

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,
Decedent.

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

**OMARR BAKER, ALFRED JACKSON,
JOHN NELSON, NORRINE NELSON,
SHARON NELSON, AND TYKA
NELSON'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO
DETERMINE HEIRS**

INTRODUCTION

Omarr Baker, Alfred Jackson, Sharon Nelson, Norrine Nelson, John R. Nelson, and Tyka Nelson (the “Non-Excluded Heirs”) bring this Memorandum of Law in Support of their Motion to Determine Heirs. The Court has excluded numerous individuals as heirs. There is no dispute that the Non-Excluded Heirs are the surviving siblings of Prince Rogers Nelson (the “Decedent”). The Estate of Prince Rogers Nelson (the “Estate”) has proceeded through a special administration, appointment of a personal representative, and execution of numerous entertainment deals—all with the implicit understanding that the Non-Excluded Heirs are the rightful heirs. Despite this understanding, the Court has yet to issue a formal heirship determination.

The time has come for that determination. Minnesota’s Uniform Probate Code provides safeguards for both the excluded heirs currently appealing as well as potential future heirs that may come forward. At this point, any further delay will serve only to increase the costs to the Estate and the Court and impede an efficient administration of the Estate. The Non-Excluded Heirs respectfully request the Court determine they are the Decedent’s heirs.

STATEMENT OF THE FACTS

Prince Rogers Nelson was born on June 7, 1958 in Minneapolis, Minnesota. (*See* Amended Order Regarding Genetic Testing Protocol and Heirship Claims following the June 27, 2016 Hearing and Judgment, filed Aug. 11, 2016, p. 3, hereinafter “August 11 Order.”) His Certificate of Birth lists his parents as Mattie Della (Shaw) and John L. Nelson. (*Id.*) Mattie Della Shaw and John L. Nelson married on August 31, 1957, and divorced approximately ten years after the Decedent’s birth, on September 24, 1968. (*Id.*) In the Findings of Fact, Conclusions of Law and Order for Judgment in the marriage dissolution proceeding, the Decedent was adjudicated a child of Mattie Shaw and John L. Nelson. (*Id.*) John L. Nelson died on August 25, 2001, and in his estate, the Decedent was adjudicated a person of interest as an heir and was qualified to serve as the Personal Representative of the estate. (*Id.*) Probate records also identify Lorna Nelson, Sharon (Nelson) Blakely, Norrine Nelson, John R. Nelson, and Tyka Nelson as the children of John L. Nelson. (*Id.*)

The Decedent died on April 21, 2016 in his home in Chanhassen, Minnesota. (*See* Petition for Formal Appointment of Special Administrator, filed April 27, 2016, hereinafter “Petition.”) His sister, Tyka Nelson, commenced a probate proceeding in Carver County District Court and the case was assigned to the Honorable Kevin W. Eide. (*Id.*) The Court appointed Bremer Trust, N.A. (the “Special Administrator”) as Special Administrator of the Decedent’s estate (the “Estate”) on April 27, 2016. (*See* Order for Formal Appointment of Special Administrator, filed April 27, 2016, pp. 1-2.) The Court appointed Comerica Bank & Trust, N.A. as personal representative (the “Personal Representative”) effective February 1, 2017. (*See* Order for Amended Letters, filed Jan. 31, 2017, p. 1.)

At the time of his death, the Decedent had six surviving siblings. (*See* Petition, Ex. A.) Despite a thorough investigation, neither the Special Administrator nor any other party was able to locate a will executed by the Decedent. (*See* Transcript of June 27, 2016 Proceedings, p. 9.) As a result, this Court established a process to determine the identity of the Decedent's heirs. (*See* Order Regarding Claims Pursuant to the Parentage Act and Probate Code, filed May 18, 2016, pp. 1-2.) As an initial matter, the following individuals were identified as siblings of the Decedent based on the Decedent's mother being Mattie Shaw and the Decedent's father being John L. Nelson: Tyka Nelson (full sibling); Omarr Baker and Alfred Jackson (half-sibling with same mother); and John R. Nelson, Norrine Nelson, Sharon Nelson, and Lorna Nelson (half-sibling with same father). (*See* Petition, Ex. A.)

Numerous individuals came forward claiming to be a wife, child, sibling or half-sibling, or other relation of the Decedent, and asserting heirship claims based on the purported relationship. To establish a fair and uniform procedure by which to address these claims, the Special Administrator requested the Court approve a protocol to govern which claimants were entitled to genetic testing (the "Protocol"). (*See* Notice of Motion and Motion, filed June 1, 2016; Proposed Order Approving Protocol, filed June 1, 2016.) On June 6, 2016, the Court approved the Protocol.¹ (*See* Order Approving Protocol, dated June 6, 2016.)

¹ The Protocol required a person claiming a genetic relationship with the Decedent to file an affidavit describing facts regarding the claimed relationship. *See* Protocol Prior to Potential Genetic Testing, filed June 1, 2016. If the type of relationship claimed and the information provided justified genetic testing, the claimant would be entitled to undergo such testing. *Id.* If, however, the information in the affidavit precluded the claimant from being an heir as a matter of law, then the claimant would not be entitled to genetic testing. *Id.* Under the Protocol, the Special Administrator would respond to each claimant who filed an affidavit, including to advise whether the person was precluded from being an heir as a matter of law and therefore not entitled to genetic testing. *Id.* If the claimant disagreed with the Special Administrator's response, he or she could file an objection with the Court. *Id.*

The Non-Excluded Heirs each submitted to the Protocol and the Special Administrator determined they are siblings of the Decedent.² The Non-Excluded Heirs then filed a Joint Petition for Determination of Heirs. (*See* Joint Petition for Determination of Heirs, filed July 25, 2016, hereinafter “Joint Petition”.) In the Joint Petition, the Non-Excluded Heirs noted (correctly) that “[a] determination of heirs is needed to identify which individuals may file a Petition for General Administration and appoint a personal representative for the Decedent’s estate.” (*Id.*, p. 1.) In the Joint Petition, the Non-Excluded Heirs are listed as the Decedent’s surviving siblings. (*Id.*, Ex. A.)

The Court held a hearing related to the heirship claims under the Protocol on June 27, 2016 and subsequently issued two orders relating to the heirship claims. In those orders—in addition to excluding multiple heirship claims—the Court held that the Decedent’s six surviving siblings are the Non-Excluded Heirs. (*See* Order Regarding Genetic Testing Protocol and Heirship Claims following the June 27, 2016 Hearing and Judgment, dated July 29, 2016; August 11 Order.) Pursuant to this Court’s August 11 Order, the Non-Excluded Heirs—Omarr Baker, Alfred Jackson, Sharon Nelson, Norrine Nelson, John R. Nelson, and Tyka Nelson—are undisputedly the Decedent’s surviving siblings.³ (*See* August 11 Order, p. 3) (“The Court is not aware of any objection or dispute with the statement that these persons are the siblings or half-siblings of Prince Rogers Nelson.”)

² *See* Affidavit of Heirship of Omarr Julius Baker and Response of Special Administrator, filed July 20, 2016; Affidavit of Heirship of Alfred Frank Alonzo Jackson and Response of Special Administrator, filed July 20, 2016; Affidavit of John Rodger Nelson and Response of Special Administrator, filed July 20, 2016; Affidavit of Norrine Patricia Nelson and Response of Special Administrator, filed July 20, 2016; Affidavit of Heirship of Sharon Louise Nelson and Response of Special Administrator, filed July 20, 2016; Affidavit of Tyka Nelson and Response of Special Administrator, filed July 20, 2016.

³ Lorna Nelson predeceased the Decedent and had no children. She is therefore not identified as a Non-Excluded Heir. *See* Minn. Stat. § 524.2-104.

In the August 11 Order, the Court stated its intent to determine the Decedent's heirs pursuant to Minnesota's laws of intestate succession—and that the identification of the Non-Excluded Heirs as the Decedent's siblings is undisputed:

There has been no credible, documented claim that any applicant is a surviving spouse of the Decedent. Assuming that there is no surviving spouse, the distribution of the Decedent's estate would be determined under the priority set forth in Minn. Stat. § 524.2-103 . . . If there are no surviving children of the Decedent, or descendants of children that predeceased the Decedent, **the estate would pass to the surviving siblings of the Decedent**, or to the descendants of any predeceased siblings. The Petition for Formal Appointment of Special Administrator alleges that there are several siblings or half-siblings of the Decedent. **No one has claimed that none of the siblings or half-siblings identified in the Petition [i.e., the Non-Excluded Heirs] are not a sibling or half-sibling of the Decedent.**

(See August 11 Order, p. 10) (emphasis added).

In subsequent orders since August 2016, the Court has consistently referred to the Decedent's six surviving siblings as the Non-Excluded Heirs.⁴ Towards the end of the Special Administrator's term, pursuant to their authority as heirs under Minnesota Statutes § 534.3-203(c), the Non-Excluded Heirs submitted and the Court accepted petitions to appoint a personal

⁴ See, e.g., Order Granting in Part the Special Administrator's Motion to Approve Recommended Deals, dated Sept. 30, 2016, p. 2 ("The term 'non-excluded heirs' has been used by the parties and the Court to refer to those heirs that were: (1) not excluded by the Court's order of July 29, 2016 and (2) were not excluded through genetic testing results received by the Special Administrator"); Order & Judgment Denying Heirship Claims of Brianna Nelson, V.N. and Corey Simmons, filed Oct. 26, 2016 (referring to the Non-Excluded Heirs as "the heirs"); Order Approving Consulting Agreements and Independent Contractor Agreements, dated Nov. 8, 2016; Order Establishing Protocol for Finalizing Court-Approved Entertainment Agreements, dated Nov. 23, 2016; Order for Transition from Special Administrator to Personal Representative, dated Jan. 20, 2017, pp. 1-2 (referring to the Non-Excluded Heirs as "the heirs"); Second Order Relating to the Transition from Special Administrator to Personal Representative, dated Jan. 31, 2017; Scheduling Order Relating to Approval of Attorneys' Fees, Final Accounting and Extension of Powers, dated Feb. 22, 2017; Order & Memorandum Approving Payment of Attorneys' Fees and Costs, dated March 21, 2017.

representative for the Decedent's estate.⁵ At the hearing before the Court on January 12, 2017, Judge Eide stated that all claimants except for the Non-Excluded Heirs are "excluded" as potential heirs. (*See* Transcript of Jan. 12, 2017 Proceedings, p. 2) ("The original six in the [joint] petition are the non-excluded heirs for the manner in which the Court is proceeding today.") However, the Court declined to determine the heirs at the January 12 hearing because of appeals pending before the Minnesota Court of Appeals. (*Id.*, p. 3.)

On March 21, 2017, the Court stated it is "reasonably certain" the Non-Excluded Heirs will be determined to be the Decedent's heirs:

Although the Court has not entered a final order determining heirship in this matter, **the Court is *reasonably certain* that Norrine Nelson, Sharon Nelson, John R. Nelson, Tyka Nelson, Omarr Baker, and Alfred Jackson (the "Non-Excluded Heirs") will be found to be the heirs of the Decedent.**

(*See* Order Regarding Application of Existing Orders and Protocols to the Personal Representative, dated March 22, 2017, p. 2) (emphasis added).

As recently as April 5, 2017, the Court stated that compared to a year earlier (when "the identity of the likely heirs was unknown"), at present "the heirs are *likely identified*." (*See* Order Granting Special Administrator's Request to Approve Payment of Special Administrator's and Attorneys' Fees and Costs through January 31, 2017 and Final Accounts and Inventory, p. 10) (emphasis added).

⁵ *See* Tyka Nelson's Petition for Formal Adjudication of Intestacy, Determination of Heirs and Appointment of Personal Representative, filed Dec. 6, 2016; Sharon, Norrine, and John R. Nelson's Joint Petition for General Administration of Estate, Formal Adjudication of Intestacy, Determination of Heirs and Appointment of Co-Personal Representatives, filed Dec. 7, 2016; Omarr Baker's Petition for Formal Adjudication of Intestacy, Determination of Heirs and Appointment of Personal Representative, filed Dec. 20, 2016.

LEGAL ANALYSIS

A. **The Court Has Broad Authority and Discretion to Issue Orders with Respect to the Administration of a Probate Estate—Including the Determination of Heirs.**

Minnesota's Uniform Probate Code provides this Court with broad authority and discretion to administer an estate in the interests of justice. *See* Minn. Stat. § 524.1-302. The Probate Code explicitly provides the Court with “jurisdiction over all subject matters relating to the estates of decedents, including construction of wills and **determination of heirs** and successors of decedents.” *Id.* (emphasis added). The Court “has full power to make orders, judgments and decrees and to take all other action necessary and proper to administer justice in the matters which come before it.” *Id.* The Minnesota Court of Appeals has similarly recognized the district court's discretion to act in the interests of justice in administering an estate. *See, e.g., In re Estate of Hoppke*, 388 N.W.2d 754, 756 (Minn. Ct. App. 1986). The Probate Code states that its provisions should be construed and applied to promote its underlying purposes and policies, which include simplifying and clarifying the law concerning the affairs of decedents, and promoting “a speedy and efficient system for liquidating the estate of the decedent and making distribution to successors.” Minn. Stat. § 524.1-102.

The Court's broad discretion to administer the Estate includes a determination of its heirs. To date, “[t]here has been no credible, documented claim that any applicant is a surviving spouse of the Decedent.” (*See* August 11 Order, p. 10.) Similarly, there has been no credible claim that any applicant is a surviving child of the Decedent. (*Id.*, pp. 11-13.) In fact, this probate matter has been proceeding with the Court *and* all parties' agreement that the Non-Excluded Heirs are the Decedent's heirs.

The best example of this is the procedure by which the Court appointed the Personal Representative. It was the Non-Excluded Heirs who submitted petitions requesting appointment

of the Personal Representative. Minnesota Statutes § 524.3-203(a) determines priority among persons seeking appointment as personal representative. As “other heirs of the decedent,” pursuant to subparagraph (a)(5), the Non-Excluded Heirs had equal priority. Pursuant to Minnesota Statutes § 524.3-203(c), each **heir** may nominate a qualified person to act as personal representative for the estate:

A person entitled to letters under (2) to (5) of (a) above may nominate a qualified person to act as personal representative When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

See Minn. Stat. § 524.3-203(c).

As the Decedent’s surviving siblings, the Non-Excluded Heirs had the right under Section 524.3-203 of the Probate Code to bring petitions to appoint the Personal Representative—and the Court accepted that right.⁶ The Court allowed the Non-Excluded Heirs to bring the petitions and put those petitions to a hearing on January 12, 2017. (*See* Order for Hearing, filed Dec. 16, 2016; *see generally* Transcript of Jan. 12, 2017 Proceedings.) The petitions and hearing resulted in the Court’s appointment of Comerica Bank & Trust, N.A. as personal representative.⁷ (*See* Order for Transition from Special Administrator to Personal Representative, filed Jan. 20, 2017; Second

⁶ In fact, select Non-Excluded Heirs specifically renounced their priority for appointment as personal representative. *See* Sharon, Norrine, and John Nelson’s Nominations of Personal Representative and Renunciation of Priority for Appointment, filed on Dec. 7, 2016 (“I have priority under Minnesota Statutes section 524.3-203 for appointment as the personal representative of this estate and/or right to nominate the personal representative of this estate because the Decedent died intestate and unmarried, and **I am the Decedent’s heir.**”) The Court and the parties did not dispute their priority.

⁷ The Non-Excluded Heirs were also parties to the Special Administrator’s accounting proceeding. The Court included them in the proceeding *because of their heir designation*. Arguably, since the Court has approved the Special Administrator’s accounting and if it is later determined that others are heirs, those heirs will not have had a chance to contest the Special Administrator’s accounting before its discharge.

Order Relating to the Transition from Special Administrator to Personal Representative, filed Jan. 31, 2017; Letters of General Administration, filed Jan. 31, 2017.) If the Court or other parties had *any doubt* as to the Non-Excluded Heirs' authority to file the petitions, there was ample opportunity to raise it. But there was no dispute over the Non-Excluded Heirs' priority with respect to appointment of the Personal Representative. A formal determination of heirs is necessary to determine the parties in interest of the Estate (for purposes of the Personal Representative's appointment, among other issues). Delaying this causes a multitude of issues. For example, if a child of the Decedent comes forward within the one year period discussed below, it is unclear whether that child will have priority over the Non-Excluded Heirs' designation of Comerica as Personal Representative and/or whether that new potential heir would have the ability to replace the appointed Personal Representative. These issues can be resolved by an heirship determination at this juncture. Just as the Court used its broad discretion and authority to appoint the Personal Representative pursuant to Minnesota Statutes § 524.1-302, it can and should use that same authority to name the Non-Excluded Heirs as heirs of the Estate.

As recently as March 2017, this Court found it "reasonably certain" that the Non-Excluded Heirs are the heirs of the Decedent. (*See* Order Regarding Application of Existing Orders and Protocols to the Personal Representative, dated March 22, 2017, p. 2.) While this 'reasonable certainty' is promising, it is nowhere near the formal determination of heirs to which the Non-Excluded Heirs are entitled. It is well within its authority—and timely at this stage—for the Court to determine the Non-Excluded Heirs are the Decedent's heirs. For months, the Court has known the undisputed identity of the Non-Excluded Heirs as the Decedent's surviving siblings. No credible surviving spouse or child has come forward. (*See generally* August 11 Order.) And in the unlikely event a spouse and/or child does come forward, the determination of the Non-Excluded

Heirs now will not impact the statutory one-year period pursuant to Minnesota Statutes § 524.3-412 in which additional heirs may come forward. Finally, to delay the determination of the Non-Excluded Heirs as the Decedent's heirs any longer would invalidate the purpose of the Probate Code, which is to promote "a speedy and efficient system" to liquidate the estate. *See* Minn. Stat. § 524.1-102.

B. Pursuant to the Summary Judgment Standard under Minnesota Law, the Identification of the Non-Excluded Heirs is an Undisputed Fact.

The identification of the Non-Excluded Heirs as the Decedent's siblings is undisputed. Rule 56.01 of the Minnesota Rules of Civil Procedure provides that a party seeking to recover on a claim may "at any time after expiration of 20 days from the service of the summons" move for summary judgment in whole or in part. MINN. R. CIV. P. 56.01. Summary judgment is appropriate when the moving party shows that no genuine issue of material fact exists and the party is entitled to judgment as a matter of law. *See* MINN. R. CIV. P. 56.03.

The summary judgment procedure mandates that a court dispose of an action on the merits if there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such facts. *See, e.g., DLH, Inc. v. Russ*, 566 N.W.2d 60 (Minn. 1997). There is no genuine issue of material fact "when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *Id.* at 71.

To avoid summary judgment, one must do more than simply show that there is some metaphysical doubt as to material facts. *See Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1989). A party cannot simply rely on the pleadings, but must present specific facts that demonstrate that there is a genuine issue. *See W.J.L. v. Bugge*, 573 N.W.2d 677, 680 (Minn.

1998). A genuine issue of material fact “must be established by substantial evidence.” *Murphy v. County House*, 240 N.W.2d 507, 512 (Minn. 1976). “Mere speculation, without some concrete evidence, is not enough to avoid summary judgment.” *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993).

This Court has *already* held there is no genuine dispute as to the fact that the Non-Excluded Heirs are the Decedent’s siblings. (See August 11 Order, pp. 3, 10) (“The Court is not aware of any objection or **dispute** with the statement that these persons are the siblings or half-siblings of Prince Rogers Nelson.”) Pursuant to Minnesota Statutes § 524.2-103, if there is no surviving spouse, descendants, or parents of the decedent then living, the estate passes to the descendants of the decedent’s parents—the decedent’s siblings. There is no surviving spouse of the Decedent. (See August 11 Order, p. 10.) There is no surviving child of the Decedent. (See August 11 Order, pp. 11-13.) This Court has excluded all claims based on a sibling relationship *except for* the Non-Excluded Heirs. (See August 11 Order, pp. 13-17; Order & Judgment Denying Heirship Claims of Brianna Nelson, V.N. and Corey Simmons, filed Oct. 26, 2016.) And the Court denied those potential sibling claims after determining there was no evidence in support. (*Id.*) Considering the Court and the parties have not disputed the Non-Excluded Heirs’ identification, it is timely and appropriate for the Court to enter an order formally determining the Non-Excluded Heirs as the Decedent’s heirs.

C. Delaying the Determination of Heirs Impedes the Probate Code’s Intent to Promote a Speedy and Efficient Administration of the Estate.

At the January 12, 2017 hearing, the Court stated it cannot determine the heirs until the appeals pending before the Minnesota Court of Appeals are resolved. (See Transcript of Jan. 12, 2017 Proceedings, p. 2.) The purpose of this delay was ostensibly to determine how the appellate court addressed the heirship claims. However, this delay impedes the purpose of the Probate Code,

which is to promote “a speedy and efficient system” to liquidate the estate. *See* Minn. Stat. § 524.1-102. No parties benefit from a delay in the heirship determination. Instead, there would be substantial prejudice to the Personal Representative, the Estate, and the potential heirs.

The Non-Excluded Heirs *are* the siblings of Prince Rogers Nelson. This fact is undisputed by this Court, the Special Administrator, and the Personal Representative. The fact that select claimants have appealed to the Minnesota Court of Appeals does not change *this Court’s* orders excluding them. (*See generally* August 11 Order; Order & Judgment Denying Heirship Claims of Brianna Nelson, V.N. and Corey Simmons.) *This Court* determined as a matter of law that the claimants were barred by the Probate Code and the Parentage Act. *This Court* excluded them as heirs. It was well within the Court’s discretion to do so pursuant to Minnesota Statutes § 524.1-302.

A delay to accommodate the pending decisions from the appellate court only expends the Court’s—as well as the Estate’s—resources. Under Minnesota laws of intestate succession, if a decedent has no surviving spouse, descendants, or parents, then his intestate estate goes “to the descendants of the decedent’s parents or either of them by representation.” Minn. Stat. § 524.2-103. A “descendant” means “all of an 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). Pursuant to the above definitions in the Probate Code, the Non-Excluded Heirs *are* descendants of the Decedent’s parents, and therefore they *are* the Decedent’s heirs.

Even in the unlikely event the heirship determination changes, the Probate Code provides safeguards for the additional heirs come forward *after* the Court determines the Non-Excluded Heirs are heirs. First, the Probate Code provides that if heirs are omitted from a formal testacy proceeding, the district court may subsequently determine testacy as it affects the omitted heirs.

Minn. Stat. § 524.3-1001(b); *see also In re Estate of Wille*, C0-98-1765, 1999 Minn. App. LEXIS 522, at *10 (Minn. Ct. App. May 18, 1999) (Minn. Stat. § 524.3-1001(b) “provides a procedure for correcting an omission or other error in the testacy proceeding at the time of the formal proceedings to terminate administration and distribute the estate”); 1 Robert A. Stein, *STEIN ON PROBATE* § 7.01(a)(1), at 137 (3rd ed. 1995) (if heir was omitted as party in previous formal testacy proceeding court may cure defect at termination of estate); *see also* Unif. Probate Code § 3-1001 (amended 1993), 8 U.L.A. 288-89 cmt. (1998) (“this section provides a method of curing an oversight in regard to notice which may come to light before the estate is finally settled”).

Second, the Probate Code provides that the determination of heirs in a formal testacy order “may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of the death or were given no notice of any proceeding concerning the estate, except by publication.” Minn. Stat. § 524.3-412(2); *see also In re Estate of Allen*, No. A03-1285, 2004 Minn. App. LEXIS 511, at *4-5 (Minn. Ct. App. May 11, 2004); *In re Estate of Hoffmann*, No. C2-98-410, 1998 Minn. App. LEXIS 1055, at *2 (Minn. Ct. App. Sept. 15, 1998). Under this provision, a party may petition to vacate an order determining heirs within the earlier of (1) the time of entry of any order approving final distribution of the estate, (2) three years after the decedent’s death (pursuant to Minn. Stat. § 524.3-108), or (3) one year after the probate order sought to be vacated. Minn. Stat. § 524.3-412(3)(i)-(iii).

In this case, the Court has already determined the Decedent’s intestacy. *See* Minn. Stat. § 524.1-201(54) (defining “testacy proceeding” as “a proceeding to establish a will or determine intestacy”); *see* Transcript of June 27, 2016 Proceedings, p. 9; August 11 Order; Transcript of Jan. 12, 2017 Proceedings, pp. 31-32; Findings of Fact, Conclusions of Law Order & Memorandum on

Roc Nation’s Petition for Allowance of Claim and Additional Relief, filed Jan. 31, 2017, p. 1 (“Decedent Prince Rogers Nelson died intestate on April 21, 2016.”). Additionally, the Non-Excluded Heirs—along with their requests to appoint a personal representative—requested the Court adjudicate intestacy and determine the heirs pursuant to Minnesota Statutes § 524.3-401. While the Court has determined intestacy, to date, the Court has *not* determined the heirs.

There is no benefit to delaying the determination of heirs further. If the Court determines the Non-Excluded Heirs are the Decedent’s heirs, the Probate Code provides at least one *full year* as a safeguard to allow potential additional heirs to come forward before proceeding.⁸ If the Estate makes no distributions in the next year, there is no harm to determining the heirs at this stage. To delay any longer would cause further inefficiency in the administration of the Estate. If the Court waits to determine the heirs until after the appeals are resolved, it could add months (or possibly years) to the waiting period. This invalidates the “speedy and efficient system” the drafters of the Probate Code envisioned in Minnesota Statutes § 524.1-102. *See In re Estate of Kotowski*, 704 N.W.2d 522, 526 (Minn. Ct. App. 2005) (“We interpret [the Probate Code] provisions liberally, in a manner that clarifies the resolution of estates and promotes their speedy distribution”).⁹

⁸ By analogy, the Non-Excluded Heirs direct the Court to the procedure that takes place when a Will Contest occurs. New York Surrogate’s Court Procedure Act 1412, for example, provides for the appointment of a Preliminary Executor to facilitate the collection and protection of estate assets and the payment of estate bills and expenses. This is important to prevent an estate from being neglected during the long period of time a Will Contest may take, or when delay in the final probate decision may occur. In this case, if the Court waits until the appeals are completely resolved, the Estate may stand neglected for a long period of time, against the intent of the Probate Code. There is no harm in designating the heirs now, as additional heirs have a full year to declare themselves, and the outcome of the appeals will adjudicate any dispute regarding the excluded heirs. As long as no distributions take place in the next year, there is no benefit to delaying the heirship determination. Moreover, an heirship determination will make the Estate administration more efficient. A delay serves only to cause inefficiency and wastes the Estate’s assets.

⁹ Because uniform laws are intended to encourage common interpretation among jurisdictions, case law from other UPC jurisdictions may have persuasive value for the Court in

Considering the undisputed identity of the Non-Excluded Heirs as the Decedent's siblings, a determination of heirs is proper.

The parties currently appealing their exclusion as heirs will not be harmed. Their appeal will be formally adjudicated before the Minnesota Court of Appeals. The August 11 Order was the Court's determination of who was *excluded* as heirs—not who is actually an heir. Therefore, that order was not an heirship determination as envisioned by Minnesota Statutes § 524.3-401. While the Court has determined excluded certain potential heirs, to date, the Court has *not* determined the heirs.

Additionally, these interlocutory appeals do not stay the Court's enforcement of the August 11 Order and, by extension, a determination of heirs. Pursuant to Rule 108 of the Minnesota Rules of Civil Appellate Procedure, “an appeal from a judgment or order *does not* stay enforcement of the judgment or order in the trial court.” MINN. R. CIV. APP. P. 108.01, subd. 1 (emphasis added); *see also Am. Int'l Specialty Lines Ins. Co. v. Brookfield Home Loans, Inc.*, No. A10-1475, A10-1551, 2011 Minn. App. Unpub. LEXIS 379, at *2-3 (Minn. Ct. App. April 26, 2011). The district court “*retains* jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from.” MINN. R. CIV. APP. P. 108.01, subd. 2.

this matter. Minn. Stat. § 645.22; *Kotowski*, 704 N.W.2d at 526; *In re Estate of Palmer*, 658 N.W.2d 197 (Minn. 2003) (determining heirs and successors of decedent in conjunction with the Minnesota Parentage Act; taking analogy from New Jersey act because of lack of previous case law in Minnesota); *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002). For example, multiple Florida courts have allowed petitions to determine beneficiaries to proceed. *See Dempsey v. Dempsey*, 899 So. 2d 1272 (Fla. 2d DCA 2005) (determination that beneficiary was entitled to share of estate not final until specific award was defined); *Bryan v. Fernald*, No. 2D15-4830, 2017 Fla. App. LEXIS 2298 (Fla. 2d DCA Feb. 22, 2017) (previous case did not prevent court from determining probate beneficiaries); *Carroll v. Israelson*, No. 4D13-4532, 2015 Fla. App. LEXIS 9965 (Fla. 4th DCA July 1, 2015) (in case with unusual facts, court allowed petition to determine beneficiaries).

An order by the district court does not “affect” an order on appeal, for purposes of Rule 108, if the new order “does not require the district court to consider the merits of the issue on appeal.” *Perry v. Perry*, 749 N.W.2d 399, 403 (Minn. Ct. App. 2008). A clarification of a judgment or order is not a challenge to its validity or merits, and “does not constitute an amendment of it or the findings upon which it is based.” *Stieler v. Stieler*, 70 N.W.2d 127, 132 (Minn. 1955). Instead, “a clarification serves only to express more accurately the thought which, at all times, the judgment was intended to convey.” *Id.* at 132. Accordingly, it is “well within the province,” of a judge to clarify previous orders, “particularly where the interests of justice require that the parties be definitely apprised as to the full meaning of the court’s determination.” *Id.*; *see also Perry v. Perry*, 749 N.W.2d 399 (Minn. Ct. App. 2008) (district court retained jurisdiction over father’s motion to modify child support that was filed while an appeal of a grant of child support to the father was pending because the motion to modify was supplemental and collateral to the issue on appeal).

Here, the Court has stated on multiple occasions that the Non-Excluded Heirs are the Decedent’s siblings and most likely the Decedent’s heirs. (*See* August 11 Order, p. 3; Order Regarding Application of Existing Orders and Protocols to the Personal Representative, dated March 22, 2017, p. 2; Order Granting Special Administrator’s Request to Approve Payment of Special Administrator’s and Attorneys’ Fees and Costs through January 31, 2017 and Final Accounts and Inventory, p. 10.) To determine them as heirs is simply to clarify the Court’s previous orders. A determination of the Non-Excluded Heirs as heirs has no effect on the pending appeals pursuant to Rule 108.01. It will only serve to expedite the proceedings, saving the Estate and the Court considerable time and money.

Overall, a delay in the determination of heirs until resolution of the appeals pending before the Minnesota Court of Appeals would not benefit any parties. Rather, it would prejudice the

Personal Representative, the Estate, and the Court. A determination of heirs starts the statute of limitations delineated in Minnesota Statutes § 524.3-412. An extended delay in the determination of the heirs would cause numerous additional fees and costs for all parties involved.

The excluded heirs appealing the Court's decision had the opportunity to come forward, submit to the Special Administrator's protocol, and have their heirship claims formally evaluated before this Court. Any additional potential heirs have one full year from the Court's determination of heirs to come forward. The death of the Decedent, an international music icon, was highly publicized. His estate proceedings have similarly been highly publicized. If the Court determines the heirs now, it will mean that any additional potential heirs will have had more than two years from the date of the Decedent's death to approach the Court. In an Estate of this size and notoriety, that provides ample time and opportunity.

D. The Non-Excluded Heirs Do Not Seek Any Relief beyond a Determination as Heirs.

The Non-Excluded Heirs do not intend with this motion to request any distributions from the Estate or otherwise act in violation of the time periods set forth in Minnesota Statutes § 524.3-412. Rather, the Non-Excluded Heirs' sole intent with this motion is to clarify what is already widely known—that they are the siblings of the Decedent. As the Decedent's siblings, they are the Decedent's heirs pursuant to the laws of intestate succession. The Court and the parties do not dispute this fact. (*See* August 11 Order, pp. 3, 10.)

If no distributions are made until the statute of limitations set forth in Minnesota Statutes § 524.3-412 expires, there is no harm to the Estate. Conversely, delaying the heirship determination causes uncertainty, additional expense, and inefficiencies. This Court's heirship determination can (and in fact, should) restrict distributions until after the one year period has elapsed and the order determining heirs becomes final.

CONCLUSION

Because there is no dispute that Omarr Baker, Alfred Jackson, Sharon Nelson, Norrine Nelson, John Nelson, and Tyka Nelson are the surviving siblings of Prince Rogers Nelson—and pursuant to Minnesota Statutes § 524.2-103 they are the rightful heirs under the laws of intestacy—the Court should determine they are Prince Rogers Nelson’s heirs.

