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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 MEMORANDUM OF LAW IN RESPONSE TO DARCELL GRESHAM JOHNSTON'S OBJECTION TO PROTOCOL PRIOR TO GENETIC TESTING

In anticipation of the hearing scheduled for July 27, 2016 regarding the legal application of the Parentage Act generally to these probate proceedings, Special Administrator Bremer Trust, N.A., respectfully responds to the Objection dated June 20, 2016 filed by Darcell Gresham Johnston ("Johnston").

BACKGROUND

As part of its ongoing efforts to determine the lawful heirs Decedent Prince Rogers Nelson, the Special Administrator prepared a Protocol Prior to Genetic Testing ("Protocol"). The Court implemented the Protocol by Order dated June 6, 2016. In developing the Protocol, the Special Administrator 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. Such relevant law includes the Minnesota Probate Code (Minn. Stat. Ch. 524), the Minnesota Parentage Act (Minn. Stat. §§ 257.01 through 257.75) and Minnesota common law.

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The process for determination of heirs is not complete. To the extent it is determined that Decedent had one or more living descendants as of the date of his death, those descendants will share the intestate estate if no Will is discovered.[1] Minn. Stat. § 524-2.103(1) (2014). If there are no such descendants, then Decedent's siblings and half-siblings will equally share the estate by representation (as Decedent's parents are deceased). Minn. Stat. § 524-2.103(3) (2014). To qualify as a sibling or half-sibling, the person must be a direct descendant of one or both of Decedent's parents. *Id*. In other words, brothers or sisters of one of Decedent's half siblings only qualify as heirs if they share a common genetic parent with Decedent.

To be successful, Johnston's claim in this matter necessarily requires a challenge to a presumption and previous judicial determination of parentage. In her objection, Johnston asserts that the Special Administrator applies the Parentage Act "in contravention to the Probate Code and Minnesota common law" as part of the process to determine heirs. (Johnston Objection at 1.) This is incorrect. Indeed, both the Probate Code and the common law provide that if certain presumptions of parentage or past judicial determinations of parentage exist, those presumptions or determinations mandate the application of the Parentage Act when determining heirs in a probate proceeding (including intestacy situations).

APPLICABLE LAW

A. The Parentage Act

As used in the Parentage Act, a "parent and child relationship" means the legal relationship between a child and the child's parents "to which the law confers or imposes rights, privileges, duties and obligations." Minn. Stat. § 257.52 (2014). A determination of the

[1] As the Court is aware, the Special Administrator has gone to great lengths searching for a Will—to date, no Will has been found.

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existence of a parent-child relationship is not limited to issues of support. Indeed (as is relevant here), 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 (2014); *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).

The Parentage Act provides numerous statutory presumptions by which a man is presumed to be the biological father of a person. Minn. Stat. § 257.55 (2014). A presumption under this section may be rebutted in an "appropriate action", and then only by clear and convincing evidence. Minn. Stat. § 257.55, subd. 2. The Parentage Act, in a later section, establishes the rules as to who is permitted to seek a declaration of the existence or non-existence of a father-child relationship, as well as the time frames in which such actions could be brought. Minn. Stat. § 257.57 (2014). Of significance to this matter, only certain persons—including the child, the child's biological mother or a person presumed to be the child's father under the Parentage Act—have standing to bring an action to declare the non-existence of a presumed father-child relationship. *Id.; see also In re Estate of Jotham*, 722 N.W.2d 447, 455 (Minn. 2006) (an "appropriate action" as used in § 257.55 "is limited to an action in which the party seeking to rebut a paternity presumption would not be barred from bringing an action to declare the nonexistence of the presumed father-child relationship under Minn. Stat. § 257.57").

B. The Common Law

Between 2003 and 2006, the Minnesota appellate courts issued several decisions that addressed the interplay between the Parentage Act and the Probate Code. In *Estate of Palmer,* 658 N.W.2d 197 (Minn. 2003), the Minnesota Supreme Court held that a purported son of an intestate decedent could attempt to establish his parentage by clear and convincing evidence

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outside the scope of the Parentage Act. The Court based its ruling on § 524.2-114(2) (2002) of the former Probate Code, which provided that the parent-child relationship "**may** be established under the Parentage Act." *Palmer*, 658 N.W.2d at 199 (emphasis added). The Court reasoned that had the legislature wanted parentage for probate purposes to be determined exclusively under the Parentage Act, it could have so provided. *Id. See also Estate of Martignacco*, 689 N.W.2d 262, 266-67 (permitting a non-marital child to attempt to establish his parentage outside the scope of the Parentage Act, again relying on the permissive language found in § 524.2-114(2) of the former Probate Code).

In *Trust Agreement dated December 31, 1974*, however, the Minnesota Court of Appeals refused to extend *Palmer* to permit a **challenge** to parentage established under the presumptions of the Parentage Act. 674 N.W.2d at 225. In that case, trustees of a trust brought a petition to determine trust beneficiaries under Minn. Stat. § 501B.16 (now § 501C.0202), contending that three trust beneficiaries were not settlor's biological children, and, therefore, not beneficiaries under the trust.[2] The trustee acknowledged that the children were settlor's children under the Parentage Act (they were born during settlor's lawful marriage to the children's mother and referenced within a later divorce decree), but argued that *Palmer* permitted challenges of parentage outside the scope of the Parentage Act. *Id.* at 231. The Court of Appeals rejected that position, and held that **challenges** to presumptions of parentage established under the Parentage Act may only be made by the persons with standing to make such challenges, and within the time frames specified by the Parentage Act to do so. The Court also noted that the fact the parentage

[2] The Court rejected the Trustees' claim that they were only seeking instructions as to enforce the trusts pursuant to their terms, as opposed to challenging the children's parentage. *Trust Agreement dated December 31, 1974*, 674 N.W.2d at 228 (the paternity challenge "is the kernel of the trustees' position"—without a determination of the paternity challenge, the trustees' position would contain no practical request for relief).

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of the children had been adjudicated as part of a past divorce decree was dispositive as to any later challenges as to their parentage. *Id.* at 232.

Then, in 2006, in a decision particularly relevant here, the Minnesota Supreme Court refused to permit a parentage challenge in the context of a probate proceeding to establish the heirs of an intestate decedent. In *In re Estate of Jotham*, the petitioner, a daughter of a deceased man and his former wife, sought to rebut the presumption that another woman was also an heir of the deceased man. 722 N.W.2d at 449-50. The other woman was born 279 days after the marriage between the man and the former wife had terminated. (The Parentage Act contains a presumption that persons born within 280 days of the end of a marriage as having been born to the parties to the marriage.) The petitioner cited to same permissive language of § 524.2-114(2) that the courts in *Palmer* and *Martignacco* had relied upon in permitting efforts to **establish** parentage. *Id.* at 452. But the Supreme Court refused to extend *Palmer* and *Martignacco* to efforts to **challenge** parentage when another interested person is relying upon a presumption of parentage found in the Parentage Act. *Id.* In such instances, "the probate court must apply the Parentage Act in its entirety to determine paternity for purposes of intestate succession." *Id.* at 453. As such, "a Parentage Act paternity presumption may be rebutted only by one who meets the standing and timeliness requirements for an action to declare the nonexistence of the presume father-child relationship under § 257.57 [of the Parentage Act]." *Id.* at 455.

C. The Probate Code

Much of the courts' analysis in the decisions cited above centered on the permissive language of § 524.2-114(2) that existed within the former Probate Code. In 2010, however, <u>that permissive language was eliminated</u> as part of a larger revision of the Probate Code. A new section, § 524.2-117 was added, providing that a parent-child relationship exists between a child

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and the child's "genetic parents". The revised Probate Code then defines a child's "genetic mother" as the woman whose egg was fertilized by the sperm of the genetic father. Minn. Stat. § 524.1-201(23) (2014). Of import here, the Code defines a child's "genetic father" as the man whose sperm fertilized the egg of a child's genetic mother. Minn. Stat. § 524.1-201(22) (2014). But that is not the end of the story. The definition of "genetic father" continues by giving priority to any parent-child relationship established under the Parentage Act (irrespective of whether that man's sperm actually fertilized the mother's egg):

> If the father-child relationship is established under the presumption of paternity under chapter 257, "genetic father" means **only** the man for whom that relationship is established.

Id. (emphasis added). Thus, if a presumption of paternity exists that cannot be rebutted, or if there has been a past judicial determination of parentage, such presumption or determination **is dispositive** in a probate proceeding. The Special Administrator developed the Protocol because the revised Probate Code requires knowledge of whether such a presumption or judicial determination of parentage exists before a decision can be made as to whether genetic testing is warranted or permissible.

CONCLUSION

Under the Probate Code, the Special Administrator must determine whether presumptions or judicial determinations of parentage exist before proceeding with genetic testing. To be successful, Johnston's heirship claim necessarily involves the challenge of a presumption of parentage and a previous judicial determination of parentage. Because the Probate Code, the Parentage Act and the relevant common law preclude challenges to non-rebuttable presumptions of parentage and previous judicial determinations of parentage, Johnston's Objection to the

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Special Administrator's use of and determinations made pursuant to the Protocol should be overruled.

Dated: June 24, 2016

s/ David R. Crosby

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