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Carver County, MN

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,

Decedent,

Court File No. 10-PR-16-46

MOTION OF BRIANNA NELSON AND V.N. TO CLARIFY OR RECONSIDER THE JULY 29, 2016 GENETIC TESTING ORDER

The Court's July 29, 2016 Order regarding Genetic Testing Protocol and Heirship Claims following the June 27, 2016 Hearing and Judgment ("Genetic Testing Order") addressed the claims of numerous parties claiming heirship under different theories. Some sought to establish their heirship claims under the Minnesota Parentage Act. Others sought permission to submit to genetic testing in order to establish their heirship claims. In the Genetic Testing Order, the Court ordered that Brianna Nelson and V.N. submit to genetic testing.

Brianna and V.N. respectfully request that the Court clarify or reconsider the terms of the Genetic Testing Order requiring them to submit to genetic testing. Brianna and V.N. – the daughter and granddaughter of Duane Nelson – make heirship claims neither under the Parentage Act nor as blood (or genetic) relations. The claims of Brianna and V.N. are based upon the father/son relationship between John L. Nelson and Duane Nelson and the sibling relationship between Decedent Prince Rogers Nelson and Duane Nelson. Because Brianna and V.N. do not base their claims upon a genetic relationship between Duane Nelson and John L. Nelson or Prince, genetic testing is unnecessary.

I. The Claims of Brianna and V.N. Are Based Upon the Relationship that Duane Nelson Had with His Father and Brother Rather Than Genetics

Brianna and V.N. base their heirship claims upon behavioral and documentary evidence of Duane Nelson's relationship with his father John L. Nelson and with his half-brother Prince. Brianna and V.N. have already submitted evidence to the Court that John

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L. Nelson, Prince, and other family members acknowledged Duane Nelson as the son of John L. Nelson. This relationship began when Duane was a child and continued through his teen years and into adulthood. John L. Nelson regarded and treated Prince and Duane – born just months apart – as his sons as they grew up and as adults.

II. Minnesota Probate Code Does Not Require Brianna and V.N. to Establish a Genetic Relationship to Prince or John L. Nelson to be Heirs

Since the 2010 amendments to the Minnesota Probate Code, the law governing intestate succession has been confusing. In 2010, the Minnesota legislature enacted substantial revisions to the Minnesota Probate Code. This rewriting of the rules of intestate succession addressed in large part emerging assistive reproductive technologies and adoption. Those enactments failed, however, to define crucial terms such as "parent," leaving courts to fill in these gaps.

A. The Minnesota Probate Code Does Not Require a Genetic Relationship in These Circumstances

At issue in this matter is whether Brianna and V.N., through Duane Nelson, are "descendants of the decedent's parents." The Minnesota Probate Code defines "descendant" as:

> 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) (emphasis added). The Probate Code contains definitions of ***58*** words and phrases in section 524.1-201 – including this definition of "descendant." Yet, there is no definition of the terms "parent," "child and parent," and "relationship of parent and child." As the Court noted in its Order, the "Minnesota Probate Code is not entirely consistent with reference to the terms father, parent, genetic father or genetic parent."

The terms "genetic parent," "genetic mother," and "genetic father" appear nowhere in the definition of "descendant." These new "genetic" relationships and terms were introduced in 2010, and apply when children of adoption or assisted reproductive technologies are at issue. In the current Probate Code, the only reference to the Parentage Act is in the definition of "genetic father" – a term that does not appear in the definition of "descendant" and has no bearing on the claims of Brianna and V.N.

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Where, as here, the Probate Code is less than clear, the Minnesota Legislature has provided courts with interpretive guidance in section 524.1-103:

> Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.

In situations such as these, courts are instructed to apply the principles of law and equity to resolve ambiguity and address situations not covered by the particular provisions of the Probate Code.

B. Minnesota Courts Have Not Required Genetic Testing in Similar Situations

To date, there have been no reported Minnesota court decisions interpreting the existing (post-2010 amended) Probate Code. The decisions addressing similar heirship questions arose under the now-repealed Minnesota Probate Code. Even under the repealed statute, there was no requirement to satisfy the dictates of the Parentage Act or demonstrate a genetic relationship in order to be an heir in an intestacy proceeding.

The most relevant and applicable case is the Minnesota Supreme Court's decision is *Estate of James A. Palmer*, 658 N.W. 2d 197 (Minn. 2003). Although it was decided under the now-repealed Code, the facts of the *Palmer* case are quite similar to the facts underlying the claims of Brianna and V.N. The *Palmer* Court interpreted now-repealed Probate Code language stating that a "parent and child relationship *may be* established under the Parentage Act" as permissive – meaning the Parentage Act was just one way for a parent/child relationship to be established under the Probate Code. *See Palmer,* 658 N.W.2d at 199-200 (emphasis added). As the appellate court in the *Palmer* case decided:

> For purposes of intestate succession, a parent-child relationship ***may be established by clear and convincing evidence*** regardless of the time limitation imposed by the Parentage Act. Respondent, having established his parent-child relationship to Palmer by clear and convincing evidence, is entitled to inherit as his descendent.

627 N.W.2d 13, 16 (Minn. Ct. App. 2002) (emphasis added). In affirming this holding, the Minnesota Supreme Court further noted:

> Had the legislature wanted parentage for probate purposes to be determined exclusively under the Parentage Act, it could have so provided.

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> 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.

Palmer 658 N.W.2d at 199-200.

Although genetic testing was already in widespread use at the time of these decisions, it is not mentioned in either decision. The courts found the behavioral and documentary evidence submitted by the potential heir was sufficient to prove that a parent-child relationship existed between decedent and the heir. That evidence included the following:

> *Birth Certificate*: In *Palmer*, the decedent was recorded as the father on the child's birth certificate.
>
> *Behavior of Father and Son*: In *Palmer*, there was behavioral and documentary evidence of an ongoing relationship between the heir and decedent including the following:
>
> - Decedent referred to the heir as his son.
> - The heir referred to decedent as his father.
> - Decedent visited the heir during the heir's childhood.
> - Decedent taught the heir auto mechanics and the two hunted, golfed, and took trips to a lake cabin together.
> - Decedent gave the heir gifts.
> - Decedent and the heir's mother had a continuing relationship.
> - Decedent attended family events as the heir's father including attending the heir's graduation.

Palmer, 658 N.W.2d at 198.

Brianna and V.N. base their claims as heirs on the same type of behavioral and documentary evidence, including the following:

> *Birth Certificate*: John Nelson's name is recorded on Duane Nelson's birth certificate as well as Prince's birth certificate.

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Behavior of John L. Nelson, Prince, and Duane:

- John L. Nelson referred to himself as Duane's father and Brianna and Duane Nelson Jr.'s grandfather

- John L. Nelson knew that Duane Nelson referred to himself as his son

- John L. Nelson and Duane visited each other at their respective homes

- John L. Nelson visited Duane when he was attending the University of Wisconsin-Milwaukee to visit, watch Duane play basketball, and attend Duane's graduation ceremony

- Prince referred to Duane as his brother

- Prince knew that Duane referred to himself as Prince's brother

- Duane attended Nelson family events with John L. Nelson and John's other children.

In sum, the evidence establishing heirship here is similar to that which the Minnesota Supreme Court found to be "clear and convincing" evidence in the *Palmer* case. No genetic testing or relationship was required.

III. The Court Should Clarify or Amend Its Order to Eliminate the Requirement of Genetic Testing for Brianna and V.N.

Here, Brianna and V.N. have made a prima facie showing that they are heirs. We seek discovery to obtain additional evidence of Duane Nelson's relationship with John L. Nelson. We also seek to obtain evidence of John L. Nelson's relationship with his other children in order to show that John L. Nelson's relationship with them was similar to his relationship with Duane. Similarly, we seek discovery to show that Prince was at least as close to Duane as he was to any of his other siblings.

Brianna and V.N. wish to clarify that their claims as heirs are not premised on a genetic relationship to John L. Nelson or Prince. Rather, their claims are premised on the father-son relationship that existed between John Nelson and Duane Nelson as well as the sibling relationship between Prince and Duane Nelson. John L. Nelson and Prince

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considered Duane Nelson – as well as his children – to be members of their family – no less than other children and siblings.

For these reasons, Brianna and V.N. respectfully request that the Court reconsider its Genetic Testing Order and relieve them from the obligation to submit to genetic testing.

Respectfully submitted,

August 26, 2016

Jayne Sykora
Sykora & Santini, PLLP
125 Main Street SE, Suite 339
Minneapolis, MN 55414
Telephone: (612) 465-9442

and

Andrew Stoltmann, admitted *pro hac vice*
Celiza Braganca, admitted *pro hac vice*
Stoltmann Law Offices, PC
10 S LaSalle St. Suite 3500
Chicago, IL 60603
Telephone: (312) 332-4200

and

Joanna Sunderland, admitted *pro hac vice*
850 N. Lake Shore Drive, Unit 301
Chicago, IL 60611
Telephone: (219) 201-7580

ATTORNEYS FOR BRIANNA NELSON AND V.N.