STATE OF MINNESOTA

IN COURT OF APPEALS

In the Matter of the Estate of:

Prince Rogers Nelson, Decedent

O R D E R

#A16-1545
#A16-1546

Considered and decided by Cleary, Chief Judge; Ross, Judge; and Stauber, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:

In these consolidated probate appeals, appellant in A16-1545 seeks review of an order filed by the district court on July 29, 2016, and appellants in A16-1546 seek review of certain orders and judgments filed and entered between July 29, 2016 and August 12, 2016. While the appeals were being briefed, certain test results were filed in district court. Respondents then moved to stay briefing of the appeals and to supplement the record for the appeals with those test results, asserting that the test results show that appellants are not related to decedent and therefore, even if appellants prevail in their legal challenges to the rulings in question, they cannot be ruled to be decedent's heirs. This court suspended briefing of the appeal and directed the parties to address whether the appeals are moot. Appellants filed a combined informal memorandum responding to this court's order. Respondents have done the same.

The mootness doctrine requires appellate courts "[to] decide only actual controversies and avoid advisory opinions." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn.

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1999). If a court cannot grant effective relief, the matter is generally dismissed as moot. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005). Mootness, however, is "a flexible discretionary doctrine, not a mechanical rule that is invoked automatically." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002) (citation omitted). Thus, a matter will not be dismissed as moot if the issue raised is capable of repetition yet evading review or if collateral consequences attach to the otherwise-moot ruling. *McCaskill*, 603 N.W.2d at 327. "If a party to an appeal suggests that the controversy has, since the rendering of judgment below, become moot, that party bears the burden of coming forward with the subsequent events that have produced that alleged result." *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 98, 113 S. Ct. 1967, 1976 (1993). While the burden of showing mootness is on the party asserting mootness, the opposing party has the burden of showing that an exception to the mootness doctrine applies. *Honeywell Intern., Inc. v. Nuclear Regulatory Comm'n*, 628 F.3d 568, 576 (D.C. Cir. 2010); *see McCaskill*, 603 N.W.2d at 329 (stating that if "an appellant produces evidence that collateral consequences actually resulted from a judgment, the appeal is not moot").

Respondents argue that the appeals are moot, asserting that the tests shows that appellants lack a genetic relationship to decedent. The tests, however, do not specifically address appellants. And even if the test results could be read to suggest that appellants lack a genetic relationship to decedent, appellants have yet to have an opportunity to obtain from the district court a ruling on any challenges they may have to those tests, meaning that there is nothing for this court to review on the point. *See Thiele v. Stich*, 425 N.W.2d 580, 582

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(Minn. 1988) (stating that, generally, appellate courts address only questions that were previously presented to and considered by the district court). Further, appellants assert that, under certain authorities, they need not show a genetic relationship to decedent in order to inherit from him.

Generally, appellate courts may not base a decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below. *Thiele*, 425 N.W.2d at 582-83. An exception to this general rule exists for documentary evidence of a conclusive nature which supports the result reached in the lower court. *In re Real Prop. Taxes for 1980 Assessment; Vill. Apartments v. State*, 335 N.W.2d 717, 718 n.3 (Minn. 1983). This court has discretion to consider documents that meet the requirements of the exception but is not required to consider such documents. *In re Livingood*, 594 N.W.2d 889, 896 (Minn. 1999). In *Livingood*, the supreme court held that this court did not abuse its discretion in refusing to consider the extra-record documents because respondent failed to establish that the materials had conclusive value. *Id.* Here, because appellants have yet to have an opportunity to challenge the accuracy of the test results in district court, those results cannot be seen as dispositive of this appeal, especially in light of appellants' arguments that, they need not actually show a genetic relationship with decedent to inherit from him.

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IT IS HEREBY ORDERED:

1. Jurisdiction over these consolidated appeals is retained, and the appeal shall proceed.

2. Respondents' motion to supplement the record for these consolidated appeals is denied.

3. Respondents' brief shall be served and filed on or before March 30, 2017.

Dated: March 21, 2017

BY THE COURT

Edward J. Cleary
Chief Judge