

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

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

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.’S
RESPONSE TO FILINGS BY
OGEDA PATRICK AND REQUEST
THAT HE BE EXCLUDED AS AN HEIR**

Comerica Bank & Trust, N.A. (the “Personal Representative”), as the Personal Representative of the Estate (the “Estate”) of Prince Rogers Nelson (the “Decedent”), submits this response to various filings by Ogeda Patrick (“Mr. Patrick”). On or about February 23, 2018, Mr. Patrick filed two Writs of Mandamus, which appear to assert an heirship claim and seek genetic testing based on Mr. Patrick’s belief that the Decedent is his genetic father. Although Mr. Patrick has repeatedly made this assertion and these requests, he has never provided any evidence or asserted any facts suggesting any connection—genetic or otherwise—between him and the Decedent. Accordingly, the Personal Representative requests that the Court deny the requests of Mr. Patrick and exclude Mr. Patrick as an heir of the Estate.

FACTUAL BACKGROUND

I. THE COURT APPROVED A PROTOCOL GOVERNING CLAIMS OF A GENETIC RELATIONSHIP WITH THE DECEDENT.

On May 18, 2016, the Court entered an order stating that a party claiming a genetic relationship to the Decedent that may give rise to heirship must file an affidavit with the Court setting forth facts that establish a reasonable possibility of the existence of such relationship. (May 18, 2016 Order Regarding Claims Pursuant to the Parentage Act and the Probate Code.) In

addition, on June 6, 2016, the Court entered an Order approving the Protocol Prior to Potential Genetic Testing filed in June 1, 2016 (the “Protocol”). (*See* June 6, 2016 Order Approving Protocol.) The Protocol was developed to provide a procedure governing the potential genetic testing of those claiming to be heirs of the Decedent. (*See id.*)

Pursuant to the Protocol, a person claiming a genetic relationship with the Decedent was required not only to comply with the May 18 Order, but also to file answers under oath by sworn affidavit to a form Request for Parentage Information no later than one week after filing an appearance in the action. (Protocol, ¶ 2.) If the type of relationship claimed and the information provided complied with the Protocol and justified genetic testing, the claimant would be entitled to undergo such testing. (*Id.* at ¶ 3.) If, however, the information was insufficient (and no additional facts were subsequently provided), the claimant failed to comply, or the information showed that the claimant was precluded from being an heir as a matter of law, then the claimant would not be entitled to genetic testing. (*See id.*) Under the Protocol, the Special Administrator would respond to each claimant who filed an affidavit. (*Id.*) If the claimant disagreed with the Special Administrator’s determination, he or she could file an objection with the Court. (*Id.* at ¶ 4.) The Court of Appeals affirmed an order of this Court applying the Protocol, and found that it complied with applicable provisions of the Probate Code and the Minnesota Parentage Act. *In re Estate of Nelson*, 901 N.W.2d 234 (Minn. Ct. App. 2017).

II. THE COURT DETERMINED THE HEIRS OF THE ESTATE.

On May 18, 2017, the Court entered an Order determining that the heirs of the Estate are determined to be Omarr Baker, Alfred Jackson, Sharon Nelson, Norrine Nelson, John R. Nelson, and Tyka Nelson. (May 18, 2017 Order Determining Intestacy, Heirship & McMillan Matters,

¶ 2.) That Order commenced the running of the statutory one-year periods, including for challenges to that determination of heirs, pursuant to Minn. Stat. § 524.3-412. (*See id.* at ¶ 3.)

III. MR. PATRICK'S FILINGS FAIL TO PROVIDE INFORMATION ESTABLISHING A REASONABLE POSSIBILITY OF A GENETIC RELATIONSHIP WITH THE DECEDENT.

Mr. Patrick originally requested genetic testing via an email dated September 7, 2017. (Declaration of Sarah M. Olson in Support of Comerica Bank & Trust, N.A.'s Response to Filings by Ogeda Patrick and Request that He Be Excluded as an Heir ("Olson Decl."), Ex. A.) On September 8, 2017, the Personal Representative responded to Mr. Patrick with a letter stating that the Court had previously determined the Decedent's heirs, and that if he was seeking to challenge that determination and claim heirship, he was required to file an affidavit setting forth the factual basis for his claim within one week of filing an appearance in the case. (*Id.* at Ex. B.) The Personal Representative enclosed the Request for Parentage Information questionnaire, pursuant to the Protocol. (*Id.*)

On or about October 6, 2017, Mr. Patrick filed an Affidavit of Heirship (the "Patrick Affidavit") and a Motion for Blood Test of Putative Father in Order to Establish [sic] Genetic Paternity (the "Motion"). In the documents, Mr. Patrick appeared to assert an heirship claim based on his belief that he is the genetic child of the Decedent, but failed to provide any facts supporting such a belief. (*See generally*, Patrick Affidavit; Motion.) The two-page Motion consisted only of a recitation of certain statutory provisions and a bald request that the Court order DNA testing to determine the relationship between Mr. Patrick and the Decedent. (*See generally*, Motion.) No facts regarding Mr. Patrick's relationship with the Decedent were included. (*Id.*) The same is true of the Patrick Affidavit, which was not notarized. (*See generally*, Patrick Affidavit.) The Affidavit provides some limited information about the "people

who claim to be” Mr. Patrick’s parents, and the “alleged father” identified by Mr. Patrick is not the Decedent. (*Id.* at p. 1.) However, it provides no information regarding why Mr. Patrick appears to believe that the man who claims to be his father is not actually his father. (*See generally, id.*) It states that Mr. Patrick is “not sure” whether any man received him into his home and held him out as his biological child. (*Id.* at p. 3.) In response to the question whether a judgment or order exist determining a parent and child relationship between Mr. Patrick and one or more parents, Mr. Patrick responds “Not in the state of Minnesota.” (*Id.* at p. 4.) Filed with the Patrick Affidavit is a birth certificate for Mr. Patrick, which does not name a father. (*Id.*, attachment.) In sum, the Affidavit does not provide a single piece of information regarding why Mr. Patrick believes that the Decedent is his genetic father. Mr. Patrick did not include, for example, any statement by his mother or other person with knowledge even alleging that Mr. Patrick was the result of a sexual relationship between the Decedent and his mother.

The Personal Representative reviewed the Patrick Affidavit and Motion and determined that the information he provided did not establish a reasonable possibility that sexual contact occurred between his mother and the Decedent that would give rise to a claim that he is the child of the Decedent. (*See Olson Decl., Ex. C.*) By letter dated November 28, 2017, the Personal Representative informed Mr. Patrick that none of the information in the Patrick Affidavit or Motion provided any basis or support for his belief that the Decedent is his genetic father, that he had failed to identify any connection at all to the Decedent, and that the Personal Representative had therefore determined that he did not qualify for genetic testing. (*Id.*) The Personal Representative noted that, if Mr. Patrick disagreed with that determination, he could file an objection with the Court within three business days of receiving the letter, pursuant to the Protocol. (*Id.*)

Throughout December 2017 and January 2018, Mr. Patrick contacted counsel for the Personal Representative, indicating that he intended to object to the Personal Representative's determination, but that he needed additional time to prepare his objection. (Olson Decl., ¶ 6.) Given the Personal Representative's delayed response to Mr. Patrick's motion and affidavit, the Personal Representative's counsel indicated that the Personal Representative would not object on timing grounds, provided that the objection was filed within a reasonable time.¹ (*Id.*) Counsel for the Personal Representative also asked for facts or other information regarding the basis of his belief that the Decedent is his genetic father, but Mr. Patrick declined to provide that information. (*Id.*)

On or about February 23, 2018, Mr. Patrick filed his two Writs of Mandamus (the "Writs"), which appear to object to the Personal Representative's determination, and reassert Mr. Patrick's heirship claim and request for genetic testing (including an alternative request for the opportunity to submit additional evidence regarding his relationship to the Decedent in order to qualify for genetic testing). (*See* Writs.) As further discussed below, the Writs consist primarily of recitations of statutes, and lack evidence or other facts supporting his assertion that the Decedent is his genetic father. (*Id.*) Given Mr. Patrick's multiple opportunities to provide such evidence, and failure to do so, the Personal Representative requests that the Court deny any relief sought by Mr. Patrick, and exclude Mr. Patrick as an heir of the Estate.

¹ Accordingly, the Personal Representative does not object to Mr. Patrick's February 2018 filings on the grounds of timeliness, although they were filed nearly three months after the Personal Representative informed Mr. Patrick of its determination that he did not qualify for genetic testing.

ARGUMENT

I. LEGAL STANDARD.

The Protocol requires that a party claiming a genetic relationship to the Decedent that may give rise to heirship must file an affidavit with the Court setting forth the facts that establish the reasonable possibility of the existence of such relationship. (Protocol, ¶ 1.) This minimum threshold is consistent with the way the Parentage Act requires application of evidentiary safeguards to preclude frivolous claims of paternity. *See, e.g., Witso v. Overby*, 627 N.W.2d 63, 69 (Minn. 2001). One such safeguard is the requirement that, before any genetic testing is ordered in connection with a parentage claim, an affidavit must be filed “either alleging or denying paternity and setting forth facts that establish the reasonable possibility that there was, or was not, the requisite sexual contact between the [alleged parents].” Minn. Stat. § 257.62, subd. 1.

In probate proceedings, Minnesota courts apply this evidentiary safeguard to protect against frivolous claims that either challenge or attempt to establish parentage. For example, in *In re Estate of Martignacco*, a party sought to establish a claim on the decedent’s estate by alleging that he was the decedent’s biological son; he asked for the disinternment of the decedent’s body to conduct genetic testing and vet his parentage claim. 689 N.W.2d 262, 264-65 (Minn. Ct. App. 2004). The court granted the request for genetic testing, but only because the requesting party submitted the affidavit of his mother, who provided specific facts regarding her affair with the decedent and son’s conception, why the decedent’s name was not listed on her son’s birth certificate, and more information supporting the alleged genetic relationship. *Id.*

As recognized by the Protocol, similar evidentiary safeguards must be applied here. To potentially qualify for genetic testing, a claimant must, at the least, provide credible facts or first-

hand testimony that establishes the reasonable possibility that there was parent-child relationship with the Decedent. Claims based on mere speculation of, or a desire for, a potential relationship with the Decedent do not warrant genetic testing pursuant to the Protocol (or the Parentage Act and Probate Code, the statutes with which the Protocol was designed to comply). This gatekeeping function, put in place and exercised pursuant to the Protocol, is critical to minimizing the Estate resources required to respond to frivolous or unsupported heirship claims in this proceeding.

II. MR. PATRICK FAILS TO PROVIDE INFORMATION MEETING A MINIMUM THRESHOLD, SO HE IS NOT ENTITLED TO GENETIC TESTING AND SHOULD BE EXCLUDED AS AN HEIR.

The information provided by Mr. Patrick, through multiple submissions over five months, does not warrant genetic testing under the Protocol. As a procedural matter, the Patrick Affidavit was not under oath, as required by the Protocol. However, even if Mr. Patrick had complied with the Protocol's technical requirements, the information he has provided does not establish a reasonable possibility that sexual contact occurred between his mother and the Decedent that would give rise to a claim that he is a child of the Decedent.

Specifically, Mr. Patrick has provided only the bald and unsupported assertion that the Decedent is his genetic father. Nothing in his birth certificate, the Patrick Affidavit, or any of his other filings suggest any factual basis for such a claim or, indeed, for any familial connection with the Decedent. As with Child 4 and Child 5 addressed in the Court's Amended Order Regarding Genetic Testing Protocol and Heirship Claims Following the June 27, 2016 Hearing and Judgment, Mr. Patrick has not: (a) claimed that he is the child of the Decedent due to the presumption of paternity under the Minnesota Parentage Act; (b) alleged a relationship with the Decedent during his lifetime; or (c) provided an affidavit from his mother indicating that she had

a sexual relationship with the Decedent which resulted in Mr. Patrick's conception. (August 11, 2016 Amended Order Regarding Genetic Testing Protocol and Heirship Claims Following the June 27, 2016 Hearing and Judgment, pp. 12-13.) Indeed, while Child 4 and Child 5 at least provided some (however weak) statement regarding why they believed the Decedent was their father, Mr. Patrick has not provided even that information. (*See id.* at p. 13.) In sum, Mr. Patrick has failed, despite multiple opportunities, to make a *prima facie* showing that he is the child of the Decedent. His requests for genetic testing—or to have yet another opportunity to supply information that may lead to genetic testing—should be denied, and he should be excluded as an heir of the Estate.

CONCLUSION

For the foregoing reasons, the Personal Representative respectfully requests that the Court enter an order denying genetic testing and any other relief that has been requested by Mr. Patrick, and excluding Mr. Patrick as an heir of the Estate.

Dated: March 14, 2018

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