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Carver County, MN

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF CARVER | 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 SUBMISSION REGARDING CASE MANAGEMENT ISSUES PERTAINING TO CLAIMS OF BRIANNA NELSON AND V.N.

Special Administrator Bremer Trust, N.A., respectfully makes this submission pursuant to the Court's Order dated August 26, 2016 regarding scheduling and discovery as to the claims of Brianna Nelson ("Brianna") and V.N.

BACKGROUND

On May 18, 2016, Brianna and V.N. filed a motion to intervene in this proceeding. As part of their motion, they alleged that John L. Nelson is the father of Duane Nelson Sr. (Brianna's father and V.N.'s grandfather). (Motion at ¶ 10.) They asserted that because John L. Nelson was also the father of Decedent, Duane Nelson Sr. and Decedent were half-brothers. (*Id.* at ¶ 11.) They also alleged that Decedent held out Duane Nelson Sr. as his half-brother. (*Id.* at ¶ 14.) Relying on the Minnesota Probate Code, the stated that "when the estate is passed to the descendants of the decedent's parents, the decedent's estate is to be divided into as many equal shares as there are (i) surviving descendants in the generation nearest the deceased parents; and (ii) deceased descendants in the same generation who left surviving descendants." (*Id.* at ¶ 25.) Based on this law, Brianna and V.N. alleged that they were entitled to a share of Decedent's Estate based on their status as descendants of Duane Nelson Sr. (*Id.* at ¶ 27.)

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Brianna and V.N. later complied with the Court's Protocol Prior to Potential Genetic Testing. Based on the information they provided in response to the Protocol, the Special Administrator determined that, because Brianna nor V.N. had produced no evidence of a relevant presumption under the Minnesota Parentage Act as to a parent-child relationship between John L. Nelson and Duane Nelson Sr., such relationship would need to be established through genetic testing in a manner determined by the Court. By Order dated July 29, 2016 (amended by Order filed August 11, 2016 ("Amended Order")), the Court determined that Brianna and V.N. had made a prima facie showing that they are potential heirs of the Decedent, and ordered that they undergo genetic testing.

Brianna and V.N. refused to undergo genetic testing. Instead, on August 25, 2016 they filed a motion requesting that the Court clarify or reconsider its July 29 Order requiring genetic testing ("Motion to Clarify or Reconsider"). Within their motion, they state that because they do not base their inheritance claims upon a genetic relationship between Duane Nelson and John L. Nelson or Prince, genetic testing is unnecessary. Instead, Brianna and V.N. assert that their claims as intestacy heirs are based on the relationships that Duane Nelson Sr. had with John L. Nelson and Prince. In support of their claims, Brianna and V.N. have proposed a nine-month pre-hearing procedure during which time they intend to (a) take written discovery and obtain depositions from the Special Administrator, the other potential heirs and additional non-party witnesses, (b) submit expert reports, and (c) depose experts.

DISCUSSION

Throughout these proceedings, the Special Administrator has sought a fair and orderly process for persons claiming to be heirs in a manner that applies the relevant Minnesota law equally to all claimants. As to Brianna's and V.N.'s claims that they are intestacy heirs of the

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Decedent, the Special Administrator requests that the Court clarify or otherwise determine whether such claims are legally cognizable under Minnesota law before approving a several-month pre-hearing discovery period for such claims.

In its Amended Order, the Court set forth the Minnesota law relevant to claims of intestacy heirship. (Amended Order at 4-10.) Included within such law are provisions of the Minnesota Probate Code and the Minnesota Parentage Act. Section 257.54 of the Parentage Act establishes how a parent and child relationship may be established. If a father and child relationship is established under a presumption of the Parentage Act, the father is determined to be the child's "genetic father" for purposes of the Probate Code. Under the Probate Code, a parent and child relationship exists between a child and his or her genetic father for purposes of intestacy. Minn. Stat. §§ 524.2-116, 524.2-117.

In their Motion to Clarify or Reconsider, Brianna and V.N. assert that the relevant statutory law is silent as to whether they can inherit absent proof of (i) a genetic parent and child relationship or (ii) a parent and child relationship established under the Parentage Act. In support of their position, they cite one case—*Estate of James A. Palmer*, 658 N.W.2d 197 (Minn. 2003). The decision in *Palmer*, however, was based entirely on the permissive language of the former Probate Code section 524.2-114(2) that was eliminated from the Code in 2010.[1] As the Court has noted, when that section was eliminated, a new section (524.2-117) was added, providing that a parent and child relationship exists between a child and the child's "genetic parents." As referenced above, a genetic father and child relationship can be established either

[1] This former code provision was what the *Palmer* court relied upon to distinguish its decision in *Witso v. Overby*, 627 N.W.2d 63, 65-66 (Minn. 2001), in which it held that the Parentage Act "provides the exclusive bases [sic] for standing to bring an action to determine paternity."

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by testing or though the provisions of the Parentage Act; the Probate Code does not specify any other way that such a relationship exists.

Brianna and V.N. argue that the Probate Code's reference to the "principles of law and equity" as a supplement to the actual provisions of the statute is sufficient for their claims to proceed. It is unclear to the Special Administrator if this position is correct. Take, for example, Brianna's and V.N.'s assertion that facts surrounding the relationship between the Decedent and Duane Nelson Jr. will support their claim as an intestacy claimant. Even if there were no genuine issue of fact that Decedent treated Duane Nelson Jr. as his half-sibling, the Special Administrator is unaware of any applicable legal authority to support the assertion that such a relationship expands who may inherit as an intestate heir under the Probate Code.[2]

As for evidence of the relationship between John L. Nelson and Duane Nelson Sr., the Special Administrator acknowledges that the intestacy subpart of the Probate Code does provide that "[t]his chapter does not affect the doctrine of equitable adoption." Minn. Stat. § 524.2-122 (2014). Equitable adoption typically applies to foster children who were not formally or legally adopted by his or her foster parents. *See* Restatement (Third) or Property: Wills and Other Donative Transfers § 25, cmt. k and Note No. 7 (1999). While Minnesota recognizes equitable adoptions, its application is limited. The relationship is rooted in the laws of contracts and promises. *See, e.g., In re Estate of Olson,* 70 N.W.2d 107, 110 (Minn. 1955). Importantly, the doctrine, as applied to situations of inheritance, applies to only the parties to the "contract". *See*

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[2] Under the Probate Code, to qualify as a sibling or half-sibling, the person must be a direct descendant of one or both of Decedent's parents. Minn. Stat. § 524-2.103(3) (2014). There is no reference to a close or familial relationship with a Decedent irrespective of the parent-child relationship. If Brianna and V.N. are correct, it is easy to imagine probate cases in the future being inundated with persons claiming that the decedent treated a non-relative "like a brother" or that they were "closer than sisters."

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Olson at 110 (child who alleged he was equitably adopted by his foster-father could not use such status to inherit as the "adopted nephew" of the foster-father's brother's estate). Here, the situation is even more removed than in *Olson,* as neither of the parties of any potential "contract" to adopt are directly involved in the claim—instead, it is the heirs of the allegedly equitably adopted child seeking to inherit from their equitable uncle/granduncle's estate. Again, even if there were no issues that John L. Nelson intended to equitably adopt Duane Nelson Jr. (outside the provisions of the Parentage Act), it is unclear to the Special Administrator whether such facts would result in Brianna and V.N. being able to inherit from the Decedent.

CONCLUSION

Because it is not clear to the Special Administrator that Minnesota law would support Brianna and V.N.'s intestacy heirship petitions based upon the facts and law included within their Motion to Clarify or Reconsider, the Special Administrator respectfully requests that the Court first determine whether Brianna and V.N.'s petitions sufficiently state a legally viable claim before requiring that the Special Administrator and the interested parties engage in lengthy pre-hearing discovery that could unnecessarily delay the efforts to determine heirs and wind-up the administration of the Estate.

Dated: August 31, 2016

s/ David R. Crosby

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