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STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:

Estate of Prince Rogers Nelson,

Deceased.

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

SPECIAL ADMINISTRATOR'S SUPPLEMENTAL MEMORANDUM OF LAW REGARDING PROTOCOL PRIOR TO GENETIC TESTING

Pursuant to the invitation by the Court made at the June 27, 2016 hearing regarding the application of the Minnesota Parentage Act to these probate proceedings, Special Administrator Bremer Trust, N.A., respectfully submits this supplemental memorandum of law.

POSITION ON APPLICABLE LAW

A. The Minnesota Probate Code Governs Intestacy Proceedings

The Special Administrator detailed its position within its earlier memorandum filed in anticipation of the June 27 hearing and then again during the hearing. Its position remains unchanged. The law governing intestate succession in Minnesota is established by Article 2, Part 1 of the Minnesota Probate Code.[1] For purposes of intestate succession, a parent-child relationship exists between a child and the child's "genetic parents." Minn. Stat. §§ 524.2-116 and 524.2-117. The Probate Code confirms that a person can only have one genetic father. Minn. Stat. § 524.1-201(22). And if a father-child relationship has been established or otherwise

[1] "The intestate estate passes by intestate succession to the decedent's heirs as prescribed in this chapter...." Minn. Stat. § 524.2-101(a) (2014).

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been judicially determined under the provisions of the Minnesota Parentage Act, the Probate Code provides it is that man—and only that man—who is the child's genetic father. *Id.*

Decedent Prince Rogers Nelson was born during the marriage of Mattie D. Shaw ("Mattie") and John L. Nelson ("John"). (Affidavit of David R. Crosby Regarding Protocol Prior to Genetic Testing ("Crosby Aff."), Exs. A, B and C.) Under the Parentage Act, Decedent is presumed to be the genetic son of John. Minn. Stat. § 257.55, subd. 1(a). Those claimants alleging that someone other than John is the father of Decedent do not have standing to challenge that presumption. Minn. Stat. § 257.57, subd. 1; *In re Estate of Jotham*, 722 N.W.2d 447, 455 (Minn. 2006). Moreover, even if such standing existed, the time to challenge the presumption that John is Decedent's father has long since passed. Minn. Stat. § 257.57, subd. 1(b); *Jotham*, 722 N.W.2d at 455. Further, John has been judicially determined to be Decedent's father. (Crosby Aff., Ex. C.)[2] A "judgment or order of the court determining the existence or non-existence of the parent and child relationship **is determinative for all purposes.**" Minn. Stat. § 257.66, subd. 1 (emphasis added); *see also In re Trusteeship of Trust Created Under Trust Agreement Dated December 31, 1974*, 674 N.W.2d 222, 231 (Minn. Ct. App. 2004).

Based on the above facts and law, for those claimants alleging heirship based on a fact pattern involving another man other than John being the father of Decedent, the Special Administrator has preliminarily determined that they should not be genetically tested because their claims fail as a matter of law. Similarly, because heirs exist as a matter of law at the

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[2] In addition to the divorce decree between Mattie and John, the Special Administrator is aware of the judicial probate records filed in the *Estate of John L. Nelson*, in which the Court ordered Decedent to be John's personal representative based on Decedent's submission under oath that he was John's son. Such records were initially filed under seal as attachments to affidavits of John Rodger Nelson, Norrine Patricia Nelson and Sharon Louis Nelson submitted pursuant to the Protocol. Pursuant to the Court's direction, those affidavits have been unsealed and will be refiled with the Court during the week of July 18, 2016.

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intestacy level of a sibling or half-sibling[3], the Special Administrator has preliminary determined that claims alleging heirship based on a relationship more distant that that of sibling or half-sibling also fail as a matter of law, and thus such claimants also should not be genetically tested.[4]

B. Section 524.2-117 of the Probate Code is not Inconsistent With the Other Provisions of the Probate Code Addressing Intestacy Situations

At the June 27 hearing, counsel for some of the objectors to the Protocol claimed that Section 524.2-117 of the Probate Code may raise an issue with the Special Administrator's positions asserted before and during the hearing. Counsel are mistaken. The primary purpose of § 524.117 is to confirm equal protection inheritance rights for persons born out of wedlock.

Years ago, Minnesota law did not permit a child born out of wedlock to inherit from his or her father. *Weber v. Anderson*, 269 N.W.2d 892 (Minn. 1978). Under that law, "a child born out of wedlock was said to be *filius nullius*, the child of no one, or *filius populi*, the child of the people." *Id.* at 894. Over time, the Minnesota legislature passed statutes that permitted such children to inherit from their fathers, but only under certain circumstances not otherwise applicable to children born during marriages. *Id.*

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[3] The Special Administrator acknowledges that claims also have been asserted by persons alleging to be a direct descendant of Decedent. The status of those claims was not a subject of the June 27 hearing.

[4] Pursuant to the Court's instruction as to the focus of the June 27 hearing, the Special Administrator has not sought to dismiss claims made by any individual claimants. At the hearing, the Court indicated it may be interested in guidance from the appellate courts on the issues raised during the hearing. In order to do so, the Special Administrator believes that the Court may need to enter judgment *sua sponte* as to certain claims in order to effectuate a final judgment, so that one or more claimants could then appeal under Rule 54.02 of the Minnesota Rules of Civil Procedure. *See Del Hayes & Sons, Inc. v. Mitchell,* 230 N.W.2d 588, 591-92 (1975) (a district court may, *sua sponte*, grant summary judgment if, under the same circumstances, it would grant summary judgment on the motion of a party). Rule 103.03(i) of the Minnesota Rules of Appellate Procedure—which permits a trial court to certify a question as important and doubtful for appeal—appears inapplicable, as the issues before the Court do not involve the denial of a motion to dismiss or the denial of a motion for summary judgment.

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In 1977, the United States Supreme Court in *Trimble v. Gordon* declared an Illinois statute unconstitutional because the statute denied an illegitimate child an inheritance interest from the child's father. 430 U.S. 762, 776 (1977). The Supreme Court clarified its equal protection analysis in *Reed v. Campbell*, when it held that while states cannot make arbitrary distinctions based on legitimacy, they can make distinctions necessary for an orderly settlement of an estate, including the imposition of statutes of limitations and other procedural restrictions. 476 U.S. 852, 855-56 (1986).

In 1985, the Minnesota legislature adopted § 524.2-109(2) as part of the probate law. It was later renumbered in 1994 (without substantive change) as § 524.2-114(2). This provision read, in relevant part, that "a person is a child of the person's parents regardless of the marital status of the parents and the parent and child relationship may be established under the Parentage Act, sections 257.51 to 257.74." The first part of this provision confirmed that Minnesota no longer distinguished between children born within or outside a marriage for purposes of intestate inheritance.[5] The second part of the provision—"the parent and child relationship may be established under the Parentage Act"—spawned the debate and confusion addressed in the *Palmer*, *Martignacco*, *December 31, 1974 Trust* and *Jotham* cases cited in the Special Administrator's original submission. (Initial Mem. at 3-5.)

Section 524.2.114(2) was eliminated from the Probate Code in 2010. A new provision, § 524.2-117 was added: "[A] parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status." The only substantive difference between this provision and the first part of former § 524.2.114(2) is the inclusion of the word

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[5] Since 1980, the Parentage Act has contained a similar provision: "The parent and child relationship may exist regardless of the marital status of the parents." Minn. Stat. § 257.73 (2014).

"genetic" before "parents." Nothing changed with respect to the law that has been in place for some 30 years that children born out of wedlock can inherit from their fathers in the same manner as children born during marriages. As to who a "genetic" father is, the legislature (also in 2010) unambiguously defined that person in § 524.1-201(22) (discussed *supra*). In other words, the 2010 amendment of the Probate Code served to (a) confirm that children born out of wedlock maintained equal-protection rights to inherit from their fathers, while (b) eliminating any confusion from the common law cases decided in the early 2000s as to whether presumptions and determinations under the Parentage Act are conclusive for purposes of intestacy. Because the law now squarely provides that such presumptions and determinations are conclusive in intestacy proceedings, the Special Administrator's Protocol is correct.

CONCLUSION

Under the Probate Code, which governs intestacy proceedings, the Special Administrator must determine whether presumptions or judicial determinations of parentage exist before proceeding with genetic testing. If a presumption of parentage exists that cannot be rebutted, or if there has been a past judicial determination of parentage, such presumption or determination is dispositive in an intestacy proceeding. The Special Administrator developed the Protocol to assist it in determining whether a non-rebuttable presumption or past judicial determination of parentage exists. The Special Administrator respectfully submits that any objections to the Protocol be overruled.

Dated: July 15, 2006

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