

STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
PROBATE DIVISION  
FIRST JUDICIAL DISTRICT

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

In Re: Estate of

Prince Rogers Nelson

PRIMARY WAVE'S FINAL REPLY  
IN OPPOSITION TO APPLICATION  
FOR DETERMINATION AND  
ESTABLISHMENT OF ATTORNEY'S  
LIEN FILED BY WHITE WIGGENS &  
BARNES, LLP

Decedent.  
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Primary Wave submits this final reply pursuant to the schedule set by the Court in its January 6, 2022 email to the parties.

WWB had an opportunity to be paid in full for any fees rightfully earned. All it needed to do was file a timely claim in the Alfred Jackson Estate. It failed to do so, and its claim is now barred – it cannot recover any fees from the Alfred Jackson Estate. Instead, it seeks to recover those fees in this proceeding. But WWB's response fails to come to grips with the fact that a lien is a remedy, and does not create the debt upon which the lien is based. Without a debt, there can be no lien.

Moreover, WWB failed to timely assert its lien as required by the specific statute applicable to lien claims for services rendered in probate proceedings. As a result, the transfer of the interest that Alfred Jackson or his estate had in the Prince Estate is not subject to the unperfected purported lien.

**I. A lien is a remedy, and presupposes an underlying debt.**

Without citation to any legal authority, WWB argues that Missouri law is “preempted” by Minn. Stat. § 481.13. WWB Resp. at 4-6. But that argument has it exactly backward. Once Mr. Jackson died and the estate proceedings in Missouri commenced, the Missouri probate court obtained preclusive jurisdiction over Mr. Jackson’s estate. *See* Missouri Revised Statutes § 472.020 (“The probate division of the circuit court may hear and determine all matters pertaining to probate business[.]”). The Missouri probate court also had jurisdiction over all debts of and claims against Alfred Jackson. § 472.020 RSMo; *State ex rel. Wratford v. Fincham*, 521 S.W.3d 710 (Mo. App. W.D. 2017) (probate court had original and exclusive jurisdiction over nursing home action seeking assets of decedent allegedly held by third parties for satisfaction of its claim for the unpaid nursing home charges against decedent).

Section 473.360, RSMo 2000, is Missouri’s statute governing claims against probate estates. The Missouri Supreme Court has held that filing a claim within the six month nonclaim period is jurisdictional. *State ex rel. Whitaker v. Hall*, 358 S.W.2d 845, 849 (Mo. Banc 1962). In addition to Section 473.360, which was revised to respond to constitutional notice concerns, the Missouri General Assembly enacted Section 473.444, RSMo in 1989. Section 473.444.1 provides:

Unless otherwise barred by law, all claims against the estate of a deceased person, other than costs and expenses of administration, exempt property, family allowance, homestead allowance, claims of the United States and claims of any taxing authority within the United States, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, which are not filed in the probate division, or are not paid by the personal representative, *shall become unenforceable and shall*

*be forever barred* against the estate, the personal representative, the heirs, devisees and legatees of the decedent one year following the date of the decedent's death. (emphasis supplied).

In *Hatfield v. McCluney*, 893 S.W. 2d 822 (Mo. 1995), the Missouri Supreme Court upheld the one-year bar of Section 473.444.1. Further, the court held that the one-year bar in Section 473.444 was not in conflict with the nonclaim statute, Section 473.360.

WWB simply chooses to ignore Missouri law, including the plain language of § 472.020 and § 473.444, but points to no contrary legal authority. WWB invoked, and personally submitted to, the jurisdiction of the Missouri probate court when it filed its claim against Alfred Jackson's estate as required under the Missouri Probate Code.<sup>1</sup> But it was unsuccessful. WWB's claim against Alfred Jackson or his estate for payment of fees was forfeited because it was not presented in a timely manner to the Missouri probate court. The Missouri court has ruled that the claim was untimely and barred. That decision was not appealed and has become final. Thus, its claim against Mr. Jackson is now unenforceable.

WWB asserts that Primary Wave cites to no Minnesota law for the proposition that the lien does not create the debt, but rather the debt must exist in order for there to be a lien. This is simply not true. Primary Wave cites to *Williams v. Dow Chemical Co.*, 415 N.W.2d 20 (Minn. Ct. App. 1987) where the Court of Appeals recognized that the

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<sup>1</sup> Section 473.380, RSMo 2000 sets out the general requirements for the filing of a claim. When a creditor holds any security for their claim, the "security shall be described in the claim." § 473.387 RSMo. WWB failed to describe any security and in fact expressly stated that it held no security for the debt. See Exhibit A to Declaration of Timothy Murphy previously filed with the Court.

lien statute does not create an underlying obligation, but only imposes a lien to protect the attorney to whom the obligation is owed. *See* Primary Wave Opp. at 8-9. The holding of *Williams* is consistent with the overwhelming body of law that Primary Wave cited, and which WWB fails to distinguish. This Court may dispose of this matter by recognizing that a lien is simply a means to collect a debt that otherwise exists and WWB lost its right to collect the debt by not presenting a timely claim in the Missouri probate.

WWB's argument about the jurisdiction of this Court to establish a lien in the instant dispute misses the point. While this Court may have jurisdiction to impose a lien in the case pending before it, with respect, the Court cannot assume jurisdiction over the underlying claim of WWB against the Jackson Estate<sup>2</sup> – that claim has to be

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<sup>2</sup> Like Sharon Nelson's tort claim against Andrea Bruce, et al., WWB's breach of contract claim against the Alfred Jackson Estate, if such a claim still exists, must be resolved separately from the probate, despite having a factual connection to the estate proceeding. In Minnesota, claims between parties that may be involved in the estate but which are not asserted against the estate are outside the probate court's exclusive jurisdiction. *See O'Brien v. Lien*, 160 Minn. 276, 279–80, 199 N.W. 914, 915 (1924) (holding the probate court's jurisdiction does not extend to "controversies incidentally arising in the course of the settlement of the estate over claims of third persons against the estate."). "The rights of third persons not interested in the distribution of the estate are not included in the jurisdiction" of the probate court. *Id.* In *State ex rel. Larson v. Probate Court of Hennepin County*, 204 Minn. 5, 283 N.W. 545 (1939), the court found a breach of contract action for unpaid attorney fees must be "determined by a court of general jurisdiction and not by the probate court." *Id.* at 17-18, 283 N.W. at 551. The probate court possesses no independent jurisdiction over controversies with strangers claiming adversely or over collateral actions. *See id.* at 8-9, 283 N.W. at 547 and *Wilson v. Erickson*, 147 Minn. 260, 261-62, 180 N.W. 93, 94 (1920) (stating same).

Here, the dispute between WWB and its client is not a claim against the estate and cannot be adjudicated in the Prince Estate probate. Moreover, in any action for breach of contract that might be brought by WWB in Minnesota (assuming such a claim

presented in the Missouri probate court, and not in the Prince Estate. It was, and that court ruled that the claim was forfeited. Without a debt, there can be no lien.

## II. WWB failed to timely perfect its attorney's lien.

WWB does not argue that it perfected its lien before the Alfred Jackson Estate transferred its entire interest in the Prince Estate to Primary Wave<sup>3</sup> as required by statute. It instead makes the bare assertion that Minnesota law only requires that an attorney lien be sought before distribution. That assertion ignores the plain language of the statute regarding the steps required to perfect a lien as to the claims of third parties.

Minnesota Statutes § 525.491 sets out the specific requirements for perfection of an attorney's lien in a probate proceeding. That statute expressly requires that an attorney who has been retained to appear for an heir in a probate proceeding serve upon the personal representative a notice of intent to claim a lien in order for the lien to be perfected. *See* Minn. Stat. § 525.491. "The perfecting of such a lien, as herein

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could be brought), the defendant (presumably the Estate of Alfred Jackson) would be entitled to a jury trial on that claim. *See United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equip., LLC*, 813 N.W.2d 49, 57 (Minn. 2012) (holding, as a matter of first impression, that a claim for a monetary payment under a contract is a legal claim with an attendant right to a jury trial under Article I, Section 4 of the Minnesota Constitution). With respect, while this Court may have authority to determine the amount of the lien, thus preserving the security for collection of the fees intended by the statute, it does not have jurisdiction in this probate case to adjudicate the amount of fees that may be recovered. Even if WWB is entitled to a lien, which it is not, the amount of the lien does not determine the amount of its claim.

<sup>3</sup> This Court recognized the complete transfer of the Alfred Jackson Estate interest to Primary Wave in its order signed on April 5, 2021. WWB filed its application for lien on August 4, 2021.

provided, shall have the same effect as the perfecting of a lien as provided in section 481.13, and such lien may be enforced and the amount thereupon determined in the manner therein provided." *Id.* Section 481.13, subd. 2(b), in turn, provides that "[i]f the lien is claimed on the client's interest in personal property involved in or affected by the action or proceeding, the notice must be filed in the same manner as provided by law for the filing of a security interest."<sup>4</sup> WWB did nothing required by either statute before the transfer of the entire interest of the Alfred Jackson Estate in the Prince Estate was completed and recognized by this court.

In *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592 (Minn. 2016), the Minnesota Supreme Court specifically distinguished cause of action liens from property liens, and affirmed that as to property liens, the lawyer asserting the lien must comply with the perfection requirements of the statute in order to gain priority over the interests of third parties. In that case, a lawyer represented his client in litigation, asserting a counterclaim that resulted in a money judgment. After the judgment was entered, a third party served a garnishment summons on the judgment debtor, asserting priority by virtue of the garnishment over any competing claims to the judgment proceeds. The lawyer belatedly tried to perfect his lien by filing a UCC

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<sup>4</sup> WWB claims that Primary Wave's reliance on *Williams v. Dow Chemical Co.*, 415 N.W.2d 20 (Minn. Ct. App. 1987) for the proposition it failed to provide notice of its attorney's lien as required under Minnesota Statutes section 481.13(4) is flawed as that section was repealed and "§ 481.13 no longer includes the notice requirement upon which Primary Wave relies." WWB Resp. at 6. WWB's argument ignores current Minnesota Statute section 481.13(2)(b).

financing statement after the garnishment summons had attached. Despite the tardy filing, the supreme court held that the lawyer's cause of action lien had priority over the garnishment summons.

In reaching that conclusion, the court discussed in some detail Minn. Stat. § 481.13, and the two different liens that it prescribes. In the course of that analysis, the court concluded that the "third-party" clause in 481.13, subd. 1(a) (which requires an attorney claiming a property lien to perfect the lien by filing<sup>5</sup>) applied to property liens, although it did not apply to cause of action liens. This is entirely consistent with the provisions of Minn. Stat. § 525.491, which specifically require an attorney seeking to assert a lien for services rendered in probate proceedings to comply with the perfection requirements of the statute.

As explained in Primary Wave's earlier filing, an expectancy interest in an estate is personal property, and under the statute, WWB was required to assert its claimed lien right by giving the required notice before it could attain priority status over the claims of third parties. It did not, and it provides no excuse for that failure.<sup>6</sup> WWB failed to

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<sup>5</sup> The court noted, "The words 'as provided in this section' clearly refer to subdivision 2 of section 481.13, which contains a detailed procedure to perfect a property-interest attorney's lien." *Oronoco*, 883 N.W. 2d at 596. Subd. 2(b) provides: "If the lien is claimed on the client's interest in personal property involved in or affected by the action or proceeding, the notice must be filed in the same manner as provided by law for the filing of a security interest."

<sup>6</sup> As Primary Wave also noted in its earlier filing, other attorneys asserting liens in the Prince Estate made timely filings, and in fact, filed UCC financing statements. Primary Wave reviewed this court's docket and conducted a lien search as part of its due diligence prior to completing the transaction to acquire Alfred Jackson's interest in the Prince Estate.

perfect its lien before the transfer of any interest that Mr. Jackson or the Jackson Estate might have had in the Prince Estate to Primary Wave. As a result, there is no interest remaining in the Prince Estate to which the lien can attach.

**III. While this Court may establish the amount of the lien, that does not determine the amount that WWB can recover for breach of contract.**

WWB spends nearly half of its brief trying to justify the amount of its fees, arguing that in some way the order issued by Judge Solum, sitting as a special master, regarding the minimal benefit it provided to the Prince Estate validates the full amount of the fees claimed in its lien application in the instant dispute. Those proceedings addressed a completely different issue and are irrelevant to the issues now before the Court.<sup>7</sup>

Primary Wave does not, as WWB asserts, concede that WWB is entitled to what it claims. Rather, Primary Wave's position is that the determination of the underlying breach of contract claim has already been made – its value is \$0 since the claim has been forfeited. And if the claim still exists, the merits cannot be decided in summary lien proceedings in this Court. While the attorney lien statutes prescribe a method for establishing a lien in favor of an attorney seeking to recover fees, those statutes do not

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<sup>7</sup> WWB claimed only \$95,662 in fees in that proceeding. Judge Solum found that WWB failed to establish that much of its work benefited the estate, and criticized many of the time entries for being highly redacted. See Order at page 24. Judge Solum was also critical of WWB for failing to comply with his order to provide time entries grouped by services claim to benefit the estate. See note 18, page 24 (“Nothing of meaning was provided.”). Ultimately, he awarded roughly \$9,000 out of the claimed total, hardly an unqualified endorsement of the value of the services provided.



control the manner in which the ultimate legal liability of the client for the fees claimed is determined. *See* discussion at n.2, *supra*. The most this Court can do regarding the claim is set the amount of the lien, while the ultimate legal liability for the claimed fees must be determined in another forum.

### CONCLUSION

A lien is a remedy used to collect an existing debt. Where there is no debt, there can be no lien. WWB forfeited its right to recover on its claim against Alfred Jackson and the Jackson Estate when it did not file a timely claim in the Missouri probate proceedings. As a result, there is no debt upon which a lien may be based.

Moreover, because WWB failed to perfect its lien as required by Minnesota Statutes sections 525.491 and 481.13(2)(b) before any interest in the Prince Estate held by Alfred Jackson or his Estate was transferred, there is no interest in the Prince Estate to which the claimed lien may attach.

Finally, if the Court determines that WWB can, in fact, assert a lien in this matter, with respect, it cannot adjudicate the underlying debt. Rather, it may establish the amount of the lien, which is simply security for the claimed debt, but WWB must maintain a separate proceeding, if it still can, to recover on its breach of contract claim.

Respectfully submitted,

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