

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
PROBATE DIVISION
FIRST JUDICIAL DISTRICT

In re the Estate of Prince Rogers Nelson,
Deceased.

Type: Special Administration
Judge: Kevin W. Eide
File No. 10-PR-16-46

**SUPPLEMENTAL MEMORANDUM
OF LAW IN SUPPORT OF
DARCELL GRESHAM JOHNSTON'S
OBJECTION TO PROTOCOL
PRIOR TO GENETIC TESTING**

The determination of Prince Rogers Nelson's heirs must be made by applying the provisions of the Minnesota Uniform Probate Code (the "Probate Code").¹ It is unfortunate that the Minnesota Parentage Act (the "Parentage Act")² has been inserted into the process of determining heirs, as the Probate Code provides the Court with all the tools needed to determine heirs. Statutory schemes that are not a part of the Probate Code are not necessary.

At the June 27, 2016 hearing, the Court asked whether the 2010 iteration of Minn. Stat. § 524.1-201(22) and the Minnesota Supreme Court's decision in *In re Estate of Jotham*, 722 N.W.2d 447 (Minn.2006) create an irrebuttable presumption

¹Minnesota Statute Chapter 524 (2015).

²Minnesota Statutes §§ 257.01 through 257.75 (2015).

that John Lewis Nelson is the father of Prince Rogers Nelson. The answer is no.

The definition of a genetic father stated in Minn. Stat. § 524.1-201(22) (2015) is just that, a definition of a genetic father. It does not mean, for purposes of intestate succession, that a father can only be a genetic father. In fact, the Probate Code and Minnesota common law apply a definition of father in matters of intestate succession that is not limited to genetically established relationships, and that encompasses many more facets of what it is to be a father.

The *Jotham* decision is not applicable to the present matter because it involved the interpretation of a statute that was repealed in 2010.

I. The Probate Code determines heirs to an intestate decedent's estate.

The Probate Code states that an “intestate estate passes by intestate succession to the decedent’s heirs as prescribed in this chapter, except as modified by the decedent’s will.” Minn. Stat. § 524.2-101(a) (2015). Heirs are “those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.” Minn. Stat. § 524.1-201(27) (2015). A descendant “of an individual means all of the individual’s descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.” Minn. Stat. § 524.1-201(11) (2015).

The statute addressing the share of heirs other than a surviving spouse provides that when a decedent is not the parent of any living children (or the descendants of a deceased child of the intestate decedent) then the decedent’s

siblings and half-siblings (and the descendants of deceased siblings and half-siblings) are the heirs. Minn. Stat. § 524.2-103(3) (2015). The Probate Code *does not require* that a potential heir share a genetic parent with a decedent in order to be determined to be an heir.³

A child is defined as “any individual entitled to take as a child under law by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.” Minn. Stat. § 524.1-201(6) (2015). And “if a parent-child relationship exists or is established *under this part*, the parent is the parent of the child and the child is a child of the parent for the purpose of intestate succession.” Minn. Stat. § 524.2-116 (2015) (emphasis added).

Nowhere in the Probate Code is a definition of father, mother, or parent found. There are definitions for genetic parent, genetic father, genetic mother, and birth mother, but none for father, mother, or parent. Minn. Stat. § 524.1-201 (2015). The 2008 version of Minn. Stat. § 524.1-201 also lacks definitions for father, mother, or parent.⁴

Within the Probate Code, parent, when establishing a parent-child

³Counsel acknowledges that this statement contradicts an earlier statement made in the Memorandum of Law in Support of Darcell Gresham Johnston’s Objection to Protocol Prior to Genetic Testing dated June 20, 2016. However that earlier statement is incorrect. The correct interpretation of Minn. Stat. § 524.2-103 (2015) is that the statute does not require a potential heir to share a genetic parent with a decedent.

⁴A copy of Minn. Stat. 524.1-201 (2008) is attached as Exhibit A to the Affidavit of Cameron M. Parkhurst dated July 15, 2016 and submitted with this Supplemental Memorandum of Law.

relationship is broader than the definitions of genetic parent, genetic father, and genetic mother stated in Minn. Stat. § 524.1-201 (2015). When identifying a parent for purposes of determining the heirs to an intestate decedent's estate, the Minnesota appellate courts have applied a clear and convincing evidence standard. *In re Estate of Palmer*, 658 N.W.2d 197 (Minn.2003) and *Estate of Martignacco*, 689 N.W.2d 262 (Minn.Ct.App.2004) *review denied* (Minn. January 26, 2005). Genetics may be a part of the clear and convincing evidence, but are only one part of many by which a parent is determined.

II. *In re Estate of Jotham* does not create an irrebuttable presumption that John Lewis Nelson is the father of Prince Rogers Nelson.

When *Jotham* was decided, the Probate Code contained language stating “the parent and child relationship may be established under the Parentage Act, sections 257.51 to 257.74.”⁵ The 2010 update removed the permissive language from the Probate Code.⁶ With this change to the Probate Code, *Jotham* is factually different from the present case.

⁵See earlier iterations of Minn. Stat. 524.2-114 from 1994, 2005, and 2008.

⁶For a discussion of the 2010 legislative changes to the Probate Code, see the materials prepared for The 36th Annual Probate & Trust Law Section Conference - June 7 & 8, 2010 by attorneys Scott M. Nelson and Peter S. Hatinen. A copy of pages 1-16 of those materials are attached as Exhibit B to the Affidavit of Cameron M. Parkhurst dated July 15, 2016 and submitted with this Supplemental Memorandum of Law.

III. Clear and convincing evidence is the standard to apply when determining the heirs to an intestate decedent's estate.

How to determine heirs in an intestate Probate proceeding has been resolved by Minnesota appellate courts. The *Palmer* and *Martignacco* cases stand for the proposition that paternity and parentage can be established by clear and convincing evidence. *Palmer*, 658 N.W.2d at 199-200 and *Martignacco*, 689 N.W.2d at 267-68.⁷

In *Palmer* the district court considered evidence about the extent of Palmer's relationship (including visits by Palmer, trips taken by Palmer and the heir, gifts given, and attendance by Palmer at the heirs family events) with the disputed heir before concluding that a parent-child relationship had been established by clear and convincing evidence. *Palmer*, 658 N.W.2d at 198-99.

In *Palmer* the Minnesota Supreme Court recognized that the Probate Code and the Parentage Act are designed to address different primary rights. Examining a decision of the New Jersey Supreme Court regarding proving parentage for purposes of intestate succession, quoting the section of the decision explaining the differences between the New Jersey Parentage Act and Probate Code, noted:

The Parentage Act and the Probate Code are independent statutes designed to address different primary rights. The purpose of the Parentage Act is to establish "the legal relationship * * * between a child and the child's natural or adoptive parents, incident to which the law confers or imposes rights, privileges, duties, and obligations." Child support is the major concern under the Parentage Act. The purpose of the Probate Code, on the other hand, is to determine the devolution of a decedent's real and personal property.

⁷This is the conclusion reached by the Court and stated in the Order Denying Audio and Video Recording of Proceeding on June 27, 2016.

Palmer, 658 N.W.2d at 200, quoting *Wingate v. Estate of Ryan*, 149 N.J. 227, 693 A.2d 457 (N.J.1997). *Palmer* further states that the separate purposes of probate and family law justify a decision by the legislature *not* making the Parentage Act the sole method to establish paternity for probate matters. *Palmer*, 658 N.W.2d at 200 (emphasis added).

The Parentage Act resolves issues during life, of the here and now, issues of responsibility to children that need to be resolved in the present, not pushed into the future. In contrast, the Probate Code resolves issues after death, a primary concern being how to distribute the real and personal property of a decedent, but also to bring finality.

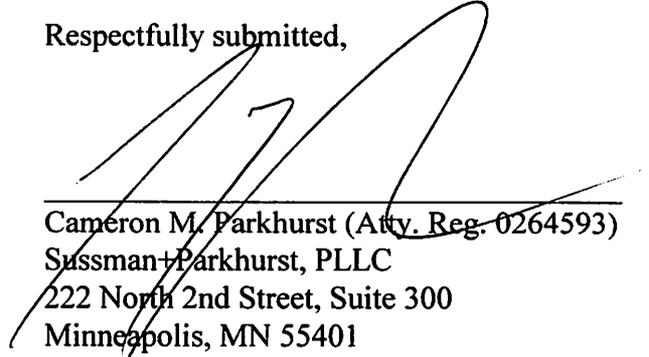
IV. Conclusion

The Probate Code provides the only instruction and guidance required to determine heirs in an intestate Probate proceeding. Under the Probate Code, a parent-child relationship is determined by clear and convincing evidence as shown by the *Palmer* and *Martignacco* cases. The Probate Code does not require a genetic connection between a parent and potential heir, nor is a finding of a genetic connection given more weight than other findings of a parent-child relationship. Genetic evidence is simply a piece of evidence used to meet the clear and convincing evidence standard.

Johnston requests that the Court issue an Order stating that the Parentage Act is not to be used to determine the heirs of Prince Rogers Nelson, and that the

standard to apply is the clear and convincing evidence standard from *Palmer*.

Respectfully submitted,



Dated: July 15, 2016

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