

**STATE OF MINNESOTA
CARVER COUNTY**

**DISTRIC COURT
FIRST JUDICIAL DISTRICT**

Judge Kevin Eide

Court File No. 10-PR-16-46

In the matter of:

Estate of

Prince Rogers Nelson,

Decedent

MOTION TO PRESENT ORAL EVIDENCE
IN PARENTAGE PROCEEDING

I. Case History

10-PR-16-46

Filed in First Judicial District Court
5/9/2018 11:23 AM
Carver County, MN

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

 In the Matter of:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

**ORDER REGARDING HEIRSHIP CLAIM
OF OGEDA PATRICK**

Decedent.

The above entitled matter came on before the Honorable Kevin W. Eide after the Court's receipt of various submissions filed by Ogeda Patrick. Previously in this matter, Mr. Patrick asserted an heirship claim based on his belief that Prince Rogers Nelson (the "Decedent") is his genetic father, and requested genetic testing. Comerica Bank & Trust, N.A. (the "Personal Representative") informed Mr. Patrick that it had determined that he did not qualify for genetic testing pursuant to the Court-approved Protocol Prior to Potential Genetic Testing (the "Protocol"). (See June 6, 2016 Order Approving Protocol). Mr. Patrick then filed two Writs of Mandamus, which appear to renew his heirship claim and request for genetic testing. In response, the Personal Representative filed a Response to Filings by Ogeda Patrick and Request that He Be Excluded as an Heir. On March 19, 2018, the Court filed its Order for Submissions, requiring Mr. Patrick to submit any evidence in support of his heirship claim and any objections to the Personal Representative's motion that he be excluded as an heir of the Estate by April 13, 2018. The Order for Submissions then provided the matter would be taken under advisement based upon the written record as of April 13, 2018. On April 16, 2018, Mr. Patrick filed with the Court his "Response to Order for Submissions of Evidence in Support of Heirship Claim and Objections to Being

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Excluded as Heir.” Though untimely, the Court will receive Mr. Patrick’s submission for purposes of this decision.

Now, based on the file and proceedings herein, the Court makes the following:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. Mr. Patrick has asserted claims to the Personal Representative and the Court that he believes the Decedent is his genetic father.
2. Among other things, the Protocol requires that a party claiming a genetic relationship to the Decedent that may give rise to heirship file an affidavit setting forth the facts that establish the reasonable possibility of the existence of such relationship.
3. Mr. Patrick has had multiple opportunities to provide information supporting his assertion that the Decedent is his genetic father.
4. As with his previous assertions to the Personal Representative and the Court, Mr. Patrick’s “Response to Order for Submissions of Evidence in Support of Heirship Claim and Objections to Being Excluded as Heir” argues he is Decedent’s child because while looking through online photographs and videos of decedent, he “began to notice some very keen, even irrefutable, resemblances between he and I.” Similarities in appearance alone, however, are insufficient to establish a reasonable probability that Mr. Patrick is Decedent’s biological child.
5. Mr. Patrick has not provided facts sufficient to establish the reasonable possibility that the Decedent is his genetic father. For example, Mr. Patrick has not: (a) claimed that he is the child of the Decedent due to the presumption of paternity under the Minnesota Parentage Act; (b) alleged a relationship with the Decedent during his lifetime; or (c) provided an

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affidavit from his mother indicating that she had a sexual relationship with the Decedent which resulted in Mr. Patrick's conception.

6. Based upon the information provided, Mr. Patrick has not established a *prima facie* showing that he is the child of the Decedent.

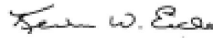
ORDER

1. Mr. Patrick is not entitled to genetic testing.
2. Mr. Patrick is excluded as an heir of the Decedent.

Dated: May 9, 2018

BY THE COURT:

Eide, Kevin



2018.05.09 10:55:43

-05'00'

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.

II. Torts

On October 05, 2017 I, Ogeda Patrick, definite descendant and heir to the Prince Nelson Estate, did file in Carver County First Judicial District Court:

1. An Affidavit of Heirship stating my claim to be Prince's biological son

And

2. A Motion for Genetic Testing of Putative Father

The doctrine “Vertical Stare Decisis” is “the doctrine that a court must strictly follow the decisions handed down by higher courts within the same jurisdiction.” This being said the Administrator, Personal Representative, nor Court were at liberty to create a protocol that was created “in light of the law”. The use and application of these words in and of themselves indicate contempt and disregard for the ‘Protocol’ that is the law, the laws of the state of Minnesota. There have been numerous precedents set in the state of Minnesota throughout history that govern the procedures of probate and parentage proceedings along with Minnesota Statutes and Rule Books. These precedents include: {(Minn. 2001) & Dorman v. Steffen 666 N.W.2d 409 (Minn. 2003)} & Witso v. Overby, 627 N.W.2d 63 (Minn. 2001)}, which affirmed:

- ◆ If a putative father, without blood test results, may bring an action to establish a presumption in himself under Minn. Stat. §257.57, subd. 2(1), we believe that the county, *the child*, or the mother may also bring an action to establish a presumption of paternity

in the putative father and may compel him to submit to a blood test to establish that presumption.] As well as

Minnesota Supreme Court case Johnson v. Hunter 447 N.W.2d 871 (1989), which affirmed that:

1. “Analogously, we have stated the right to establish family relations is "inherent and inalienable." Thiede v. Scandia Valley, 217 Minn. 218, 224-25, 14 N.W.2d 400, 405 (1944).”
2. “However, the Minnesota Supreme Court has held that, if the child is not a party to a paternity action, the child is not bound by the decision in that case and can bring a separate action to establish paternity.”

***In this case, (Johnson v. Hunter) Ms. Tia Marie Johnson was successfully able to bring a paternity action without the inclusion of her mother in the establishment process contrary to the statute-excluding, preclusive intent and defiant language the protocol imposed, demanding establishment of paternity via methods inconsistent with laws created by Minnesota Legislature to adjudicate such matters. It was a less than jurisprudential act, steeped in deceit by the Court and associated parties, to attempt to create a protocol and allude to it as the only means of establishing paternity, when in fact the Protocol fallaciously excluded statutes described in Minn. Stat 257.63 applicable in establishing paternity; laws that cannot simply be done away with nor excluded through creation of a ‘Protocol’ “in light of the law.” Since its start this case has been wrought with judicial malfeasance, violations of immutable laws and statutes that govern Minnesota

Probate and Parentage proceedings; a deeply woven deception, all an concerted effort to exclude the one true heir of the Prince Estate, I Ogeda Patrick.

III. Laws

Article III of The U.S. Constitution

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

So, it is clear that judges do not wield law-making power, nor do Administrators in Probate Proceedings nor Personal Representatives, and per the U.S. Constitution they [Judges] are also bound by the Constitution and the laws of the state as the supreme Law of the Land.

MINNESOTA CODE OF JUDICIAL CONDUCT

Rule 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Rule 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

2Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. [3]

When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

Rule 2.3 Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others based

upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Rule 2.4 External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Rule 2.6 Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in a dispute but shall not act in a manner that coerces any party into settlement.

Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice.

Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

IV. Responses To Previous Order Excluding

In response to the section entitled Findings of Fact & Conclusions of Law of the above order filed by the Honorable Judge Eide:

Findings of Facts & Conclusions of Law #2: (Please refer to the order above for exactness)

“Among other things, the Protocol requires that a party claiming a genetic relationship to the Decedent that may give rise to heirship file an affidavit setting forth the facts that establish the reasonable possibility of the existence of such relationship.”

RESPONSE: The statutes and rules of the state of Minnesota listed below constitute the methods and procedures of establishing paternity (presumptions, genetic testing, evidence of paternity, etc.).

Minnesota Parentage Governing Statutes

257.54 HOW PARENT AND CHILD RELATIONSHIP ESTABLISHED.

The parent and child relationship between a child and:

- (a) the biological mother may be established by proof of her having given birth to the child, or under sections 257.51 to 257.74 or 257.75;
- (b) the biological father may be established under sections 257.51 to 257.74 or 257.75; or
- (c) an adoptive parent may be established by proof of adoption

484.81 PLEADING; PRACTICE; PROCEDURE.

Subd. 1.General.

Pleading, practice, procedure, and forms in civil actions shall be governed by Rules of Civil Procedure which shall be adopted by the Supreme Court.

Subd. 2.Court rules.

The court may adopt rules governing pleading, practice, procedure, and forms for civil actions which are not inconsistent with the provisions of governing statutes.

- ◆ Creating such a protocol to adjudicate paternity/heirship claims brought forth against the Prince estate, which unfairly limit the number of options to prove paternity, is inconsistent with paternity/probate statutes created to address such issues, therefore making it a verboten action.

Findings of Fact & Conclusions of Law # 3: (Please refer to the order above for exactness)

Mr. Patrick has had multiple opportunities to provide information supporting his assertion that the Decedent is his genetic father.

RESPONSE: This is untrue. The originally filed documents (Heirship Claim and Request for Genetic Testing) were:

- ◆ purportedly filed under seal, although I did not request them to be filed under such status when filing them at the Courthouse,
- ◆ not responded to for nearly two months

- ◆ And, when responded to, they were done so in an unofficial capacity; in a letter to me without an official order filed with the Court and signed by the Judge.
- ◆ The right to be heard is an integral proponent of due process.

Because of the Court's and the Administrator's failure to adjudicate my Claim of Heirship and Request for Genetic Testing with proper regard and adherence to the Rules of Civil Procedure and General Practice, I then decided to file two Writs of Mandamus for each filing, respectively. Instead of setting a time and date for hearing these matters orally in person (obviously the most effective manner for presiding over a claim as paramount as someone asserting to be a descendant, a status possibly pre-empting in nature because of the order of devolution created by the Legislature in Minn. Stat. 524.2-301 in which the Legislature established intention that a decedent's intestate estate passed in order first, to his children if present BEFORE the Estate can pass to other possible Heirs if there is found to be no descendants), the Court only requested that I submit any evidence in support of my heirship claim and respond to the Personal Representative's motion that I be excluded as an heir of the Estate.

Findings of Fact & Concluson of Law # 4: (Please refer to the order above for exactness)

“As with his previous assertions to the Personal Representative and the Court, Mr. Patrick's “Response to Order for Submissions of Evidence in Support of Heirship Claim and Objections to Being Excluded as Heir” argues he is Decedent's child because while looking through online photographs and videos of decedent, he “began to notice some very keen, even irrefutable,

resemblances between he and I.” Similarities in appearance alone, however, are insufficient to establish a reasonable probability that Mr. Patrick is Decedent’s biological child.”

RESPONSE: I disagree. This is untrue because case law and Minnesota Statutes state that:

257.63 EVIDENCE RELATING TO PATERNITY. -*Governing Statute*

Subdivision 1. Included evidence.

Evidence relating to paternity may include:

- (1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- (3) genetic and blood test results, in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;
- (4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and
- (5) all other evidence relevant to the issue of paternity of the child.

In addition,

Court of Appeals of Minnesota.

Mary Laymon as the personal representative of the Estate of Howard Arnold Laymon,
Respondent, v. Minnesota Premier Properties, LLC, et al., Appellants.

A17-0162

Decided: October 09, 2017

“We also consider judicial decisions from other states that have adopted the UPC. See Minn. Stat. § 524.1-102 (2016) (providing that Minnesota's probate code must be “applied to promote the underlying purpose and policies” of the UPC, including “to make uniform the law among the various jurisdictions”); *Beachside*, 802 N.W.2d at 774–75 (looking to “other jurisdictions that have applied identical provisions from the UPC” in construing and applying Minn. Stat. § 524.3-101); see generally Minn. Stat. § 645.22 (2016) (stating that “[l]aws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them”). Those decisions bolster our resolve that residuary devises, like specific devises, may result in immediate devolution upon the testator's death. See, e.g., *Ruzicka v. Ruzicka*, 635 N.W.2d 528, 534 (Neb. 2001) (stating that “each . . . residual devisee is the vested titleholder of an interest in the real property presently included in the residue of the estate”); *In re Estate of Johnson*, 863 N.W.2d 215, 219–22 (N.D. 2015) (agreeing that residuary devisees took title to estate property immediately upon testator's death, subject to administration).”

In the state of Texas:

“In cases involving proof of paternity, the fact finder must decide in each case whether the evidence presented is clear and convincing. *Garza v. Maverick Mkt., Inc.*, 768 S.W.2d 273, 275-76 (Tex. 1989) (holding that in a wrongful death action an alleged child must have the opportunity to prove by clear and convincing evidence that he is the deceased’s child). The Texas Supreme Court listed some of the potential evidence an alleged child may use to prove paternity including:

1. Blood or genetic tests;
2. Evidence of physical resemblance of the child to the alleged father;
3. Prior statements by the alleged father that he was the father of the child, or other admissions by him bearing on his relationship to the child; and
4. Evidence of periods of conception and gestation.

So, it is clear that others states as well have adopted laws for adjudicating paternity very similar to the constructs of laws currently on the books in the state of Minnesota. Thus, judging from these case precedents and statutes, one can distinguish that similarities in appearance (genetically) it is not only able to establish a reasonable probability that the sexual requisite contact occurred, but it is also evidence sufficient in proving paternity under the clear and convincing burden of proof.

Findings of Fact & Conclusions of Law #5: (Please refer to the order above for exactness)

“Mr. Patrick has not provided facts sufficient to establish the reasonable possibility that the Decedent is his genetic father. For example, Mr. Patrick has not: (a) claimed that he is the child

of the Decedent due to the presumption of paternity under the Minnesota Parentage Act; (b) alleged a relationship with the Decedent during his lifetime; or (c) provided an affidavit from his mother indicating that she had a sexual relationship with the Decedent which resulted in Mr. Patrick's conception."

RESPONSE: Claiming presumptions under the MPA is not the only possible method of establishing paternity, as can be evidenced through comprehension of the following statute.

257.65 CIVIL ACTION.

An action under sections 257.51 to 257.74 is a civil action governed by the Rules of Civil Procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 257.62 and 257.63 apply to proceedings under this section.

In the Estate of Martignacco:

b.) "The district court concluded, "[i]f [respondent] is properly considered an heir of [decedent], then he, as the sole surviving son, is the sole heir and taker of [decedent's] [e]state pursuant to [the probate code]." In making its determination, the court noted that biology and not family relationship was the only issue to be considered. Accordingly, summary judgment was granted for respondent, who was adjudicated to be decedent's biological son and sole heir."

The ruling from this case clearly specifies that biology, whether there is a genetic relationship, is the only pertinent issue to be considered, not whether the child had a relationship with the decedent during his lifetime.

And, in response to section (c) of the above Finding of Fact and Conclusion of Law, the mother's inclusion in the establishment process is not required as noted in Minnesota Supreme Court case Johnson v. Hunter 447 N.W.2d 871 (1989).

V. THE PROTOCOL & CLEAR AND CONVINCING EVIDENCE

In *Weber V. Anderson* 269 N.W.2d 892 (1978) the Supreme Court of Minnesota declared that the 'clear and convincing' standard of proof is a sufficient burden of proof in adjudicating paternity after the putative father's death, stating that:

Section 573.01 provides as follows:

"A cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in section 573.02 [wrongful death statute]. It also dies with the person against whom it exists, except a cause of action arising out of bodily injuries or death caused by the negligence of a decedent or based upon strict liability, statutory liability or breach of warranty of a decedent, survives against his personal representatives. All other causes of action by one against another, whether arising on contract or not, survive to the personal representatives of the former and against those of the latter."

The first two sentences of § 573.01 make special provisions for causes of actions "arising out of an injury to the person," provisions clearly inapplicable to paternity actions. However, the final sentence of the statute provides: "All other causes of action by one against another * * * survive to the personal representatives of the former and against those of the latter." We conclude that this general provision embraces paternity actions.

In reaching this conclusion, the legitimate concern that has been expressed in some of the cases from other jurisdictions about the risk of fraudulent claims against the putative father's estate.

However, this risk is not significantly greater in paternity actions brought after the putative father's death than in many other types of actions, including an action by a party seeking to prove that he recognize e is the legitimate child of a decedent. Most importantly, we believe the risk is outweighed by the injustice which is done to the innocent child by denying it an adjudication of paternity (which is what the protocol's exclusion of Minnesota Statute 257.63's legal-application/bearing did exactly) simply because its putative father happened to die.

We believe that the risk of fraudulent claims in this context is better met, not by barring all such causes of action, but by requiring clear and convincing proof by the plaintiff that the putative father was in fact the father. This requirement provides a significant measure of protection to the putative father's estate, but does not take from the child all opportunity to prove paternity. "Clear and convincing proof" means exactly what is suggested by the ordinary meanings of the terms making up the phrase. Satisfaction of this standard requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is "highly probable."

VI. Cause for Revision

54.02 Judgment upon Multiple Claims

When multiple claims for relief or multiple parties are involved in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

- 1.) Only one claim could have been adjudicated in the order listed above, 2.) Because of the Court's failure to assign a time and date for hearing a claim of heirship of a possible descendant, the deprivation of due process resulting from such action cannot terminate such action,
- 3.) Because the order listed above failed to adjudicate fewer than all the claims or the rights and liabilities, and due to lack of express determination and direction the action filed by myself is not terminated and is subject to revision.

Due to the aforementioned assertions of this motion and my belief in their sufficiency in proving a paternal/genetic relationship between myself, the Claimant, Ogeda Patrick, and the

Putative Father in question, Prince Rogers Nelson, in accordance with Minnesota Rules of General Practice Rule 364.11 Burden of Proof, which states:

The party proposing that certain action be taken shall prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard. A party asserting an affirmative defense has the burden of proving the existence of the defense by a preponderance of the evidence,

Therefore, Mr. Patrick hereby respectfully requests the opportunity to be heard, in pursuance of rights bestowed upon by the 14th Amendment of the U.S. Constitution, which affords the protection of Due Process to all American citizens, to present oral, genetic, and other evidence in support of my claim as Descendant of Prince Rogers Nelson, and Heir, to the Prince Estate.

Respectfully submitted by: Ogeda Patrick

Date: 10/23/2019

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