed posttrial memoranda, and Holm, as personal representative, and

Gale, as attorney for the estate, followed up on certain matters as suggested by the district court.

***2** On August 30, 2010, the district court, in an extensive order, validated certain questioned acts of the personal representative; except for fees, approved the final account; and *sub silentio* denied respondent's other objections. The district court addressed the fees of the personal representative and attorney in detail, concluding that both were unreasonable. The district court reduced the personal representative's fees by approximately one-half, from $2,275 for 91 hours to $1,150 for 46 hours. The district court reduced attorney Gale's $16,043 fee for approximately 80 hours of work by $5,354, about one-third, leaving Gale with a fee of $10,689.

Motion for New Trial/Amended Findings

In their posttrial motion for a new trial or for amended findings of fact and conclusions of law, appellants challenged the district court's reduction of their requested fees. The posttrial motion was accompanied by a motion for approval of the Amended Final Account that included additional attorney and personal-representative fees covering the time leading up to the June 2010 trial, the trial itself, posttrial activity, and completion of the probate. In the Amended Final Account, the personal-representative fees increased by $500 and the attorney fees increased to $32,780. Appellants also moved the district court to sanction respondent "for needlessly protracting the disposition of this estate" and forcing a trial on frivolous claims. A hearing on the Amended Final Account and various motions was held on November 10, 2010. No transcript or record of the November hearing was provided to this court on appeal.

In a December 15, 2010 order covering all matters that were scheduled for consideration at the November hearing, the district court approved the Amended Final Account with substantial reductions to the additional attorney fees and denied appellants' motions. As for personal representative Holm, the district court found that, although the additional fees were not supported by any billing records, Holm had been instructed by the district court to amend certain items in the final account and that the requested fee increase of $500 was reasonable.

In rejecting attorney Gale's motions regarding its prior reductions of his fees, the district court observed that the bases for its initial determination concerning the reasonableness of the fees were both the timesheets and billing records Gale previously introduced into evidence [1] and the statutory standard for attorney fees in probate, noting that the award of fees in this circumstance is within the district court's discretion. The district court further observed that Gale's timesheets did not always match the billing records; that many of the handwritten time logs were illegible and contained only summary descriptions of the work performed; that the smallest increment of time in Gale's billing system was one-quarter hour, or $50, resulting in a significant charge for nominal activity; and that Gale had billed his attorney hourly rate for some work that could typically be done by a paralegal when he otherwise reduced his rate for such work.

***3** As for the additional legal fees that were being newly claimed as part of the Amended Final Account, the district court stated that the November hearing was Gale's opportunity to present all of his supporting evidence and arguments. The district court observed that the dramatic increase in attorney fees from the initial final account to the amended final account was "alarmingly high." The district court further found that there was not supporting documentation for the fees and that attorney fees incurred in the preparation of a motion for yet additional attorney fees and personal-representative fees were not incurred for the benefit of the estate "in any shape or form," but for the benefit of appellants. The district court added several other critical findings regarding the fees. Based on time billed for appearing at trial and certain necessary posttrial work, the district court allowed an increase of $2,500 over the $10,689 in attorney fees amount previously approved. This appeal follows.

DECISION

I. ADEQUACY OF FINDINGS

The first issue raised by appellants is whether the district court erred by failing to provide sufficient specific findings regarding the reasonableness of the fees charged, thereby preventing appellate review. What constitutes a reasonable amount of attorney fees is a factual determination that will not be set aside unless clearly erroneous. *In re Estate of Balafas,* 302 Minn. 512, 516, 225 N.W.2d 539, 541 (1975). When the district court's findings are reasonably supported by the evidence, they are not

clearly erroneous and must be affirmed. *Schweich v. Ziegler, Inc.*, 463 N.W.2d 722, 729 (Minn.1990). But "[t]he district court must make sufficient findings to permit meaningful appellate review." *Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship,* 638 N.W.2d 214, 220 (Minn.App.2002), *review denied* (Minn. Feb. 4, 2002); *cf. In re Guardianship of Doyle,* 778 N.W.2d 342, 353 (Minn.App.2010) (reversing the district court's sua sponte disallowance of $5,000 in guardian-conservator fees for lack of adequate findings and because the district court had yet to finally review and rule on the account.).

Here, the August 2010 order includes nine specific findings concerning the personal-representative fees and makes general observations justifying the district court's conclusion that attorney Gale billed an unreasonable amount of legal time devoted to decedent's estate. Although the district court's August order does not provide a detailed analysis of Gale's specific billing practices, in its December 2010 order denying appellants' posttrial motions the district court made numerous specific findings concerning Gale's billing practices that clearly demonstrate the district court's rationale in determining that the attorney fees were unfair and unreasonable. On this record, we conclude that the district court's findings as to appellants' fees are sufficiently detailed to permit appellate review.

II. FEE REDUCTIONS

***4** The second issue raised by appellants is whether the district court erroneously reduced their fees. Minnesota statutes authorize reasonable compensation. *See* Minn.Stat. §§ 524.3–719 (2010) ("reasonable" for personal representative); 525.515 (2010) ("just and reasonable" for attorney). Allowance of personal-representative and attorney fees is a matter largely within the discretion of the district court; the reasonable value of such services is a question of fact. *In re Estate of Baumgartner,* 274 Minn. 337, 346, 144 N.W.2d 574, 580 (1966). A district court's findings of fact will not be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01; *see In re Disciplinary Action Against Coleman,* 793 N.W.2d 296, 303 (Minn.2011) (stating that factual findings will not be reversed "if they have evidentiary support in the record and are not clearly erroneous" and that findings of fact are clearly erroneous when an appellate court is "left with the definite and firm conviction that a mistake has been made" (quotations omitted)). We give due deference to the district court's opportunity to observe witnesses and evaluate their credibility. Minn. R. Civ. P. 52.01; *In re Estate of Serbus,* 324 N.W.2d 381, 384–85 (Minn.1982), *overruled on other grounds by In re Estate of Kinney,* 733 N.W.2d 118, 125 (Minn.2007).

A. Objection

Appellants complain that no one filed a motion or petition challenging fees. They claim that such a formal challenge is required by Minn.Stat. § 524.3–721 (2010) prior to district court consideration. However, the statute only requires that the person contesting fees notify interested parties or file a petition or motion. Minn.Stat. § 524.3–721. The statute does not mandate a petition or motion. *Id.*

Here, the record indicates that, in an affidavit dated April 1, 2010, respondent objected to both the fees of the personal representative and the attorney and that this objection was served on appellants. When the district court scheduled the June 21, 2010 trial, it was clear that this objection to fees was before the district court. The transcript of that hearing contains statements by counsel and the district court reflecting awareness of the challenge to fees. The record indicates that respondent expressed concern that she only received appellants' billing records in the form of voluminous exhibits on the morning of the trial and did not have adequate time to prepare. We conclude on this record that respondent's objection was sufficient to place the fees at issue and gave appellants notice that their fees were appropriately part of the trial. Although respondent failed to address or present evidence regarding the fee issue and the district court dissuaded attorney Gale from testifying as an expert witness on the personal-representative fees, appellants knew their fees were at issue and had the responsibility of proving up their fee requests.

B. Personal-representative fees

***5** The law provides that, to determine what amount reasonably compensates a personal representative:

> [T]he court shall give consideration to the following factors:
>
> (1) the time and labor required
>
> (2) the complexity and novelty of problems involved; and

(3) the extent of the responsibilities assumed and the results obtained.

Minn.Stat. § 524.3–719(b). Further, "[a]ny personal representative ... who defends or prosecutes any proceeding in good faith, whether successful or not, ... is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred." Minn.Stat. § 524.3–720 (2010).

Here, the district court made detailed findings concerning the tasks of the personal representative in this probate proceeding. It found that the estate contained no real estate or other assets that were difficult to liquidate or distribute and that, as a result, the administration of decedent's estate was relatively simple. Although the district court found that the personal representative's hourly rate was reasonable, it also found that the number of hours billed, as well as the method of tracking billed time, exaggerated the time that the personal representative spent on estate matters. The district court essentially found that the estate did not require the time or labor that the personal representative put in. Not only were there no novel or complex problems, but the district court specifically found that the personal representative's recordkeeping was questionable and that his administration of the estate was generally inefficient. The district court noted that menial tasks such as opening an envelope were recorded as taking 15 minutes. The record indicates that the responsibilities assumed and results obtained were not unusual. In sum, the district court applied the statutory factors and made findings of fact supported by record evidence. We conclude that the district court did not abuse its discretion in reducing the personal representative's fee to $1,150 in its August 30, 2010 order and by affirming that reduction in the December 2010 order. [2]

C. Attorney fees

Appellants also assert that the district court abused its discretion in reducing the attorney fees. The law provides that, in probate proceedings:

(a) Notwithstanding any law to the contrary, an attorney performing services for the estate at the instance of the personal representative, ... shall have such compensation therefor out of the estate as shall be just and reasonable....

(b) ... Where there is no prior agreement in writing with the testator consideration shall be given to the following factors in determining what is a fair and reasonable attorney's fee:

(1) the time and labor required;

(2) the experience and knowledge of the attorney;

(3) the complexity and novelty of problems involved;

(4) the extent of the responsibilities assumed and the results obtained; and

***6** (5) the sufficiency of assets properly available to pay for the services.

(c) ... In determining the reasonableness of the attorney fees, consideration shall be given to all the factors listed in clause (b) and the value of the estate shall not be the controlling factor.

Minn.Stat. § 525.515. Caselaw adds that the services provided by the attorney representing the estate must benefit the estate in order to be compensable. *In re Estate of Evenson,* 505 N.W.2d 90, 92 (Minn.App.1993); *see In re Estate of Weisberg,* 242 Minn. 150, 152, 64 N.W.2d 370, 372 (1954) (stating that "courts have a duty to prevent dissipation of estates through allowance of exorbitant fees to those who administer them"). Generally, fees incurred in defending or seeking contested fees are not for the benefit of the estate and are not recoverable. *In re Estate of Bush,* 304 Minn. 105, 123–26, 230 N.W.2d 33, 44–45 (1975).

1. Arguments

In an attempt to organize the multitude of objections raised and repeated at different points in appellants' brief, we summarize appellants' arguments claiming district court error in reducing Gale's fees as follows:

A. Gale was obligated to, and did successfully, defend the final account against respondent's objections.

1. Respondent forced Gale to engage in significant extra activity with numerous unfounded objections and demands, including:

i. demanding formal probate of the estate,

ii. claiming undue influence of Holm on decedent,

iii. objecting to the appointment of Holm as personal representative,

iv. bonding the personal representative when the decedent's will waived a bond,

v. claiming inappropriate bank and credit card usage,

vi. disputing payment on a late claim for reimbursement of funeral bill,

vii. arguing that there were missing items of personal property,

viii. objecting to amount of decedent's life-insurance payout,

ix. disputing payment on a late claim, and

x. arguing that there was a missing Cadillac car.

2. Gale had an obligation to prepare for and handle a trial over several of these matters.

3. The district court failed to recognize Gale's success in rebutting or successfully overcoming all of the foregoing objections and demands.

4. The district court disregarded the numerous documents and items of correspondence that attorney Gale prepared and filed as a part of probate and incident to the numerous, unfounded objections.

5. The district court shifted the financial burden of defending the estate against ill-founded claims from respondent and the estate to Gale personally, assuming that the successful defense did not benefit the estate.

B. The district court made erroneous assumptions about Gale's billing practices.

1. The district court misconstrued his time records when comparing them to billing statements.

2. The district court unfairly criticized the legibility and brevity of his daily logs and failed to recognize that there were also typed billing statements.

***7** 3. The district court improperly assumed that a solo practitioner should have support staff readily available to handle routine matters and should bill accordingly.

C. Gale was denied a hearing on his fee claim.

D. The district court improperly allocated the burden of proof and considered evidence outside the record.

1. The district court failed to place the burden on the objector to establish by expert testimony or otherwise that fees as paid are excessive.

2. The district court failed to recognize that respondent did not introduce any evidence that fees were excessive and that the record is otherwise devoid of such evidence.

3. The district court based findings on the court's personal knowledge or experience when it must base its decision only on the record.

2. Broad Considerations

Given the record in this case and the shotgun-style briefing on several of these arguments, we will not address them individually. Rather, we will address broad considerations that bear on resolution of these matters.

a. Statutory Standards/Deference

Before reaching the merits of Gale's attorney-fee claims, we first address his assertion concerning the allocation of evidentiary burdens when a probate attorney requests fees. Gale claims that the district court was bound to accept his fee proposals because respondent introduced no evidence to show that the fees were neither just nor reasonable. Gale mischaracterizes the burdens relevant to a claim for attorney fees in the probate setting. "[T]he allowance of compensation for attorney[ ] fees in probate proceedings rests largely in the discretion of the [district] court; and ... the reasonable value of such services is a question of fact." *Baumgartner,* 274 Minn. at 346, 144 N.W.2d at 580. As such, the district court's findings will not be disturbed unless the appellate court, after reviewing the evidence, "is left with the definite and firm conviction that a mistake has been committed." *In re Estate of Congdon,* 309 N.W.2d 261, 266 n. 7 (Minn.1981) (quotation omitted).

As previously noted, a probate attorney "shall have such compensation ... out of the estate as shall be just and reasonable," and, in reviewing fees, the district court is to consider the previously quoted statutory factors.

Minn.Stat. § 525 .515(a)-(b). But, regardless of the factors, caselaw interpreting section 525.515 "requires proof of a benefit to an estate before an attorney may be paid for providing 'services' for the estate." *Evenson,* 505 N.W.2d at 92. A party in exclusive possession of evidence has the burden to produce that evidence. *See Butt v. Schmidt,* 747 N.W.2d 566, 576 (Minn.2008) (stating that, in the marital-dissolution context, each party is responsible for producing his or her own work, education, and earnings history). This assertion is consistent with the nearly universal rule that the party moving the court to order payment of attorney fees bears the burden to establish the propriety of the award. *See. e.g., Geske v. Marcolina,* 624 N.W.2d 813, 818 (Minn.App.2001) (stating that, in a marital-dissolution proceeding, the moving party has the burden of proof in establishing that conduct-based fees are appropriate).

***8** Here, Gale made this threshold showing by submitting his billing records—which were in his exclusive possession—and both parties in various ways over the course of the district court proceedings argued the five statutory factors. The district court considered the record when it ruled on this issue. As the party requesting fees and having the supporting evidence, Gale bore the initial burden of production. Once he produced the evidence in his control, respondent argued that the statutory factors, when properly applied to these facts, mandated limiting Gale's requested fees. But respondent could also have rested on the record. Gale is essentially suggesting that the district court was bound to grant his fee request for the sole reason that respondent-objector failed to come forward with evidence sufficient to defeat the request. There is no such requirement in the statute, which mandates the application of certain factors. Because imposing a burden of production on a party who raises objections to a final account and requiring the district court to grant the fees requested unless the objector meets that burden would alter the district court's inherent discretion in acting on fee requests, we decline to adopt Gale's approach.

b. Attorney Fee Request, Generally

In entering its orders, the district court looked at the attorney-fee request generally and had the opportunity to determine an appropriate fee for this type of estate, based on its experience, its observations of the trial, the nature and extent of the various disputes, and its evaluation of Gale's work. In its August 2010 order, the district court found that the number of hours Gale reported for work for the estate was excessive. The district court found that the estate was not large or complex. The district court pointed out that the estate consisted largely of bank accounts with no real property, stocks, or complex investments; that no experts were retained; and that, as the attorney for the estate, Gale's responsibilities were presumptively relatively light. It determined that none of the five statutory factors supported a larger fee for this type of estate. Indeed, except for having to deal with the persistent inquiries of respondent and recasting the probate from informal to formal, Gale does not indicate any estate-related legal work that was unusually onerous or excessive that would support a greater fee. While recognizing that a formal probate takes more attorney time than an informal proceeding, we conclude that a district court may limit fees in a straightforward probate based on the statutory factors.

We recognize that this probate was complicated by respondent's objections. In this regard, the district court dealt with the parties and the various disputes. It saw the witnesses and documents, listened to counsel, read the pleadings, and had a far better opportunity than this appellate court to evaluate the complications of this probate proceeding, the complexity and cause of the problems, the experience and knowledge of the attorney, the work that is customarily done by clerical and paralegal staff, the responsibilities assumed, and the results obtained. We conclude that the district court applied the statutory factors in reaching its determination that the hours billed by Gale were an excessive and unreasonable amount to devote to the settlement and distribution of a modest estate and to answering questions and dealing with challenges about a range of matters. In sum, subject to adjustments noted below, we conclude that the district court did not clearly err in finding that, based on the statutory factors, the attorney's probate fees as presented and considered at the June hearing should be limited to the reduced amount which it allowed.

c. Respondent's Objections

***9** In looking at the multitudinous challenges by respondent, several are relevant to attorney fees, while others were never seriously pursued. As a daughter and devisee of decedent, respondent appears to be troubled by perceived improper conduct by her nephew, who had access to her mother's bank accounts and household furnishings and who participated in selling her house to

the fiancée of another nephew. The suspicions of the heirs extended to Holm's handling of the probate as the personal representative. When it came to a trial, the objections of undue influence and missing property melted away for lack of evidence.

We also note that although the district court ruled against the challenges, they are not necessarily ill-founded. Paying late claims for reimbursement raises red flags. The cash sale of the Cadillac appears to have caused confusion. Thus, to a certain extent, avoidable sloppiness in handling the estate may have caused objections. Similarly, the use of credit cards and the checkbook by a grandson of decedent when she was in the nursing home and the use of her cash card after her death raised suspicions. The trial testimony of Holm explaining the usage was not contradicted, and the district court ignored the issues in its order, effectively dismissing respondent's objections. Yet an additional consideration was the life insurance payout. Further investigation was not unreasonable with respect to the position of the life-insurance company reducing its payout on decedent's policy. This was easily resolved when the insurer furnished attorney Gale a letter written by the decedent electing to reduce the size of the policy.

One consideration that appears in reviewing the objections and claims of maladministration of the estate is that they were partly caused by Holm and were easily corrected or possibly could have been prevented by the attorney for the estate. The district court could weigh this in determining fee requests.

d. Briefing by Appellants

Appellants have not provided in their brief any indication of how much of Gale's time went into dealing with objections, trial preparation, or following up after the trial and have not pointed us to exhibits detailing that time. [3] This is largely the attorney time spent after January 2010 and included in the fees that were subject to the November 2010 court hearing. Parties on appeal are required to cite to the record for all statements of material fact, Minn. R. Civ.App. P. 128.02, subd. 1(c), and failure to cite to the record may be a basis for declining to consider an issue or for dismissal of an appeal, *Brett v. Watts,* 601 N.W.2d 199, 202 (Minn.App.1999), *review denied* (Minn. Nov. 17, 1999). The purpose of the rule requiring citations is to facilitate appellate review. *Cole v. Star Tribune,* 581 N.W.2d 364, 371 (Minn.App.1998) (striking portions of appellants' briefs because they failed to provide citations to the record, relied on extra-record assertions, and made repeated erroneous assertions of facts). Although we choose not to strike appellants' factual assertions that are unsupported by citations to record evidence, we decline to undertake the task of hunting through a trial transcript and hundreds of exhibits to locate uncited evidence to overturn a district court decision.

e. Gale's Submissions

***10** Next, we consider the findings of the district court concerning the legibility and inconsistency in billing records. Like the handwriting of many of us, Gale's handwritten time records are difficult to read. This should not be held against him. (Typed billing statements were submitted to the district court.) But, given this difficulty, we question the purpose and value of filing these time records. [4] Their submission to the district court raised the risk of confusion. In addition, we note that Gale numbered nearly every page of his office records as a separate exhibit and referred to them in large blocks, compounding the district court's and our difficulty of locating record support for his statements and arguments. As just mentioned, it is not the responsibility of this court to hunt through the record to find documents that may or may not support reversal of a district court decision. That is appellant's responsibility.

The district court pointed out inconsistencies in appellants' time and billing records. In their motion for amended findings and in their brief, appellants attach and cite to the exhibits which overcome or otherwise answer the district court's comments about inconsistency. This substantiates four hours of billed work disallowed by the district court. Here, the district court did not question Gale's billing rate of $200 per hour. We allow these four hours at that rate for $800. We acknowledge that these were pointed to by the district court as examples of why it discounted Gale's fees for the period preceding February 2010. Although the impact of the district court's finding may extend beyond the four hours and $800, we recognize that the time was incident to the routine probate tasks and before a trial was even scheduled. Thus, the district court was dealing with the basic fees for probating this estate. Our $800 allowance corrects what is a clear detail error in the more general analysis of the district court.

f. Solo Practitioner

We take seriously appellants' complaint that the judiciary should not penalize a solo practitioner's request for fees for lack of a paralegal or other support staff that is typically available in a larger law firm. It is common knowledge that many solo practioners have highly capable support staff. We note that Gale himself sometimes billed his time at $100 per hour on the ground that he was essentially performing paralegal work. We review the district court's decision and findings for abuse of discretion. We conclude that generally the district court did not abuse its discretion or inappropriately penalize Gale as a solo practitioner when indicating that Gale should more rigorously follow his own billing practice.

In one instance, Gale's classification of time spent as an attorney is improperly disallowed. He asserts that he spent attorney time to immediately respond to the district court's apparent loss of his exhibits, fearing lack of the missing exhibits might adversely affect his claim for fees, and that he should be fully compensated for this court-caused problem. Responding to the district court's apparent loss of documents understandably puts pressure on the solo practitioner, and he should be allowed compensation. We note that Gale's fees were reduced by $250 for this effort and conclude that $250 of his fees should be restored.

g. Evidentiary Hearing

***11** Appellants claim that the district court improperly denied them an adequate evidentiary hearing. Appellants' claims in this regard are unavailing. The claimed fees were submitted to the district court on two occasions. First, there are the fees that were presented to the district court at the June 21, 2010 hearing, reduced in the August 30 order, and subject to the motions for amended findings or a new trial. These fees were for the period in the initial final account. Because these fees had been the subject of the June 21 trial, the district court order correctly points out that there had already been a hearing.

Second, there are the fees that were claimed after those earlier billings. The additional fees for attorney time were included in appellants' Amended Final Account and motion for acceptance of that account and were before the district court at the November 10 hearing. Appellants do not identify any ruling of the district court that precluded their bringing up these bills on November 10. The fees included all the pre- and posttrial time of Gale. At this stage of the proceedings, appellants knew that the district court was highly critical of attorney fees and should have recognized that the sizable additional claimed fees were at risk.

The district court's December order points out that appellants failed to avail themselves of the November hearing as an opportunity to prove up these fees. Appellants have not furnished us with a transcript or any record of the November hearing, and none appears in the district court file. On appeal, appellant has the burden of providing an adequate record, including a transcript of the proceedings, that is sufficient to show alleged errors. *Mesenbourg v. Mesenbourg,* 538 N.W.2d 489, 494 (Minn.App.1995); Minn. R. Civ.App. P. 110.02, subd. 2. Absent such a record, we are unable to consider appellants' claims regarding the adequacy of the November hearing or review the district court's denial of their request for yet further proceedings on the matters before the court in June 2010.

h. Trial Preparation

Appellants claim attorney fees for preparation for the June 21 trial. Based on the district court's document register, the trial transcript, and the appendix to the brief, we recognize that Gale devoted time to preparation for the June trial that was not included in billings that stopped in February 2010. This cut-off date was four months before trial. Based on a one-day trial, the expectation that there are at least two hours of preparation time for each hour of trial, and the fact that the district court allowed seven and one-fourth hours of trial time, we conclude that fourteen and one-half hours can fairly be considered minimal preparation time. Based on $200 per hour, we allow Gale $2,900 in fees for trial preparation.

III. NEW TRIAL

The third issue raised by appellants is whether the district court abused its discretion in denying their motion for a new trial. Appellants argue that they were denied an opportunity to submit evidence and that they are entitled to a new hearing at which they can present a detailed accounting of their fees. We review a district court's denial of a new-trial motion for an abuse of discretion. *Stoebe v. Merastar Ins. Co.,* 554 N.W.2d 733, 735 (Minn.1996).

***12** Minn. R. Civ. P. 59.01 provides that a new trial may be granted on several grounds, including an irregularity in the proceedings whereby the moving party was deprived of a fair trial, or a decision not justified by the evidence or contrary to law. Appellants' principal contention is that they were deprived of a fair trial by an irregularity, specifically that the district court did not give them an opportunity to explain their recordkeeping at the hearing or allow Gale to testify as an expert concerning his own method of billing. Appellants do not cite to any point in the record where the district court refused to allow Gale to testify. On one occasion, the district court cautioned him against being a witness on the personal representative's fees because it might complicate his continuing role as an attorney for the estate in the court proceeding. As the district court observed, appellants were given an opportunity to present documentation and testimony in support of their requests for fees at the June 21 and November 10 hearings. We have no record or transcript of the November hearing. For the reasons previously discussed, we conclude that the district court did not abuse its discretion in denying the motions for a new trial and amended findings and deny the request that we remand for a further hearing on attorney fees.

IV. SANCTIONS

The next issue is whether the district court erred in denying appellants' motion for rule 11 sanctions against respondent's attorney. We review a district court's determination of the need for rule 11 sanctions for an abuse of discretion. *Leonard v. Nw. Airlines, Inc.*, 605 N.W.2d 425, 432 (Minn.App.2000), *review denied* (Minn. Apr. 18, 2000).

Appellants' sanction motion is procedurally deficient. They did not bring a separate motion for rule 11 sanctions; rather, they argued in their posttrial motion that a hearing should be scheduled to impose sanctions on respondent and her counsel for pursuing baseless and frivolous claims. A motion for rule 11 sanctions must (1) be made separately from other motions or requests; (2) describe the specific conduct alleged to violate the rule; and (3) be served as provided in Minn. R. Civ. P. 5.01–.05. Minn. R. Civ. P. 11.03(a)(1); *see Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 789–90 (Minn.App.2003) (holding that the district court abused its discretion by imposing rule 11 sanctions when the moving party failed to follow the provisions of Minn. R. Civ. P. 11.03(a)(1)).

Even had appellants followed the proper procedure, rule 11 sanctions are not necessarily warranted just because the district court ruled against and declined to address respondent's objections to the final account. As previously discussed, questions were raised about whether decedent was capable of writing checks or using her bank card while in the nursing home, the use of her cash card after her death, whether her life-insurance company was justified in reducing the face amount of the policy, whether certain late claims should have been disallowed, and the amount of personal representative and attorney fees. We conclude that the district court did not abuse its discretion in denying sanctions.

V. RESPONDENT'S ATTORNEY FEES

***13** By notice of related appeal, respondent argues that her counsel's fees should have been paid from the estate under Minn.Stat. § 524.3–720. Respondent's counsel conceded at oral argument that this issue was not raised before the district court. As such, the issue is not properly before us on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (1988) (appellate court will generally consider only matters presented to and considered by the district court). Respondent provides no support for the proposition that an issue raised for the first time on cross-appeal is entitled to any more consideration than an issue raised for the first time on direct appeal. *See State v. Thomas*, 467 N.W.2d 324, 327 (Minn.App.1991) (issues not raised before district court generally will not be addressed on appeal). Respondent has waived this issue.

VI. CONCLUSION

In sum, we conclude that the district court made three errors in reducing Gale's attorney fees: misreading time records resulting in an $800 adjustment, disallowing legal time in supplying a replacement set of exhibits resulting in a $250 adjustment, and excluding trial-preparation time resulting in a $2,900 adjustment. This is a total adjustment of $3,950. We modify the December 15, 2010 order of the district court to add $3,950 to the previously allowed attorney fees for a total of $17,139. Otherwise, based on our scope of review and all of the considerations

previously discussed, we conclude that there is substantial evidence and sufficient findings to sustain the August and December orders and that the district court acted within its discretion in reducing Gale's attorney fees.

Additionally, we conclude that the district court's findings are adequate for appellate review and that it did not abuse its discretion in denying appellants' motions for amended findings, a new trial, and sanctions. We further reject respondent's request for attorney fees.

Affirmed in part, reversed in part, and modified.

All Citations

Not Reported in N.W.2d, 2012 WL 5754

Footnotes

1 There is a certain amount of confusion concerning the exhibits received at the June 21 hearing. After the hearing, the district court apparently lost the exhibits. Although appellants assert a duplicate set was delivered to the district court, many exhibits were not included in the records transmitted to the court of appeals from the district court. Copies of these exhibits were provided by appellants.

2 The district court did allow the requested $500 of additional compensation for the personal representative for work done on the final account after the June hearing. That increase is not at issue in this appeal.

3 We also note that appellants' brief does not contain an addendum providing the orders from which this appeal was taken and that the appendix lists every page as a separate "exhibit." *See* Minn. R. Civ.App. P. 128.02, subd. 3 (requiring an addendum). We also note that almost every sentence in the brief is a separate paragraph, making it challenging to follow appellants' arguments.

4 Time records should only be submitted if requested by the court. Minn. R. Gen. Pract. 119.03, 412(a).

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State of Minnesota
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EXHIBIT KK

2006 WL 2348079
Only the Westlaw citation is currently available.

Court of Appeals of Minnesota.

In re ESTATE OF Joseph Henry GOSNELL, III, a/k/a Joe Gosnell, Decedent.

No. A05-1879.
|
Aug. 15, 2006.

Synopsis

Background: Decedents's heirs-at-law appealed from order of the District Court, Washington County, allowing final account in probate of estate of decedent.

Holdings: The Court of Appeals, Minge, J., held that:

trial court did not abuse its discretion when it denied request for additional discovery or evidentiary hearings regarding reasonableness of fees charged to estate, but

it could not decide on appeal whether trial court correctly determined that fees charged by attorney and personal representative were fair and reasonable.

Reversed and remanded.

Washington County District Court, File No. PX-00-400096.

Attorneys and Law Firms

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Gerald G. Dederick, Robert L. Bach, Wendy M. Brekken, Felhaber, Larson, Fenlon & Vogt, P.A., Minneapolis, MN, for respondent.

Ronald B. Sieloff, Eagan, MN, for Estate of Barbara Ann Gosnell, and Scott Wibbens and David Wibbens.

Considered and decided by RANDALL, Presiding Judge; WILLIS, Judge; MINGE, Judge.

UNPUBLISHED OPINION

MINGE, Judge.

***1** This is an appeal from an order allowing the final account in the probate of the estate of Joseph Gosnell. Gosnell's heirs-at-law challenge the award of more than $465,000 in attorney fees and more than $32,000 in personal-representative fees, arguing that the district court erred by (1) failing to allow discovery or grant an evidentiary hearing on the reasonableness of the claimed fees; (2) failing to make specific findings about the reasonableness of the fees under the factors listed in Minn.Stat. §§ 525.515, 524.3-717 (2004); and (3) failing to reduce allegedly excessive fees. We reverse and remand.

FACTS

Joseph H. Gosnell, III (Mr. Gosnell) and Barbara Ann Gosnell (Mrs. Gosnell) were married in 1996. Mr. Gosnell had no children. Mrs. Gosnell had two children from a previous marriage. Appellants are certain nephews, nieces, and other blood relatives of Mr. Gosnell. In October 1999, on the eve of a medical operation, Mr. Gosnell engaged George Knapp, a distant relative and an attorney, to quickly prepare a will. The will names Mrs. Gosnell as the sole beneficiary and contains a survivorship clause that requires the beneficiary to survive Mr. Gosnell by 90 days. No contingent beneficiaries were named in the will. Respondent Robert A. Erickson, a longtime friend of Mr. Gosnell, was named as the personal representative. Mr. Gosnell survived the surgery. Although attorney Knapp urged Mr. Gosnell to have his will redone to deal with various contingencies, Mr. Gosnell did not do so.

On February 23, 2000, Mr. and Mrs. Gosnell died in an automobile accident. The death certificates did not include a determination of survivorship between the couple. At the time of Mr. Gosnell's death, the assets in his estate were real estate, artwork, and a business.

Erikson, as the designated personal representative, retained the services of the Felhaber law firm to probate the estate of Mr. Gosnell (the estate). On April 17,

2000, Erickson filed a petition seeking formal probate of will and appointment of a personal representative. In the petition, Mr. Erickson renounced his right to the appointment and nominated Diane Hurley, a longtime friend and employee of Mr. Gosnell, as personal representative. After numerous objections and counter-nominations for the position of personal representative, the district court ultimately appointed Erickson as the personal representative.

Various parties filed more than 170 pleadings during the five years this probate matter was pending. In addition to the controversy regarding the personal representative, the district court heard arguments for summary judgment, dealt with numerous other motions, held a pre-trial hearing and approved a settlement of the litigation over who were the legal heirs, approved the sale of Mr. Gosnell's business, held a hearing and issued a legal opinion regarding the clarity of the will's language, and held hearings on other objections raised by appellants. Additionally, the district court ordered the estate to conduct an investigation into possible legal-malpractice claims against attorney Knapp for his drafting of Mr. Gosnell's will. Based on the results of the investigation, the estate did not pursue such a claim. Except for the appeal now before this court, the parties have settled their differences; none of the district court's rulings has been contested.

***2** Estate administration by the personal representative and legal counsel required oversight of estate- and income-tax preparation, sale of real estate in three states, sale of other assets including a highly valuable work of art, an investigation into the validity of a divorce Mr. Gosnell obtained in Mexico more than 30 years ago, and disposition of Mr. Gosnell's business. The attorneys reported that disposition of the business required determination of ownership, inventory, and financial status of the corporate entity. The corporate records were largely incomplete.

The total value of the estate was $1,911,347.51 including non-probate assets. The attorney fees claimed were $465,939.50 and the personal representative's claimed fees were $32,307.05. Detailed legal billing records showing time and expenses were filed. Appellants challenged the fees. The respondent is the personal representative.

On February 8, 2005, respondents filed a petition for the complete settlement of the estate and decree of distribution. Four days before the scheduled April 15, 2005 hearing, appellants objected to the attorney fees and personal representative fees in the final account. Oral argument was allowed. Numerous specific objections were made as to the number of attorneys assigned, the amount of time billed, and the nature of the work included in the law firm's records. The size of the bill compared to the size of the estate was also criticized. Appellants requested time for additional discovery and a further hearing. The district court issued an order allowing the final account, settling, and distribution of the estate. As a function of this order, the attorney fees were approved. The order included no findings of fact or memorandum supporting the fees or rejecting appellant's objections to the fees. Appellant's requests for additional discovery and a further hearing were not specifically addressed and implicitly denied. This appeal follows.

DECISION

I. Additional Discovery and Hearings

The first issue is whether the district court erred in denying appellants' request to conduct additional discovery and for an additional evidentiary hearing regarding the reasonableness of the fees charged to the estate. A district court "has wide discretion to issue discovery orders and, absent clear abuse of that discretion, normally its order with respect thereto will not be disturbed." *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen,* 454 N.W.2d 916, 921 (Minn.1990).

Appellants were entitled under law to challenge the reasonableness of the fees charged to the estate in the manner provided in Minn.Stat. § 524.3-721 (2006). Absent an agreement with the testator, the following factors are used to evaluate attorney fees:

(1) The time and labor required;

(2) The experience and knowledge of the attorney;

(3) The complexity and novelty of problems involved;

(4) The extent of the responsibilities assumed and the results obtained; and

***3** (5) The sufficiency of assets properly available to pay for the services.

Minn.Stat. § 525.515(b) (2006). Absent an agreement, the personal representative's fees are reviewed on the basis of factors (1), (3), and (4). *See* Minn.Stat. § 524.3-719 (2006). In making a determination of the reasonableness of the fees charged by the attorneys and the personal representative, the district court is given significant deference within the statutory framework.

Here, the district court apparently felt that the written objections to the fees, responses to those objections, further submissions in support of the fees, and appellant's responses to those submissions provided enough information to decide the matter of reasonableness of fees without further discovery or evidentiary hearings. Based on the district court's extensive experience with this probate and the issues involved in this case, the voluminous probate-court file, and the detailed time records submitted by the law firm handling the estate, the district court could reasonably have determined that there was an adequate record to rule on the attorney and personal representative fees. Accordingly, we conclude that the district court did not abuse its discretion when it denied appellants' request for additional discovery or evidentiary hearings.

II. Lack of Specific Findings

The second issue is whether the district court erred in failing to provide specific findings regarding the reasonableness of the fees charged by the Felhaber law firm and the personal representative. The district court's award of a reasonable amount of attorney fees is a factual determination that will not be set aside unless clearly erroneous. *In re Estate of Balafas,* 302 Minn. 512, 516, 225 N.W.2d 539, 541 (1975). When the district court's findings are reasonably supported by the evidence, they are not clearly erroneous and must be affirmed. *Schweich v. Ziegler, Inc.,* 463 N.W.2d 722, 729 (Minn.1990). The legislature has identified specific factors previously set forth that the court is to consider in determining the reasonableness of personal representative and attorney fees. *See* Minn.Stat. § 524.3-719(b)(1-3); § 525.515(b)(1-5). However, the statutes do not require specific findings by the district court to support its approval of the disputed fees.

Here, the probate court did not make specific findings of fact, and its order to allow the final account, settling and distribution of the estate's assets implicitly held that the attorney fees were fair and reasonable. Both parties discuss *In re Estate of Bush,* 304 Minn. 105, 230 N.W.2d 33 (1975), as providing an answer to whether this court may rely on the district court's order to impute a determination that the attorney fees charged to the estate were reasonable. In *Bush,* the Minnesota Supreme Court relied on a number of factors to find that the district court's determination regarding the appropriateness of attorney fees was fair and reasonable. 304 Minn. at 123-24, 230 N.W.2d at 44-45. Important to the Court's analysis in *Bush* was the district court's memorandum accompanying its findings, which discussed 18 separate factors, and the district court's intimate knowledge of the case. 304 Minn. at 117-20, 230 N.W.2d at 40-42.

***4** Other decisions have concluded that the district court's determination of reasonableness comes directly from its findings of fact. *See Balafas,* 302 Minn. at 515, 225 N.W.2d 539 (laying out specific language that exhibited an intimate knowledge of the issues at hand); *In re Estate of Weisberg,* 242 Minn. 150, 153, 64 N.W.2d 370, 372 (1954) (affirming that consideration of the size of the total estate and the extent to which an estate is depleted by fees is appropriate in determining reasonableness). This court has looked to specific findings of the district courts in determining whether the finding of reasonableness was justified. *See In re Estate of Torgersen,* 711 N.W.2d 545, 555 (Minn.App.2006) (stating that "the district court did not reach the issue of good faith or reasonableness of the fees claimed. Therefore, we reverse ... and remand to the district court for a determination of whether appellant acted in good faith and, if so, for a determination of the reasonableness of the fees ...").

Respondents rely on *Edina Comm. Lutheran Church v. State* to support their assertion that a district court's findings will be upheld if they "permit meaningful appellate review." 673 N.W.2d 517, 523 (Minn.App.2004). But in *Edina Comm. Lutheran Church,* this court concluded: "[a]bsent findings, we do not know what the trial court concluded on the issues, and thus we cannot determine whether denial of [appellant's] motion constituted an abuse of discretion." *Id.*

The record in this matter is incomplete regarding the district court's rationale in determining that the attorney

fees were fair and reasonable. Unlike *Bush* and *Edina Comm. Lutheran Church,* in this case the district court has not furnished a memorandum or justification of findings. Appellants point to the lack of a detailed memorandum as support for their contention that the district court abused its discretion in ordering attorney fees. Contrarily, respondents rely on the familiarity of the district court with the proceedings to justify the award of attorney fees without a memorandum to support the district court's decision. However, the record lacks a justification for a finding of fair and reasonable attorney fees. The only statement in the district court's order that remotely addresses the reasonableness of attorney fees is the cryptic sentence in the official probate form that reads: "The Final Account of the Personal Representative is allowed ."

The factors listed in Minn.Stat. §§ 525.515 and 524.3-719 seek to assure that fees are fair and reasonable. Here, the attorney fees are substantial compared to the size of the estate. Although the district court in this case allowed the fees when it approved the final account and allowed payment of the fees, without findings or analysis by the probate court, meaningful review by this court is precluded. We cannot decide whether it correctly determined that the fees charged by the attorney and the personal representative were fair and reasonable under the legislative guidelines.

***5** Accordingly, we do not reach the challenge to the amount of fees. We reverse and remand this matter for findings of fact and analysis of the fairness and reasonableness of the attorney and personal representative fees. Of course, the district court may in its discretion allow discovery and a hearing on the fees if it decides that would be helpful.

Reversed and remanded.

All Citations

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