STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER FIRST JUDICIAL DISTRICT

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In Re the Estate of Transcript of Proceedings

Prince Rogers Nelson, District File No. 10-PR-16-46

Deceased. Appellate File No. A16-2042

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The above-entitled matter came on for probate hearing before the Honorable Kevin W. Eide, one of the Judges of the First Judicial District, at the Carver County Justice Center, 604 East 4th Street, City of Chaska, County of Carver, State of Minnesota, on October 21, 2016.

A P P E A R A N C E S:

David Crosby and Laura Halferty appeared on behalf of Bremer Trust National Association.

Frank Wheaton and Justin Bruntjen appeared with and on behalf of Alfred Jackson.

Adam Gislason and Ken Abdo appeared with and on behalf of Sharon Nelson, Norrine Nelson and John Nelson.

Thomas Kane appeared with and on behalf of Omarr Baker.

Celiza Braganca, Andrew Stoltmann, Joanna Sunderland, Deanna Besbekos-LePage, Jennifer Santini appeared on behalf of Brianna Nelson, present and V.N. not present.

Eric Dammeyer and Andrew Lehner appeared on behalf of Corey Simmons.

Robert Barton and Christopher Boyett appeared with and on behalf of Tyka Nelson.

Cameron Parkhurst and Sharon Fischlowitz appeared on behalf of Darcell Gresham Johnston.

THE COURT: We will go on the record in the matter of the Estate of Prince Rogers Nelson; Tyka Nelson, Petitioner. This is Court File 10-PR-16-46 and for those that may not be aware we've actually split the file and some of the documents are in 10-PR-16-46A.

We've got a court reporter's nightmare here, as far as all of the appearances today. So Mr. Crosby, maybe we can start with you; work around the table and then maybe work back towards Mr. Parkhurst in the corner there. Go ahead and take it slow.

MR. CROSBY: Good afternoon, Judge. I'm going to stay seated just because this microphone doesn't go very high, with your permission. Normally I'd stand. David Crosby and my partner Laura Halferty here from Stinson Leonard Street on behalf of the Special Administrator, Bremer Trust.

THE COURT: Mr. Bruntjen.

MR. BRUNTJEN: Good afternoon, Your Honor. Justin Bruntjen, B-R-U-N-T-J-E-N, along with my co-counsel Frank Wheaton. We're here representing Alfred Jackson, Your Honor.

MR. WHEATON: Good afternoon, Your Honor. Frank Wheaton for Alfred Jackson with Justin Bruntjen.

THE COURT: Thank you.

MR. GISLASON: Good afternoon, Your Honor.

Adam Gislason from the Lommen Abdo law firm, along with my partner Ken Abdo. We're here on behalf of Sharon, Norrine and John Nelson.

THE COURT: Thank you.

MR. KANE: Good afternoon, Your Honor. My name is Thomas P. Kane, K-A-N-E. Cosen O'Connor is the name of the firm and we represent Omarr Baker.

MS. BRAGANCA: Good morning, Your Honor. My name is Celiza Braganca, and I and Andrew Stoltmann, along with Joanna Sunderland and Deanna Besbekos-LePage and Jen Santini, represent Brianna Nelson, who is here with us today, and V.N., the minor, who is the granddaughter of Duane Nelson.

THE COURT: Thank you.

MR. DAMMEYER: Good afternoon, Your Honor. My name is Eric Dammeyer with Andrew Lehner; we represent Corey Simmons.

THE COURT: Okay.

MR. BOYETT: Good afternoon, Your Honor. Robert Barton and Christopher Boyett on behalf of Tyka Nelson, who is present.

THE COURT: Thank you.

MR. PARKHURST: Your Honor, Cameron Parkhurst and Sharon Fischlowitz -- whose license is up to date, Your Honor -- F-I-S-C-H-L-O-W-I-T-Z -- Sussman+Parkhurst,

on behalf of Darcell Gresham Johnston.

THE COURT: Thank you. Is there anyone -- any other attorneys in the audience portion that we haven't already acknowledged? Seeing none. Are there any unrepresented parties here? I'm not aware that there are any unrepresented parties at this point. All right.

We're here today to address the legal basis upon which Brianna Nelson and V.N. are making a claim to be an heir of the Estate. An evidentiary hearing has been scheduled, I believe for October 29th through November 1st, to address any factual issues. But as I said, we're here to address the legal issues today.

There is an -- I guess maybe a latecomer -- to the party here, for Mr. Corey Simmons, who also claims to be a descendant of Duane Nelson. And, Mr. Dammeyer, maybe you could address your motions real quickly. I'm not sure that we'll respond to them fully at this point, but why don't we address those preliminarily.

MR. DAMMEYER: Thank you, Your Honor.

Your Honor, we filed a motion on September 26th asking to be included in those people that you had described as the applicants who are not excluded.

THE COURT: I'm going to stop you. And for other parties, I would appreciate you're standing while you're talking, but if you can tilt the microphone up,

that would be helpful.

MR. DAMMEYER: Thank you.

So on September 26th we filed a motion asking to be included in the group of people that you identified in your July 29th Order, all of Brianna Nelson and the V.N. -- the minor V.N. And the motion was based upon the fact that my client had not been served -- even though he claims to be an heir to the Estate -- and that we ask that the Court would join him into that category of people; allow him to proceed with genetic testing; participate in the arguments for the legal issues on the 18th of November and then the trial at the end of November.

THE COURT: Okay. Mr. Dammeyer, it's my intention to allow you to be heard today. Do you believe that your client is in a different position than Brianna Nelson and V.N. with respect to the legal claim to be a possible heir of Prince Rogers Nelson?

MR. DAMMEYER: I think with regard to the issue of the relationship between John L. Nelson and Duane Nelson, we're in the same position. My client's position with regard to Duane is -- who he claims is his father -- is different because he doesn't have the same type of fact issues involved, and so his connection to Duane, we want to also be able to present a clear and convincing

evidence case, but we also want to do the genetic testing to confirm that relationship.

THE COURT: V.N. and Brianna Nelson do not claim that there is a genetic relationship between Prince Rogers Nelson, any of the other claimed siblings or half siblings of Prince Rogers Nelson, or with John L. Nelson, to my understanding. Are you making a different claim?

MR. DAMMEYER: No, we just don't know, Your Honor, and my client fully believes that Duane is his father. And if the connection is to be made -- regardless of the method of which the connection between John L. Nelson and Duane Nelson -- or John, yes, I'm sorry -- John L. Nelson and Duane Nelson, we would like to participate in that legal argument, and I think we're going to take the same position as Brianna Nelson and V.N. but we'd have the second issue that has to do with connecting my client with his father.

THE COURT: All right. I'm going to turn it over to Ms. Braganca -- I assume has the lead argument -- with respect to Brianna Nelson and V.N., and then I'll give you a chance to add anything that you would like to.

MR. DAMMEYER: Thank you, Your Honor.

THE COURT: All right. Go ahead.

MS. BRAGANCA: Thank you, Your Honor. My name is Lisa Branganca, and I'm here representing Brianna

Nelson and V.N.

The question that you've asked -- you've asked us to address today is whether under Minnesota probate law -- or whether Minnesota probate law recognizes if two people can have a parent-child relationship even if they do not meet the criteria of the Minnesota Parentage Act and they are not related genetically.

THE COURT: I'm going to stop you. Maybe you're heading towards the easel, and if you're doing so, that's fine. I'm going to ask that you stand behind counsel table and use the microphone if you're not needing to use the easel.

MS. BRAGANCA: Okay. Thank you, Your Honor. I was just about -- I was on my way to the easel.

THE COURT: All right.

MS. BRAGANCA: So the question -- I just want to make sure that we're very clear that we're answering the question that the Court wants us to answer, and I will make sure to speak up so that there is no problem with anybody hearing me.

What is the legal standard for determining whether two people had a parent-child relationship for the purposes of intestate succession? Because Brianna Nelson and V.N. are claiming through being descendants of Duane Nelson that they have a relationship -- that Duane

Nelson has a parent-child relationship with John L. Nelson.

Now this question has been answered by the Minnesota Supreme Court in 2003. In the case of the *Estate of Palmer* and the answer was yes. *Palmer* remains the law of the State of Minnesota unless and until the Minnesota Supreme Court tells us otherwise, the Minnesota Legislature tells us otherwise, or the U.S. Supreme Court tells us otherwise, and none of those things have happened. So to the extent that we are making our claim under *Palmer*, *Palmer* is still good law.

THE COURT: Can I stop you there?

MS. BRAGANCA: Oh, yes, definitely.

THE COURT: I'll refer to *Palmer* and I'll refer to *Martignacco*, a separate case.

In *Palmer* you've got a situation where there's a determination of parentage, but it's an awfully strong argument that that determination is based on an admission of a genetic relationship, a father-son relationship. The father was charged with criminal illegitimacy back in, I think, 1959 when we did those things. And he admitted -- he was adjudicated the father in a sense that he admitted and was found guilty of that offense.

Martignacco, citing *Palmer*, similar question. In that case they exhumed the body to do genetic testing.

So when you're referring to the law of the State of Minnesota, until one of these courts you mentioned overturns it, is the law of the State of Minnesota that you need a genetic relationship to have a parent-child relationship?

MS. BRAGANCA: Your Honor, the answer to that is no. We -- first, I'd like to address the *Palmer* case.

And in *Palmer* -- I know counsel for the six siblings has stated that the fact that there was a guilty plea in the path that the decedent had entered established paternity and a genetic link. That was absolutely not the case. The parties raised the issue of whether that guilty plea to a charge of illegitimacy established paternity. That was an issue that was addressed in the trial court -- in the district court and here's what the appellate court said: "The district court determined that the plea did not establish paternity." That is a quote in Footnote 3 of the appellate court decision in *Palmer*. So that is simply not the case that the guilty plea established a genetic link.

The Minnesota Supreme Court reiterated that the guilty plea was not a fact that they were relying on in reaching their conclusion. In addition -- when you mentioned *Martignacco* -- *Martignacco* we had an unknown

child who was challenging the brothers of the decedent and whether -- and the brothers of the decedent claimed that this unknown child should not be able to establish heirship. And that was determined -- the Court determined in that case that the status of an heir could be -- not necessarily had to be but could be determined -- via genetic testing. And this is not something that we dispute. There are multiple ways for a person to establish that they are an heir of an estate. One of them is a genetic relationship. There's no question of that. Another one is under the Parentage Act. We don't question that. Others are under specific provisions of the Probate Code. And we can go through what those are, but those don't apply to Brianna and V.N. And the last is the *Palmer* standard of clear and convincing evidence.

THE COURT: Assuming for the moment whether there was an adjudication of paternity or not, it appears a strong implication that there was a genetic relationship in *Palmer*. Is there any case in the State of Minnesota where paternity has been determined for intestate succession purposes where there is clearly not a genetic relationship?

MS. BRAGANCA: That would be the case, Your Honor, in cases of adoption. There would be lots of cases where people could be --

THE COURT: Let me rephrase it. Under the Probate Code you can have a genetic relationship; you can have an adoptive relationship; you can have reproductive -- I can't remember the terminology --

MS. BRAGANCA: Assisted reproductive.

THE COURT: -- assisted reproductive relationship. Those are set forth in the statute. I'm talking about something where there is no adjudication of paternity; no presumption of paternity under the Parentage Act; no genetic relationship or any other parent-child relationship that's identified in the Probate Code.

MS. BRAGANCA: Your Honor, there is no reported case of that in the State of Minnesota. We have to acknowledge that. This would be -- this is new ground. And this is why we've been saying from the beginning that this is a complex issue, that it's not clear under the Probate Code and we would like to be able to get to an evidentiary hearing to be able to present the evidence which we believe is strong enough to reach the standard of clear and convincing evidence.

We're not planning on putting forth evidence that will be wishy-washy. It will not be on a disputed fact. We do have strong evidence so far. We're not done with discovery yet, Your Honor, but we already have found

evidence that is as compelling as the guilty plea in a claim of illegitimacy.

THE COURT: Thank you for your answer.

MS. BRAGANCA: So, Your Honor, I just want to be clear that we are definitely making a claim -- we are looking at what is the language of the Probate Code; what is the purpose of the Probate Code and what is the Minnesota decisions. We are not asking the Court to go anywhere outside of Minnesota law. We're very clearly trying to confine ourselves to make sure that we're stating a claim -- a legally cogenible claim -- within the State of Illinois.

THE COURT: Minnesota.

MS. BRAGANCA: Minnesota. I'm so sorry.

THE COURT: That's okay. Every time I go to a courthouse outside of Carver County, I usually make that mistake myself.

MS. BRAGANCA: Under the Minnesota Probate Code, there -- the Minnesota Probate Code specifically states that a parent-child relationship may be established under the Probate Code and those specifically listed ways or it may exist. So the question is why would they include this language, "may exist"?

Now, the Minnesota Legislature in 2010 adopted, without change, the Uniform Probate Code. And the

Uniform Probate Code is a code that is drafted by the Uniform Law Commission as a tool for state legislatures all over the country. So that's the drafting history that we've gone back to since when the Minnesota Legislature adopted the new Probate Code in 2010, it said nothing. There was no legislative report; there was nothing -- and it didn't change anything. So the way -- the further persuasive evidence of what the Probate Code means would come from the Uniform Law Commission.

The actual language of Section 2116 of the Probate Code says, "If a parent-child relationship exists, or is established under this part," meaning the Probate Code, "the parent is a parent of the child and the child is a child of the parent for purposes of intestate succession." Now, that's not crystal clear. We will definitely admit that, that the new Probate Code has not been in effect for very long and certainly nobody else has had to face an issue like the Court is facing today.

So our reading of this -- we will attempt to make sure that we're not leaving any words out of the statute because that is what the Minnesota Supreme Court tells us to do. They actually say that in the *Palmer* case, that we shouldn't read a statute or interpret it in such a way that language in the statute is irrelevant and

doesn't matter.

So how do we read this so that the "or may exist" actually means something? Now we know the Probate Code is not the only way that parentage can be established. It doesn't set forth an exclusive way to a path to heirship. One of the ways that we talked about before was adoption is a way that someone can establish themselves, under the Probate Code -- the specific terms of Probate Code -- as a heir. Another one is by following the requirements of assisted reproduction to establish parentage.

Another is genetic. And there's a specific reference in the definition of genetic father to the Parentage Act. So that is the -- there is a direct link there between the Probate Code -- it points you directly to the Parentage Act to say if that is the path through which you are establishing parentage, then you can have one and only one genetic father. And we are not seeking to establish a claim of heirship under that. What is interesting in this statement is that the Probate Code -- the 2010 Probate Code -- has 58 definitions in it. And there's actually language in the Probate Code that says -- you know, refers to the definition of the parent-child relationship, but there is no definition. So, we are left trying to figure out how do we determine what's the

parent-child relationship under the Probate Code.

The one thing we can see is that there is no place in the Probate Code that says this is the exclusive list; that it is -- these are the ways that one can establish heirship, or establish a parent-child relationship, and no others. And we know that that is something that the Minnesota Legislature could have said and that the Uniform Probate Code could have said. The Uniform Probate Code, the committee that drafted it, did actually look at whether they should just use the Parentage Act. Just look at the Parentage Act and say, "That's how we're going to establish parentage for the Probate Code purposes", and they didn't do that.

So there is an alternative way, and that is embodied in this or may exist. And that is a way that *Palmer* continues to be good law. The Minnesota Legislature did not step in and say, "We are occupying the field -- when we enact this 2010 Probate Code all previous law that is inconsistent with these provisions -- or that existed at all, is swept away." Instead the Probate Code says, "Here is some terms that we've put in." And they included lots of new provisions to deal with new technologies, but they also have acknowledged the reality of families. And I contend that that's what we're really talking about here. And it's certainly

something that we would like to bring in Professor Susan Gary to be able to present evidence of what that group was wrestling with. And also to be able to speak to the way that courts around the rest of the country have been wrestling with the reality of families as opposed to the legal -- the legalistic definition of a family. And that is something -- not just, you know -- the uniform law committee was not just trying to deal with assisted reproduction. They were wrestling with a lot of issues of "What is a family?" And "What is a parent-child relationship."

THE COURT: When it says "may exist," when? What point in time do we have to determine that that parent-child relationship existed?

MS. BRAGANCA: Well, "may exist," I think the relevant time would be during the life of the two people that we are considering. So it's not -- I think it can be at any point during that relationship.

THE COURT: Okay. So John L. Nelson died before Duane Nelson, correct?

MS. BRAGANCA: Yes, Your Honor.

THE COURT: So presumably there wasn't a whole lot of parent-child relationship after one of the two was gone. So at the time that John L. Nelson died there was a determination of who his children were, a legal

adjudication of who his children were. How do you get around that?

MS. BRAGANCA: Your Honor, there was in a probate of John L. Nelson's estate -- John L. Nelson died in 2001. Prince Rogers Nelson filed the probate action with the court and stated that John L. Nelson had no will. And he stated that -- he identified the other siblings and omitted Duane Nelson. That is uncontestable. What Prince Rogers Nelson did not tell the Court and what nobody else told the Court was that there ever was a Duane Nelson. So the Court did not make a determination that Duane Nelson was not an heir.

THE COURT: I think you're in a difficult box there because Duane Nelson never intervened, never filed anything with the Court, never sought in any way to be adjudicated an heir. And if the point is that John Nelson and Duane Nelson were nowhere in the same circles with each other, they were so far apart that Duane Nelson didn't even know that John had died, how do you then claim that there's a parent-child relationship that existed at the time of John L. Nelson's death?

MS. BRAGANCA: At the time of John Nelson's death, Duane Nelson was diagnosed as paranoid schizophrenic. He had been in and out of hospitals and had had a number of emergency admissions into hospitals

starting back in 1996. So by this time it is pretty clear that Duane Nelson was in no shape -- did not necessarily have the capacity to be able to appear and oppose his entire family in stating that he was an heir. How the family had the six siblings to appear here, had they informed the Court that Duane Nelson existed and had this impairment, the Court then could have appointed somebody to represent Duane Nelson and made an effort to determine whether Duane Nelson was, in fact, a child of John L. Nelson or not. But that absolutely did not happen.

THE COURT: Was there ever any determination of incompetency?

MS. BRAGANCA: I do not believe that anybody -- that there was any reason that there had to be a determination of incompetency. There were some -- we had evidence of a number, quite a few, admissions into psychiatric facilities for treatment. Some emergency and some not. We have a diagnosis of paranoid schizophrenia.

In addition, Your Honor, I just want to point out that the probate proceeding of John L. Nelson's estate was fatally flawed, as we know now, only because of discovery. John L. Nelson did not die intestate. John L. Nelson had a will. It was a 1986 will. We don't know if any of the siblings, including Prince, knew about

that will. But we now have it from Prince Rogers Nelson's file. The Special Administrator produced it recently. In addition to that -- producing that executed will, in the same file is a draft will that is -- that -- for John L. Nelson from the middle of 1989. And in that draft will and in the notes associated with that draft will, there is a reference -- there were references to Duane Nelson as a son of John L. Nelson.

We are still in the process of investigating to determine who prepared the notes that were with it and who prepared the -- and the circumstances of preparing the draft will. But this is evidence that either John L. Nelson said, "Duane is my son" to whoever was preparing these notes and ultimately preparing the will or people generally around John L. Nelson believed that Duane Nelson was his son.

THE COURT: Okay.

MS. BRAGANCA: Your Honor, one of the things that we wrestled with the most is -- and I'm not sure if it's a concern to the Court -- but the fact that language has changed in the Probate Code. We previously had the *Palmer* case, was decided when the Probate Code had language that said, "A parent-child relationship may be established under the Parentage Act." So it clearly established that the Parentage Act was not a litmus test.

It was not the way to determine parentage. The 2010 code eliminated that "may" language. But it didn't, again -- you know, it did not establish an exclusive test. It did not say that "Here are the only ways, exclusive ways, that somebody can establish parentage." So, again, you know, the six siblings have said "Well, *Palmer* is irrelevant because this language has been eliminated." But the fact is when somebody takes out "you may use this," that doesn't mean that you can never use it, or you must use it.

Your Honor, we'd like to -- let me move to the arguments that -- because I think we're talking about the *Palmer* case. So here's what we've heard about -- from the six siblings about the *Palmer* case: They stated in their submission to the Court, "*Palmer* court is assessing whether the evidence presented by the purported child was clear and convincing support of a biological or genetic parent-child relationship. Indeed, the factors the court reviewed hold that there must be clear and convincing evidence of a genetic relationship; not just a person holding out as a parent." So we looked at that and we wanted to determine is that the case. So we went to the *Palmer* decisions and we looked at both of them. And we looked at the language that was actually used in the decision. We looked for biological and varying

biological. And we actually found that there was no mention nowhere.

I mean, there wasn't this -- a discussion of the circumstantial and behavioral evidence and then a mention of it. This confirms. This indicates to us that there is a biological relationship. Zero. There is no mention of it. In addition, we looked for genetic and words related to genetic, and there is nothing in either one of the decisions -- the Appellate Court decision, or the Supreme Court decision -- that said anything about genes, genetic, any of it. We also looked for DNA, and we found absolutely nothing that mentioned DNA or anything related to DNA.

Now, what we're -- what the six siblings are asking is for something to be read into the *Palmer* case that is not there. So the question is: Well, did the Minnesota Supreme Court mean biological or genetic parent-child relationship but not say it? Because that's really what their argument is. That it means something even though it doesn't explicitly state it. So we looked to see whether the Minnesota Supreme Court may be -- if there was a reason in its history. Maybe it wasn't familiar with DNA evidence at the time or this was unfamiliar territory. We went back and we looked at some other decisions of the Minnesota Supreme Court and some

other events.

In 1989 the Minnesota Supreme Court issued its decision in *State v. Schwartz*. And that was a case where there was a conviction -- a criminal conviction -- on the basis of DNA evidence. The Court issued a very detailed decision addressing the testing methods and an evaluation of whether DNA evidence was admissible. We all remember when the 1994 O. J. Simpson trial -- and I think that's when DNA and this kind of testing became common dinnertime discussion.

There also was publication of -- for the use of courts how the *Reference Manual on Scientific Evidence*, the first edition, addressed DNA; this was all in 1994. Now, in 2003 the Minnesota Supreme Court again issued a decision where it looked at DNA evidence in detail, and that was the same year as the *Estate of Palmer* case. So I think it is unfair to think that the Minnesota Supreme Court meant something that it wasn't capable of saying. I think the Minnesota Supreme Court at the very same time that it was looking at DNA evidence and genetic relationships between evidence found in various places that the Court easily could have said, "We find, based upon this circumstantial evidence, that there is a genetic relationship -- that there is a biological relationship."

THE COURT: Do you think it was just so obvious that they didn't need to say it?

MS. BRAGANCA: Your Honor, I don't think that the Minnesota Supreme Court would be necessarily that casual in their language. They went through the evidence in detail. I think we're assuming that the Minnesota Supreme Court does not know how to say what it means. And I think that that's a problem. They long relied on genetic evidence. The Minnesota Supreme Court could have --

THE COURT: Let me restate my question. I agree with you completely. They're obviously aware of DNA at the time. But if I handle a paternity hearing next week, most likely the county attorney is going to come in and say that we did genetic testing and there's a 99.99 percent chance that this guy is the father of this child. But it's also equally possible -- well, not equally -- sometimes we'll have them come in and say, "We know that because of our relationship he is the father of the child and we're not going to ask for DNA testing because we know what the results are going to be and so we will stipulate or admit to the adjudication of this man as the father of the child." Is -- I'm -- the inference that you're getting from the criminal charge of illegitimacy, that's something different than an

admission that this man was the biological, genetic father of the child, that's different from that, I'm missing it. I'm sorry.

MS. BRAGANCA: Well, Your Honor, there are many reasons that someone can enter a guilty plea. And some of them can be to avoid the expense of further hearing. There can be other reasons. And it is not just the question of did the Court just not consider the guilty plea. The district court considered it and said it does not establish paternity. This is -- this was an issue that that district court expressly addressed.

So the question is why? Well, you know, we cannot then say -- after the Court expressly looked at that guilty plea and said, "It does not establish paternity," we cannot then look to the District Court's decision and the Appellate Court's decision and the Supreme Court's decision and say it all hinged on that paternity plea. That would be an unfair way to read those three decisions.

THE COURT: Thank you.

MS. BRAGANCA: Your Honor, there's been a couple of other cases that have been raised as potentially determining that *Palmer* no longer applies. One of them is the *Witso v. Overby* case. That is a Minnesota Supreme Court case in 2001. And that case does

not even address the relationship between the Paternity Act and the Probate Code. It was exclusively -- the issue was: Must a paternity action be dismissed for lack of standing when the petitioning putative father shows the requisite sexual contact but has not had genetic testing? It was completely dealing with the issue of the rights and the obligations under the Paternity Act. Citing the *Witso* case ignores the fact that the Minnesota Supreme Court has said in *Palmer* and in *Jotham* that there are different purposes for the Parentage Act and for the Probate Code.

The Parentage Act applies for the right and it addresses the rights, privileges, duties and obligations of a parent and child, and as the *Palmer* said, "primarily child support. "The Probate Code applies after death and deals with distribution of property." And these are very different purposes and it -- they drive a different interpretation of a parent-child relationship. And as the Court said, "The distinct purpose of probate and family law justify the legislature's decision not to make the Parentage Act the sole means of establishing paternity for the purposes of probate." So we need to account for what the different purposes are in determining whether a parent-child relationship exists. And that's why citing the *Witso* case is irrelevant. It

has no bearing on the issue that is before the Court right now.

So, Your Honor, what we're asking for today is not a ruling from the Court that Brianna Nelson and V.N. are, in fact, the heirs in this estate. We're not asking from the Court for a ruling that Duane Joseph Nelson is the son of John L. Nelson. All that we are asking the Court to do today is to permit Brianna Nelson and V.N. to get to an evidentiary hearing -- just like the evidentiary hearing that took place in the *Palmer* case -- at which point the Court can assess all of the evidence and determine whether there is sufficient evidence, whether we've met our burden -- which we accept our burden -- of clear and convincing evidence of a parent-child relationship between John L. Nelson and Duane Nelson. Thank you.

THE COURT: Ms. Braganca, I'm not going to let you get off without one more question. And I think it's --

MS. BRAGANCA: What question?

THE COURT: Well, you'll see. I think it's the toughest question that I can ask in this case: You've talked about the *Palmer* case and you've talked about the law as it was prior to 2010, and then the Court modified the statute in 2010. And the Court, as we've talked

about, established ways in which you can determine paternity by genetics, by adoption, or by assisted reproduction. You mentioned that there are 58 different definitions in the Code and they don't define parent. They don't define parent-child relationship. I think there was one other that you said it didn't define. I think it's remarkable that -- I don't know that either side -- but you haven't brought up the fact that there is a definition of child.

MS. BRAGANCA: Yes, Your Honor. There is a definition of child.

THE COURT: Okay. So let me just throw out a scenario for you. You are asking the Court to determine that there is a parent-child relationship for intestacy purposes based on behavioral and relationship evidence indicating that John L. Nelson and Duane Nelson had a parent-child relationship. You admit there is no genetic testing, there is no determination, adjudication under the Parentage Act of a parent-child relationship.

There is no presumption of a parent-child relationship. So let's focus on the behavioral and relationship testimony, and here's is my scenario: Mom and Dad have a sexual relationship and a child is born. They're either married at the time and then divorced or they never get married in the first place. Mom then

marries a second man who takes over the role as stepparent to this child. All right? Stepdad does all of the things that we hope a dad will do. He reads books to the child. He tucks the child into bed. He coaches the soccer team. He attends the school conferences. He eats meals with the family and nurtures the child educationally, socially, spiritually. He helps pay for college. He's there while the child grows into adulthood and nurtures him in that way. He spends most holidays with the child. He is grandpa to the child's children. Ultimately the stepdad dies. Is there a parent-child relationship between the stepdad and the child?

MS. BRAGANCA: In that particular case we can look to the language of the 2010 Probate Act. And that definition of child says, "Child includes any individual entitled to take as a child under law, by intestate succession, from the parents whose relationship is involved." But it goes on and it says, "And excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant." So in the scenario that the Court has posed, that child would not be entitled to inherit from the stepfather because that child would be only a stepchild.

THE COURT: If I look to legislative intent or if I look to equity, how can I possibly find that there

is a parent-child relationship based on non-genetic, behavioral, or relationship evidence, and in my scenario, the stepchild does not inherit from the stepparent.

MS. BRAGANCA: Your Honor, this is something that the Uniform Law Commission wrestled with, and the Probate Code is not a perfect solution. It -- the resolution and the Uniform Probate Code that Minnesota ultimately adopted is imperfect. In such a case, equity -- I think we all would agree that equitably that child should be able to inherit, but because of the language of the Probate Code the child would not be able to.

THE COURT: Thank you. Mr. Dammeyer, any additional comments?

MR. DAMMEYER: Yes, Your Honor.

I want to point out to the Court, Your Honor, that if you read *Palmer* and *Jotham*, it's very easy to become myopically fixated on the word "may," which is the permissive word they wrestled with in that. And truly they determined something under a statute that no longer exists. However -- and I want to just add that the repeal of that word from the statute was part of a bathtub full of Probate Code stuff. So it wasn't a focused repeal based upon merit or substance.

THE COURT: I would agree.

MR. DAMMEYER: But the other thing is is that

when you read *Palmer* and *Jotham*, you see a court trying to determine the legislative intent because they wanted to justify making the word "may" permissive. And so they analyzed -- both the Court of Appeals and the Supreme Court in *Palmer*, and then the *Jotham* court spent more time working on the "legislative intent" than they did on the word "may."

And what they said was -- in *Palmer* -- was that had the legislature wanted parentage for probate purposes to be determined exclusively under the Parentage Act, it could have so provided. But there exists a sound rationale -- and that's what I want to emphasize. They're saying, "There exists a sound rationale for the legislature's decision to use permissive language." And they go on to bring into their decision-making process, a New Jersey court case, *Wingate*, which is quoted in their decision. And that both the *Palmer* court and the *Wingate* court -- which the *Palmer* court approved of -- took this process to the point of saying, "There's a difference between paternity cases under the Parentage Act" -- which is what it was originally designed to do -- "and heirship determination cases." That was sort of -- the Parentage Act was sort the drafted in as a method of determining that. But they are saying clearly in their decision that it's the legislature's intent to treat those two things

differently. And that adding the Parentage Act was adding another method to the process of determining who the heirs are.

I also want to point out that in the Parentage Act we have provisions in the Parentage Act that recognize this principle. And Section 257.57 says that "A child can bring an action if no presumed father is determined." Now, what that says is that of the nine things -- I think they talked about nine things in the Parentage Act that make a presumption of fatherhood. The Parentage Act also has this provision that says, "If there isn't a presumption. If there's no presumption of fatherhood, then a child can bring an action."

And then in 257.58 the Parentage Act talks about that. It says -- subdivision 2, on heirship -- it says, "Section 257.57 and this section do not extend the time within which a right of inheritance or right to succession may be asserted." And it's talking about determination of heirship. So I think the Parentage Act itself points to an optional way of proving it, and that is by clear and convincing evidence.

So my point, Your Honor, is that I believe that both *Palmer* and *Jotham* not only talk about the Parentage Act but talk about the alternative because they found that it was the legislature's intent to make the finding

of parentage permissive and not limited. That they were looking at -- the way the statutes were drafted and these connections that are -- they are flawed and they are somewhat vague, but the clear point, if you look at the big picture, is that the legislature wanted people to have options and opportunities to prove. And what's the protection from the watershed of that with people claiming relationships, regardless of genetics? Well, the protection for that -- and this is even commented upon by the Supreme Court is the clear and convincing standard. And so the Court is maybe going to be faced with more cases of people claiming even though there is not a genetic relationship proved. Or maybe there isn't a presumption of paternity under the Parentage Act, but there's the clear and convincing evidence which is the filter that judges have to say this just does not present a case for it.

What happens -- in a scenario that I want to suggest to you -- what happens if there's a person that claims parentage, Your Honor, and there's no way to test genetically. There's no way it can happen. It might even happen in this case. Then are they not allowed because they're not -- they have no way to prove genetic relationship? Clearly *Jotham* and clearly *Palmer* say, "No, they ought to have their day in court."

The other point I wanted to make, Your Honor, was -- had to do with -- we see the probate point -- the Probate Code pointing to these optional means, not only in the repealed Section 114, but also in its pointing to the Parentage Act. If Your Honor accepts the idea that I've presented to you, that the Parentage Act gives people who don't have a presumption a way to bring a claim, and the Probate Code points to the Parentage Act as a way to go; then what I'm saying is is that the Probate Code is saying that the Parentage Act, including the optional clear and convincing method, is pointing to it and saying this is an option that the legislature agreed should be given.

The other thing is going back to the language of Section 524.2-116 where it says, "If a parent-child relationship exists or is established under this part." If anyone wanted to argue that "if the parent-child relationship exists," has to do with a finding under the Parentage Act, that sentence would not make sense because it would be redundant. If it says, "If a parent-child relationship exists under the Parentage Act or is established under this part." The Probate Code, then what they're saying is is that it's only good if it's only good. It's a redundant statement.

So our position is, is that the Probate Code

allows for the principles of equity and justice to be used as a supplement to the code itself, but the code itself also points to the Parentage Act, and the Parentage Act gives presumptions to assist the Court in finding parentage but also gives an escape valve to those who cannot prove parentage by saying specifically and expressly that they can bring an action. And the action is what *Palmer* and what *Jotham* were talking about.

Thank you, Your Honor.

THE COURT: Thank you. Mr. Kane, Mr. Gislason, who's going to go next?

MR. KANE: I think I am, Your Honor.

THE COURT: Mr. Kane.

MR. KANE: Thank you, Your Honor. My name is Thomas Kane and I represent Omarr Baker, and I'm speaking along with my colleague, Mr. Gislason, on behalf of the non-excluded heirs in this particular case.

I want to start out by stating that this is somewhat a difficult relationship in terms of a relationship because we are -- nothing I say should be interpreted as in any way suggesting that the people in this room do not have a good relationship with each other or don't like each other, don't take care of each other, et cetera. I'm just arguing here on the legal basis; that in our view, there is no basis for finding Brianna,

V.N., or Corey to be the child of -- the grandchild, or the child, as the case may be, of John L. Nelson.

THE COURT: Can I stop you for just a minute? Microphone again. Please ignore the microphone, but why don't you pull it over closest to the side of the table and it will pick up as best as possible.

MR. KANE: Sorry, Your Honor.

THE COURT: Other than that, don't worry about it.

MR. KANE: So I would like to start off with a different approach, Your Honor. The Court has read the briefs. I would like to just deal with a couple of issues.

The first issue is Rule 56. The material submitted by Corey Simmons' lawyer says that, "We just want to have a hearing, and there's nothing in front of this Court that says that we can't have our hearing." I would read Rule 56.05 which says, "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible into evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated herein."

And I could go on but we are in a summary judgment posture in this particular case. The only affidavits that have been submitted, that I'm aware of,

from what I would call the "intervenors" in this case do not address any of the issues that would make a fact issue for this court to decide. They are opinions. They are not admissible evidence. There is no foundation. And they don't comply with Rule 56 in any way. And the time has come and gone for them to ask this Court, "Oh, I forgot I should have submitted an affidavit."

Brianna does not have any factual evidence relating to the relationship between John and Duane. Corey certainly doesn't have any relationship, and V.N. certainly does not have any relationship. We, on the other hand, have submitted an affidavit from the Nelsons. I will let my colleague, Mr. Gislason, talk about that. So that should be the end of it right then and there as far as we're concerned.

Under Rule 56 the intervenors have not presented any evidence and, therefore, we should prevail. But let me go on to state that there are two statutes, and we generally agree with the analysis of counsel relating to the fact that the Parentage Act and the Probate Code in terms of what their purpose is. I think the Court understands that fully, and I think everybody understands that. But what I would suggest to the Court is that nowhere -- nowhere -- does it say or suggest that the idea that you can have some sort of a relationship

that establishes parentage outside of those statutes by some other basis, such as showing a parent-child relationship or that a father treated somebody as if he were a child establishes intestacy. And that's what we're all talking about in this particular case.

I would also point out, Your Honor, that the intervenors, at least one of the intervenors, have submitted an affidavit of Ms. Gary. Ms. Gary is a well-respected professor. She's submitted material and she's not from the state of Minnesota, and she was involved in the code as counsel, Ms. Braganca, talked about. Nowhere in Ms. Gary's statement or in the brief filed by the intervenors do they cite any case, or a suggestion of a case, that says "you can inherit under intestacy unless you can show a genetic relationship." None. In the whole United States. There is none. And there is a reason for that because as we believe *Palmer* makes very clear -- and I'll get to that when I get to *Palmer*. Makes very clear that that isn't what we're talking about. We're talking about whether or not in this particular matter there is a genetic relationship between John and Duane.

Once it was stipulated, or a signed statement in this case by V.N. and by Brianna that they have no genetic relationship, they cannot inherit. It's over.

It's done.

Now they then try to rely on the so-called *Palmer* case. Not so-called. It is called the *Palmer* case. And I would like to address the *Palmer* case. And I'd like to just put it in context.

Mrs. Palmer sat at home or did whatever she did for 51 years and her husband dies and all of a sudden she's confronted with the idea that Mr. Smith was her son's child. Never --

THE COURT: Her husband's child.

MR. KANE: Her husband's child. I'm sorry, I misspoke. Her husband's child. She didn't have any knowledge about that. There is no factual evidence whatsoever in the appellate -- in either the Appellate Court or the Supreme Court that says that she presents any evidence that suggests that there's not a genetic relationship. All she said was I was surprised. I didn't know about it. I didn't hear about it. And as far as I know, my husband's best friend didn't know about it. That is all the evidence she had. As a result, what happened at the trial?

Ms. Braganca talks about the trial that she wants in this case. But in the *Palmer* case there was stipulated facts. All the facts were stipulated. And I would suggest that the reason that they were stipulated

facts is that Ms. Palmer had no evidence to suggest otherwise that Mr. Smith was not the child of Mr. Palmer.

I would also point out that *Palmer* -- not withstanding the long discussion we had -- really wasn't about what we're talking about. It was whether or not the statute of limitations for the Probate Code applied, or the statute of limitations for the Parentage Act applied. Because her point was, "I don't know who he is. I don't know anything about him. But he missed the statute of limitations." Now, she couldn't -- and I'm now just engaging in speculation -- but she couldn't at that point in time stipulate that he was a genetic child because that would detract from her argument, so she made the argument about clear and convincing evidence.

Now, we've talked about clear and convincing evidence a fair number of times. And I would like to go to *Palmer*, and I would like to talk about what *Palmer* actually says. Because *Palmer* and clear and convincing evidence is not the whole sentence. Clear and convincing evidence of what? The Court, on page 4 of the brief, the Supreme Court decision says, "The Court went on to hold --" talking about the trial court and the appellate court -- the trial court in Ramsey County -- "that since the statute does not mandate the exclusive use of the Parentage Act to determine paternity, parentage may also

be established in a probate court proceeding by clear and convincing evidence to establish paternity." That's all we're talking about.

Now, I would also like to point out, because Mr. Crosby in his material talked about the restatement. And I would -- I'm now citing from the restatement, third property, which also talks about wills, restatement of law. And it talks about on Section 2.5, parent-child relationship. And it goes, on the first page, "For purposes of intestate succession." And then it goes on, "parent-child," et cetera. I would like to read B in the comments. "Proving parentage. Paternity may be established by any reliable, scientific method including DNA analysis." There is no other suggestion of how you prove paternity. And that's all that *Palmer* was talking about was paternity. Namely, how do you establish paternity?

Now, the Court raised the issue, was it obvious? Justice Gilbert in the *Palmer* Supreme Court case just said, "All we're talking about is paternity." One sentence. It was a given. This is how you establish it, clear and convincing evidence. And I agree with my colleague across the table that said, "What is the reason that you have clear and convincing evidence?" Well, if you can't establish any other DNA evidence, or scientific

evidence, our Supreme Court said, "We're not going to cut you off." Just like the Court's example, you come in, we know who the kid is, we're going to stipulate to it. That is all that *Palmer* said as it relates to that issue. And then it also went through and it cited *Wingate*, which is, again, a statute of limitations issue.

So we're talking about intestacy. We're talking about clear and convincing evidence of proving paternity. That is what we're talking about. And neither statute, Parentage Act or the Probate Code, suggests anywhere -- there's no comment, there's nothing in any language anywhere -- that says holding someone out or treating someone affectionately or being friendly or reading them stories, or doing anything else, gets you there. And you have the different sections and the Court went through them: Adoption, assisted reproduction and genetic. That's it. That's how you get there under the intestacy statute.

Now, the trial court did not rely on the criminal conviction in *Palmer* and -- but it did make a footnote both at the Appellate Court and the Supreme Court, so it clearly thought it was significant, that there had been a criminal conviction of illegitimacy and that the birth certificate within two weeks had been changed to make Mr. Palmer the father of Mr. Smith.

Mrs. Smith was not a party to any of this. Mrs. Smith didn't know any of it. So the issue is, you know, was she bound by it? Because it was her claim that she was attacking whether or not Smith could be -- inherit it, so what the Court was confronted with legally is: Are you bound by something that you don't participate in?

And Mrs. Smith didn't participate. She didn't know about it. So the Court didn't rely on that, but it did go through and say, clearly, "How do you establish paternity?" They didn't talk about establishing a relationship. They didn't talk about holding out, anything that counsel for the intervenors have suggested. We have submitted -- Mr. Gislason will talk about the affidavit that makes clear that as far as they know John L. Nelson was not the father of Duane Nelson -- the genetic father of Duane Nelson. And there has really been no dispute in the family about that. And Brianna, Corey certainly can't talk about it.

Now, I would like to just talk about one bit of evidence that they have argued talks about the -- meets the clear and convincing standard. And Ms. Braganca brought it up and that goes to this will issue. Now, they haven't submitted an affidavit, so it fails there. They haven't got anybody to testify in terms of a deposition, so it fails there. So it doesn't meet the

Rule 56 standard. But let's talk about -- let's put all of that aside and say we want to look at it. In 1986 there's a will, apparently it's signed. It's got a signature. We don't know today whether or not today that's real or not, but it says it's signed.

Prince is given the authority to hand out the money. None of the children are listed. None. Now, in 1989 -- and we're not clear what state that was in, but it looks like it was signed in Wyoming, and I don't know the reason for that, but we do know that in 1989 we have another draft will which was not signed. And this the intervenors have submitted. And what the practice is in Minnesota is that to make sure that we don't have this argument about whether or not a child is omitted, you list all the children, and then you say "I don't give them anything." That is what happened in the 1989 draft. Now, how do we know that? There's a recent article, or at least in the last year, and I have copies for everybody, and I can just hand them out if that's all right, Your Honor.

THE COURT: Are you suggesting that the Court would receive a copy?

MR. KANE: Yes, Your Honor.

THE COURT: I'll have to hear from the other parties before the Court is willing to do that.

MR. KANE: Okay. I would like to give it to them so they can comment.

THE COURT: Okay.

MR. KANE: So this is -- I'm sorry. So this is the unintended consequences of disinheriting children. And I think the statute says, or the practice is, that's what you do. You list the kids. But this draft will also excluded all of the children, except for Prince. So my point is that there is no reason to have any inference from a draft will that excludes all the children, including Duane, other than the fact that presumably whoever wrote this down knew what the law was in Minnesota and knew that John Nelson was on the birth certificate of Duane Nelson and to make sure that he's excluded, you had to write that down. That's an equally as possible explanation as the fact that Duane was, in fact, his child. He was excluded, in any event, on both wills, the signed will and the draft will.

The other -- so there really is no particular evidentiary basis for that. There is nothing probative about that. Now, as Corey has raised the issue of equitable adoption -- and I'd like to just address that because it's in front of the Court. Now, they have also suggested that they want some additional time to look at this. I think the time has come and gone, as I said

earlier. And -- but -- so I want to address this equitable adoption issue. In the case of the *Olson* case as well as the *Lee* case, which is -- and I'll cite it: Yee Lee is the defendant, and the plaintiff was Ramsey County, State of Wisconsin. And they talk about -- and it's a 2009 decision and they cite the *Olson* case regarding equitable adoption. And then they say, "When the words 'equitable adoption' are used, it is our opinion that the court, under its general equity powers, merely is treating the situation as though the relationship had been created between the one promising to adopt and the beneficiary of that promise. All the rules which define the capacities and incapacities of persons to acquire rights or to be subject to duties are strictly legal."

So that is, in essence, the most recent case regarding equitable adoption. I would also point out that in the statute or the -- again, the restatement of property -- and, again, I have a copy. And I will hand this out to the other side, and then if they object to it, fine and we won't give it to the Court, if that's all right.

THE COURT: That's fine. The *Olson* and *Lee* cases, are they cited in a brief?

MR. KANE: Yes, Your Honor. I've cited -- the

Lee case is a Minnesota Court of Appeals case, and the *Olson* case is in the brief. And I don't have the -- I don't actually have the cite of the *Lee* case, but I think it's in the material. But that is not an equitable adoption case, but Ramsey County was trying to prove that this child was equitably adopted.

So there is no issue regarding equitable adoption regarding Brianna or V.N. Corey says there is an equitable adoption issue but there is no evidence in front of this Court regarding any basis regarding equitable adoption. Equitable adoption basically only takes place in two situations: One, where there has been an attempt to adopt and it isn't completed and the Court finds equitably it would be unfair not to complete the adoption; or there's an adoption under another jurisdiction or another culture where there is no document and the party cannot prove it up. That's -- that's basically what it is in Minnesota.

The restatement of property suggests that you have another issue and that's the foster child. And the foster child language is extremely interesting. And I have this language if I can pass it out, Your Honor. Is that all right?

THE COURT: Sure.

MR. DAMMEYER: Your Honor, may I reserve the

right to interject an objection to this document?

THE COURT: Definitely.

MR. KANE: This is the restatement of property that the Special Administrator cited in his material. But it goes through and talks about what an equitable adoption of foster children means, and basically -- and I'm not going to go through the whole thing -- but basically it says that there has to be an agreement and there has to be an adoption of some of the foster children and the foster child has to be treated exactly as the child who was, in fact, adopted. Those are the only exceptions.

And clearly Corey doesn't fall within that under any factual issue in terms that he has presented. None of the other provisions of the Probate Code or the Parentage Act apply, so it's our view that in sum that what you have, Your Honor, is no genetic testing. No statute supports their claim. The *Palmer* case does not support their claim. It says, "You've got to prove clear and convincing paternity." It doesn't say anything else. It says that is what you have to prove by clear and convincing evidence. And there is no affidavits by Brianna or Corey that rebut the evidence that our parties have submitted relating to the standard under Rule 56 that would give us summary judgment; that as a matter of

law, Brianna, V.N., and Corey are not intestate heirs of Prince Rogers Nelson.

THE COURT: Thank you.

MR. KANE: And I concede the rest of my time to my colleague, Mr. Gislason.

THE COURT: And, Mr. Gislason, we're going to take an afternoon recess at this point.

Jackie, do you want 15 or 20?

THE COURT REPORTER: 15 is fine.

THE COURT: All right. We're going to reconvene in 15 minutes.

(Recess in proceedings.)

THE COURT: All right. We will go back on the record in Court File 10-PR-16-46.

Mr. Gislason, your turn.

MR. GISLASON: Thank you, Your Honor.

May it please the Court and Counsel. After recess and Mr. Kane's foreshadowing to my argument, I feel that the stage has been set for something dramatic, but I'm going to keep my comments very brief.

We are in a highly complex historic estate proceeding, but the matter that is at issue today is very straightforward. The law is clear, and I agree with Your Honor's comments earlier or question earlier, is -- and that is, doesn't there need to be a genetic relationship?

And the answer to that is, yes.

So why and how are we here? We're here because the intervenors, Brianna and V.N., first refused a genetic test and we now know they did so because they're not attempting to prove a genetic relationship between Duane Nelson, Sr., and the father of our clients, Sharon Nelson, Norrine Nelson, John Nelson, the Petitioner Tyka Nelson, and Prince Rogers Nelson. They also admit they cannot prove one of the presumptions under the Parentage Act which is significant. So they seek to prove their case and engage in revisionist family history and revisionist legislation by attempting to prove an heirship claim under *Palmer*. And we now know after hearing from Mr. Kane, and based on the submissions by the Special Administrator in this case, that *Palmer* does not apply.

The -- I found it interesting that the intervenors only raised or only alluded to one piece of evidence in their submissions today. We've been engaged in a month plus of discovery -- very expensive, time -- consuming discovery. And I think it's very telling what was submitted by the intervenors with their motion and with their brief.

We heard today about a will, a draft will and another will from 1986, which lacks foundation. It's

hearsay. It's inadmissible. The facts that are relevant are set forth in the affidavit of Sharon Nelson and also -- that are also part of the record the affidavits of Norrine Nelson and John Nelson. Those facts are unrebutted. It's important, as Mr. Kane mentioned earlier, under the Rule 56 summary judgment standard that we submitted affidavits based on firsthand knowledge of material facts. The intervenor submitted one affidavit of counsel attaching nine exhibits. There's -- that affidavit is not based on any firsthand knowledge. The affidavit of Sharon Nelson is and the facts that are set forth in that affidavits, and I won't go through them, are pertinent to the issue at hand.

I'd also like to echo Mr. Kane's comments about family. This is not a family dispute. And the stability of counsel working with counsel in this case, and counsel in this courtroom, I think is a reflection of the family's respect for one another in this matter. This is a case about the law. And this is a case about the truth. And the law is clear, Your Honor. Thank you.

MR. KANE: Your Honor, we'd move -- does anybody object to the two documents? One is the case law and the other is the article.

MS. BRAGANCA: Yes, Mr. Kane. You stated that you require an evidentiary or foundation for them. And I

don't think we have a foundation for them.

THE COURT: Mr. Dammeyer.

MR. DAMMEYER: Your Honor, I object on the procedural fact that this Court has scheduled the motions in limine to occur in November and that I received the memorandum with his -- by his admission a summary judgment motion three days ago, and I did my best by staying up late to say something about that, but I think that this is not the day and the time for us to be arguing summary judgment motion and nor have I been given -- Mr. Simmons has not been given a reasonable opportunity at all to respond to that.

THE COURT: Okay.

MS. BRAGANCA: Your Honor, may I also follow up on that? There was no mention in your Order when you asked us to come and state the legal basis for the claims of Brianna Nelson and V.N. in this case. There was no request, whatsoever, that we should then attach all of the evidence that we have to date. We have not finished discovery, and this should be viewed as -- with the standard of a motion to dismiss. Is there any set of facts under which this claim could survive? And that is the standard.

The fact that we did not attach affidavits or other evidence -- I mean, we can go through right now

inexhaustively the not credible testimony that we've had from a number of folks already. We have not talked about the affidavit that was filed with the Court of Carmen Weatherall, who is Brianna Nelson's mother, and spent time with both Duane Nelson and John L. Nelson and observed through firsthand knowledge their parent-child relationship and also observed Norrine Nelson telling Duane Nelson that he was not a real Nelson and John L. Nelson saying, "That's not true;" saying, "He is my son."

Now, obviously, that's not testimony that has been given before the Court so that the Court then can assess it. But that is in an affidavit that was filed by Carmen Weatherall with Brianna Nelson's heirship claim.

In addition, we have not talked about the lawsuit that was brought by Lorna Nelson, a deceased sibling, a child of Vivian Nelson and John L. Nelson and sister of Duane and Norrine Nelson, John R. Nelson and Sharon Nelson.

Lorna Nelson brought a lawsuit against Prince, and she named John L. Nelson and Duane Nelson and PRN Enterprises as a defendant. In that lawsuit -- and this is brought by her, she is a sister -- she states and says, "Defendant John L. Nelson, an individual, is the father of Plaintiff, Lorna Nelson, and Defendants Prince Nelson and Duane Nelson." This is one of the siblings.

Now she is deceased, but this is something that was filed in a federal court lawsuit.

The Court described John L. Nelson as the father of Duane and Duane as the son of John L. Nelson, and what's most telling here is that John L. Nelson was a party to this lawsuit.

THE COURT: Ms. Braganca, I'll stop you in the sense that I'm going to agree with you that this should be looked at as a motion to dismiss based upon the pleadings. When the Court scheduled the trial, the Court understood that discovery was ongoing. It was the request of the other heirs, and perhaps the Special Administrator, that we address the legal basis of the claim as soon as possible so that we could short circuit the discovery process, if appropriate. And so the Court does agree with that.

With regards, however, to Mr. Kane's request, the Court is going to base its decision based on the legal argument of the parties. You've both been -- you've all been given an opportunity to present that in writing. You've been given an opportunity to orally argue based upon your written submissions, and I'm not going to receive anything at this point.

Mr. Crosby or Ms. Halferty.

MR. CROSBY: Good afternoon, Judge. I don't

have a microphone. I hope everybody can hear me. I'll try to speak loudly and briefly.

Judge, as you know, the Special Administrator has been seeking to apply existing Minnesota law fairly and equally to all persons claiming to be heirs. And obviously the goal is to preserve the assets of the Estate and to move things along as expediently as possible. Thus, as you said, I think it was our suggestion, when we understood that Brianna and V.N. were asserting a claim outside the scope of the Probate Code or the Parentage Act, we suggested to the Court that it would be appropriate for Brianna and V.N. to detail the legal basis of their claims. In other words, irrespective of the facts, is there a legal basis in which the claims can go forward? As we've seen in this case so far, sometimes under Minnesota law, whether certain facts -- whatever certain facts may be, may be deemed irrelevant, for the purposes of intestacy. One example was that when the Court rejected the position of certain claimants seeking genetic testing relating to allegations that someone other than John Nelson was the genetic father of Prince.

So we have a similar question here regardless of the fact that Minnesota law recognizes a claim outside the realm of the Probate Code or the Parentage Act.

I want to take this opportunity to go back to the question you asked Ms. Braganca earlier in your hypothetical, if you don't mind, Judge. I think if I understood it right, there was a new dad in the mix, who was not the person who genetically fathered the child, but basically then stepped in and raised the child. Is that roughly right?

THE COURT: Exactly right.

MR. CROSBY: Okay. And I think Ms. Braganca said, "Well, you know, they don't take." Well, that's wrong under Minnesota law. It's flat wrong. Where is the answer? It's in the Parentage Act, 257.55, subpart D. "A man is presumed to be the biological father of a child if while the child is under the age of majority, he receives the child into his home and openly holds out the child as his biological child." So I think that was pretty much your hypothetical. But, again, it's presuming the biological, even though the fact would say it's not, but that is what Minnesota law provides. Now why is that relevant or important here? Well, who can bring that claim? It's only the father, the child, the mother, but there is limited people who can do that. 257.57 sets forth who those people are.

The concern the Special Administrator has is there's nothing that says "the child of a child" or "the

grandchild of a child" can bring that claim. So that's one of the questions that we have for the Court. And we set forth our position of the existing law of intestacy in our written submissions. I'm not here to advocate for one person being an heir or another. We are aware of the *Palmer* case, though. The question is is *Palmer* still good law given the statute upon which the Court based its decision on appeal?

I'm going to use one of Ms. Braganca's charts here. The distinct purposes of probate and family law justified the legislature's decision not to make the Parentage Act the sole means of establishment. Well what's the legislature's decision? Well, that's the 114 statute that ultimately was repealed. And the Court based its decision on that statute, and it's based moving away from *Witso v. Overby* based on that statute. But that statute is no longer here. So that is one of the concerns the Special Administrator has.

The other question about the current 116 Statute exists or is established under this part. Well, certainly if it exists, that could be under the Parentage Act. We've seen that elsewhere in the Probate Code and I heard Mr. Dammeyer say something to the effect that would be superfluous if it was the Parentage Act, means the Parentage Act applies. Well, our position would be that

the Probate Code is confirming what the Parentage Act says where it says under 257.66 the determination of parentage is determinative for all purposes. We talked about that in the other motions in this case.

Now, the Parentage Act does contain some subjectivity outside of genetics, and I just read one of them. You receive the child into the home and openly hold out the child as his biological child even though it may not be the case. That's not applicable here though. And, again, there's a question about Brianna and V.N. having standing to raise a claim under the Parentage Act. Because under 257.57 it's very clear who can bring those claims, and it's only a limited number of people and the Special Administrator has concerns that these folks don't fit within that.

Related question. And I think Your Honor had asked this too: Can Brianna and V.N. raise a claim to essentially reopen the findings of John Nelson's intestacy proceeding when the time for Duane, or someone acting on his behalf, to challenge that has expired.

The Probate Code also contains some subjectivity with respect to genetics. There's a language or a definition of 57 -- or however many it was -- functioned as a parent of the child. So the legislature knew how to do that. That has to do with

cases of assisted reproduction, but the statutory definition is still there. And then the concept of equitable adoption is also in the Probate Code. And, again, that's outside of genetics too. So there are three different ways that the legislature has referenced establishing a parent-child relationship outside of the true genetic testing. But from the Special Administrator's view, this case doesn't fall within any of those, and so that takes us back to you and your decision, because the question that we are struggling with is can a parent-child relationship be established under Minnesota law without reliance on genetics or the presumptions of the Minnesota Parentage Act.

So our papers, I think, set forth our legal position of the cases. I'm happy to answer any questions that you have; otherwise, that's all I've.

THE COURT: Thank you. Ms. Halferty, anything?

MS. HALFERTY: No, Your Honor.

THE COURT: Thank you. Ms. Braganca and Mr. Dammeyer, I'll give you a chance to respond.

MS. BRAGANCA: Your Honor, with respect to the effect of the probate of John Nelson's will we're not aware of any legal requirement that an heir, or a potential child come forward during the probate of an estate unless that child is seeking to recover funds

under that -- in that proceeding. So it's unclear -- and we would ask for some type of briefing to determine why this probate proceeding has a collateral effect of determining parentage for the purposes of all proceedings going forward in time. We've raised the issue of Duane Nelson's capacity to be able to participate in the proceeding. We've raised the issue of his potential notice, but we also have the issue of what is the legal effect of a probate?

We know for a fact that we had family members who were participating in this proceeding who did not notify the Court, but what does it mean? What if -- does the fact that Prince elected not to take anything under the Probate Act, does that determine that he is not the child of John L. Nelson? No, he was part of the proceeding, but we know for a fact that there was a will. And so that entire proceeding, for whatever reason, was based on a falsehood. It was -- there was something that was told to the Court that was not, in fact, true. Now we don't know why. We don't know if Prince knew about the will, but we do know that there was a will. What affect does that have on an intestate proceeding that took place? We would ask for an opportunity to be able to brief that particular issue if that is something that the Court is concerned about.

THE COURT: It is, but you've had a chance to brief it.

MS. BRAGANCA: Okay. Well, I would say that there is absolutely no law, whatsoever, nothing in Minnesota law that says that the resolution of a probate action, which necessarily involves the death of one particularly important person who could speak to who his children were, that that determines a parent-child relationship for all other proceedings in perpetuity. As compared to the participation of all of the individuals who are relevant here, that would be: John Nelson, Prince Nelson, and Duane Nelson. In both the copyright lawsuit brought by Lorna Nelson, they were all alive and participated. There was an attorney who represented John Nelson in that proceeding, and in that proceeding John Nelson never said anything other than that he was the father of Lorna Nelson, of Prince Nelson, and of Duane Nelson. Now, this case -- this was not some small case. This was far more significant than the probate action for John L. Nelson, and John L. Nelson was alive. This case went to an Eighth Circuit of the Court of Appeals. There is a published decision from the Eighth Circuit Court of Appeals which, again, there's no dispute of this family relationship, of the relationship between John L. Nelson and Duane Nelson. So if we're going to look at legal

proceedings that have a collateral -- they collaterally estop people from challenging these facts going forward. This is a far more persuasive and far more important case than the probate of John L. Nelson, because from a probate you can't know what the decedent would have wanted. And we can submit the complaint in the Lorna Nelson lawsuit for the Court to see. We brought copies. Does anybody object?

THE COURT: Mr. Kane, Mr. Gislason, the request has been made that I received the pleadings or complaint, I guess, from the action that was involved. Any objection?

MR. KANE: Yes, Your Honor, we object. It's irrelevant. It's not signed by any party. It's not a signed document.

THE COURT: Okay. And I'm not going to receive it, the same reason that I gave before. In addition, I've already said that the legal basis upon which we're here, or the procedural posture that we're here, is a motion to dismiss, and the facts are not going to weigh in the decision.

MS. BRAGANCA: Okay. Your Honor, and it is attached to our briefs, so it is filed with the Court.

THE COURT: Okay.

MS. BRAGANCA: I want to correct another

statement. Mr. Crosby stated that we are -- that Brianna and V.N. are asserting a claim outside the Probate Code. And I want to be very clear this claim is made under the Probate Code. We're not asking the Court to come up with some crazy, new claim that exists in the ether somewhere that's not under the Probate Code. We've laid out how this claim falls squarely within the *Palmer* case, and the *Palmer* case is under the Probate Code. So we just want to clarify that we're not asking for some other equitable determination by the Court. We're asking that the Court make this ruling under the existing Probate Code.

There was one more thing that I would like to raise with the Court. Mr. Kane said that there was -- that the import, really, of the *Palmer* case is that it's all about a biological relationship. It's about a genetic relationship. And he raises the fact that, you know, the Court seemed to consider all of this evidence and did not -- or establish that there was a paternity there. Now, I take issue with the word and the way that Mr. Kane uses the word "paternity." Paternity does not mean a genetic relationship. Paternity is a legal relationship. It's a social relationship. It's the establishment of a father-child relationship. And to use the word "paternity" as synonymous for a genetic relationship is actually just wrong. It's not correct

under Minnesota family law. It's not correct under the Minnesota Probate Code. Paternity is a conclusion that comes from the Court, and I think that's important that whenever Mr. Kane used it, he was referring to paternity as a proxy for genetic father. And that is not an appropriate use of the term. That's not consistent with Minnesota law.

Finally, I just want to raise that the Court in *Palmer* could have said -- at any point, any one of the three courts could have said -- "You know what? We're going to send this back to the trial court. We're going to require a genetic test." This was 2003.

Again, you know, Minnesota has been considering genetic evidence since at least 1989. So that was perfectly within the ability of the district court to say "You know what? We're not going to listen to all of this behavioral evidence. You know, we're on the clock. We're busy people. Go get a genetic test." That was a very simple way that the Court could have dealt with it. And even if the district court didn't decide to do that, the appellate court could have said, "Hey, Mr. Trial Judge, you missed the boat here. A simple way to solve this is to send this guy back to get a genetic test. This is the way to answer the biology and the genetics issue." And even if the appellate court didn't do that, the

Minnesota Supreme Court could have said, "Both of you courts have missed the boat. Go back, get a genetic test, and that will resolve the issue."

This is 2003, genetic testing is common. So what do we conclude from the fact that the Court did not do that? I don't think we can conclude that the Court then meant that there had to be a genetic relationship when there's a very simple thing that the Court could have done to get that determination. If this were, you know, a century earlier, then we wouldn't be having this talk, but the fact that it's 2003 and the Minnesota Supreme Court is upholding convictions -- criminal convictions -- based on genetic evidence, means that the Minnesota Supreme Court easily could have said -- if biology and genetics is what the Court meant in *Palmer*, and what the Court meant later when it reaffirmed *Palmer* in the *Jotham* case -- if that's what the Minnesota Supreme Court meant, the Supreme Court easily could have said, "Go -- Palmer people go get a genetic test and that will resolve the issue." And the Court did not -- none of the three courts did that.

THE COURT: Thank you. Mr. Dammeyer.

MR. DAMMEYER: Your Honor, I just want to add some comments to what Mr. Crosby artfully described, and I agree with both of what he said. There was one part

where I think he made an assumption and most people make this assumption that the time limit for doing anything about Duane Nelson's estate has expired because it has been more than three years. But the statutes in Minnesota say that for purposes of determining the descent, who the heirs are under an intestate decedent, there is no statute of limitations. And as Statute 524.3-108 and Statute 525.31, both of which make it clear, that an action for determination of an intestate heirs is always available. Now --

THE COURT: What was the second statute that you cited?

MR. DAMMEYER: 525.31. So the first one, 3-108, specifically says that "the three years statute of limitation does not apply to actions to determine heirs of intestate or to determine descent." And then the 525 statute is talking about determinations of descent when the Court adjudicates who gets property if it has been more than three years. And in that statute it specifically says that the three-year limitation of other statutes doesn't apply. So you've got two statutes that say this can be done at any time.

It may be that Corey Simmons is going to have to go and become personal representative of Duane's estate in order to do this, but as Mr. Crosby pointed

out, the Parentage Act, there is a limited number of people who can bring that action. One of the people that is described as having the authority to bring that action is the personal representative of the decedent's father. And then the Parentage Act also makes it clear that that is not under any type of limitation as far as when that can occur. That is exactly what *Jotham* is about. That an action by a party is not restricted by a 23-year statute of limitations like they had there, and the statutes of Minnesota make it clear that this could be done now.

But my client is coming through this court to try to prove his relationship with Duane. And so it seems to me it would be more appropriate for us to say, "Let's test and find out if this is true; otherwise, it's over for us." But if it isn't, then he would have a standing, wouldn't he, to go forward into this court and say Duane was my father and I want to determine who his heirs are. So I think it's premature to just say the time limit has ran out, because it has not. Thank you, Your Honor.

THE COURT: Thank you. All right. The Court will conclude the proceeding then today. I'm going to ask that we take about a ten-minute recess, and then as I previously discussed with counsel, I'd like to meet

briefly downstairs at the Oak Lake Conference Room. And for those of you who are here and who are members of the public or the media, the purpose is to address some confidential business relationships that need to be addressed promptly for the Estate so that this would be a closed meeting with myself and the attorneys. And we're going to have a bailiff down there to make sure that it's a confidential meeting. So don't try to weasel your way down.

So take a brief recess. You're welcome to leave now if you wish, or to stay for that meeting, if you wish.

Before we conclude, I just want to let you know that we will try to get a decision out very, very quickly on this. We understand there's ongoing discovery and that depending on how the Court rules it may have a significant impact on where you go with things. So we will get that out as quick as we can.

(Whereupon, the proceedings concluded.)

REPORTER'S CERTIFICATE

I, Jackie J. Knutson, Official Court Reporter in and for the County of Carver, First Judicial District, State of Minnesota, do hereby certify that the foregoing transcript consisting of 68 pages constitutes a true, complete and accurate transcript of my Stenographic notes taken at the time and place indicated above in the matter of the Estate of Prince Rogers Nelson.

Dated this 20th day of February, 2017.

/s/ Jackie Knutson
Jackie J. Knutson
Official Court Reporter
First Judicial District