

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:

Court File No. 10-PR-16-46

Estate of Prince Rogers Nelson,

Decedent,
and

Tyka Nelson,

Petitioner.

**BREMER TRUST'S (1) MEMORANDUM
IN RESPONSE TO MEDIA COALITION'S
MOTION TO INTERVENE FOR THE
LIMITED PURPOSE OF ENSURING
ACCESS TO COURT PROCEEDINGS
AND RECORDS AND (2) REQUEST FOR
MODIFIED PROTOCOL FOR
CONFIDENTIAL BUSINESS
AGREEMENTS**

The Special Administrator of the Estate of Prince Rogers Nelson, Bremer Trust, N.A., does not object to the Media Coalition's request to intervene to advocate for their interests via their pending Motion to Intervene for the Limited Purpose of Ensuring Access to Court Proceedings and Records.

With respect to possible media access to paternity proceedings, the Special Administrator rests upon its prior submission regarding media access, with the intention to honor the Court's directives about the filing of documents regarding heirship and privacy with the Court. With respect to possible media access to ongoing business matters of the Estate, the Special Administrator seeks to retain the ability to file confidential business documents under seal with the Court.

The Special Administrator also takes this opportunity to request that the Court adopt a modified protocol for business agreements involving the Estate to allow the Special

Administrator to best administer and monetize the Estate's assets and raise funds necessary for the payment of estate taxes while also involving potential heirs to the extent practicable.

I. Background

A. The Special Administrator's Administration of Estate Business Agreements

On May 2, 2016, the Court formally appointed Bremer Trust as Special Administrator for the Estate of Prince Rogers until October 27, 2016. Doc. No. 32.

On June 8, 2016, the Court issued an order authorizing the Special Administrator's employment of entertainment industry experts. Doc. No. 149. The June 8 Order emphasized that "the Court intends for the Special Administrator to take all prudent steps to monetize the Estate's intellectual property, and to raise funds necessary for the administration of the Estate and for the payment of estate taxes." *Id.* at 1. The June 8 Order also indicated that the "Special Administrator has not been granted, and the Court will not grant at this time, the authority to enter into contractual relationships that will extend beyond the term of the Special Administration." *Id.* at 4, ¶ 17.

Accordingly, the June 8 Order provided that "no entertainment or intellectual property exploitation agreement in which the Estate grants rights that extend beyond November 2, 2016 shall be entered into without first providing a copy of the proposed agreement to counsel for the potential heirs for review and comment and without prior Court approval," and that "[a]ny comments by potential heirs must be provided to the Special Administrator and the Court within five days of receipt of the proposed agreement." *Id.* at 5, ¶ 2.¹

¹ The May 2, 2016, Order Confirming Appointment of Special Administrator cited the date of October 27, 2016 (Doc. No. 32), whereas the Findings of Fact, Order & Memorandum Authorizing Special Administrator's Employment of Entertainment Industry Experts cited the date of November 2, 2016—the date three months from the May 2, 2016, Order, rather than 90 days (Doc. No. 149).

Since the entry of the Court's June 8 Order, the Special Administrator has employed entertainment industry experts to monetize assets of the Estate by negotiating business agreements licensing those assets. Affidavit of Laura Krishnan ¶ 13.

One such agreement is the agreement for the BET Awards 2016 program. *See* Doc. No. 239 (Order Regarding BET Awards 2016). The pace of the negotiations for the BET Awards 2016 agreement was such that time was of the essence, with material terms evolving and key concessions not being made until the eleventh hour, as is common in many business negotiations. Krishnan Aff. ¶ 18. Thus, the Special Administrator submitted the BET Awards 2016 agreement to the Court on June 24, 2016, with the program set to air on June 26, 2016. Doc. No. 231 (Proposed Order). The Court ordered that the Special Administrator was authorized to enter into the agreement the same day the agreement was submitted to the Court. Doc. No. 239.

Since its appointment, the Special Administrator has also performed business obligations of the Estate, including carrying out a previously negotiated arbitration settlement. While the clock was ticking on a pending resolution to the arbitration, the Special Administrator took the time to involve counsel for potential heirs and fully brief them on the considerations at stake. The Special Administrator also appreciated the importance of Court approval of the arbitration settlement and submitted the Special Administrator's proposed action for Court review. Doc. No. 229 (Petition of Special Administrator to Approve Performance of Prior Settlement Agreement).

Like the terms of the BET Awards 2016 agreement, the terms of the arbitration settlement agreement are confidential. Thus, the other parties to that agreement insist that the terms of the settlement remain confidential and not become public. Accordingly, the Special Administrator filed the underlying business information under seal. *See* Doc. Nos. 245A (Affidavit of Laura E. Krishnan), 245B (Affidavit of Gary Hansen). At the same time, in

recognition of and out of respect for the public nature of probate proceedings, the Special Administrator took care to prepare a draft court order with a general description of the business matter under review and an explanation of the justification for sealing. Doc. No. 230 (Proposed Order Regarding Special Administrator's Performance of Prior Settlement Agreement).

The Special Administrator is also making business plans with respect to the possibility of selling certain real estate properties owned by the Estate (excluding Paisley Park). Krishnan Aff. ¶ 21. Such plans will require business agreements with real estate agents and, eventually, prospective buyers. *Id.* The anticipated terms of such negotiations and agreements will also need to be kept confidential. *Id.*

B. The Media Coalition's Requests for Access and Motion to Intervene

On May 25, 2016, the Court issued a Notice of Request for Video or Audio Recording in the Courtroom in response to requests from multiple media representatives for access to the hearing scheduled for June 27, 2016. Doc. No. 115. The Court's notice allowed for input regarding still photography, video recording, and audio recording by June 17, 2016. *Id.*

On June 17, 2016, the Special Administrator filed a memorandum (1) objecting to photography, video recording, and audio recording of the June 27, 2016, proceeding, and (2) setting forth legal considerations regarding courtroom closure in accordance with Minnesota Statutes Section 257.70. Doc. No. 192 (Objection to Photography, Video Recording, and Audio Recording of Proceeding and Legal Considerations Regarding Minn. Stat. § 257.70).

On June 24, 2016, the Media Coalition filed its Motion to Intervene for the Limited Purpose of Ensuring Access to Court Proceedings and Records. Doc. Nos. 258 (Motion); 259 (Memorandum in Support). The Media Coalition's Motion is directed to "the June 27 hearing and other proceedings involving paternity in this case." Doc. No. 259 at 1-2. The Media

Coalition also asks “the Court to refrain from sealing any portion of the Court file without first giving members of the media an opportunity to be heard.” *Id.* at 2.

On June 29, 2016, the Court issued an order unsealing certain records. Doc. No. 276. The order held that (1) submissions from parties claiming to be direct descendants of the deceased would be sealed, and (2) submissions from other persons claiming to be heirs would not be sealed. *Id.* at 3-4. On June 29, 2016, the Court also issued an order that the Media Coalition’s Motion to Intervene for the Limited Purpose of Ensuring Access to Court Proceedings and Records will be heard on July 28, 2016, and that any briefing is due by July 21, 2016. Doc. No. 270.

II. Argument

A. Media Intervention for the Limited Purpose of Ensuring Access to Court Proceedings and Records Regarding Paternity

The Special Administrator does not object to the Media Coalition’s request to appear in this matter and advocate for the “Limited Purpose of Ensuring Access to Court Proceedings and Records,” as the Media Coalition’s motion requests. *See Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986) (holding that a media representative may intervene in a lawsuit to seek access to court filings pursuant to Minnesota Rule of Civil Procedure 24.01 if the Rule’s four-part test is satisfied). As *Schumacher* recognized, “Rule 24.01 establishes a 4–part test that a non-party must meet before being allowed to intervene as of right: (1) a timely application for intervention, (2) an interest relating to the property or transaction which is the subject of the action; (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party’s ability to protect that interest; and (4) a showing that the party is not adequately represented by the existing parties.” *Id.*

B. Special Considerations Regarding Paternity Proceedings

The Special Administrator incorporates by reference the relevant legal considerations in its memorandum (1) objecting to photography, video recording, and audio recording of the June 27, 2016, proceeding, and (2) setting forth legal considerations regarding courtroom closure in accordance with Minnesota Statutes Section 257.70. Doc. No. 192 (Objection to Photography, Video Recording, and Audio Recording of Proceeding and Legal Considerations Regarding Minn. Stat. § 257.70).

In short, the Media Coalition brief outlines important considerations that need to be taken into account with respect to media access to civil proceedings. The Special Administrator also owes it to the potential heirs to reiterate the legal considerations centering on the privacy of personal histories, particularly of minors, and the role of the Court when exercising its probate authority as to a person's estate.

C. Request for a Modified Protocol for Confidential Business Agreements

The Special Administrator requests that the Court adopt a modified protocol for confidential business agreements involving the Estate. As the Court has stated, the Special Administrator must "take all prudent steps to monetize the Estate's intellectual property, and to raise funds necessary for the administration of the Estate and for the payment of estate taxes." It has become apparent to the Special Administrator that the number, variety, complexity, timing, and confidentiality of the business agreements needed to administer the business of the Estate require a modified protocol, especially given the pace of the business activities of the Estate. *See, e.g., Krishnan Aff.* ¶¶ 19-20.

Thus, the Special Administrator seeks a modified procedure that facilitates the Special Administrator's ability to obtain the most favorable business terms possible under the

circumstances so that the Special Administrator can best perform its duty to advance the business interests of the Estate while also allowing for input from prospective heirs and Court oversight. In particular, the Special Administrator proposes the following modified protocol for any proposed agreement that would extend beyond November 2, 2016, or any proposed agreement that would sell any individual assets of the Estate for more than \$50,000²:

1. Before entering into any such proposed agreement, the Special Administrator will provide a copy of the proposed agreement to attorneys for potential heirs on an attorneys' eyes only basis.
2. The Special Administrator will provide reasonable notice under the circumstances of any such proposed agreement, which the Special Administrator expects to be 2 days during the normal course of business, but may be more or less than this amount of time, depending on the circumstances.
3. If a potential heir objects to any such proposed agreement, the objection must be raised to the Special Administrator within 24 hours of the notice of the proposed agreement provided by the Special Administrator.
4. If no potential heir objects to any such proposed agreement within 24 hours of the notice of the proposed agreement provided by the Special Administrator, the Special Administrator has the authority to enter into the proposed agreement but will apprise the Court of the general nature of the agreement before entering into the agreement to allow the Court to continue to oversee the administration of the Estate.

² The Special Administrator discussed the general nature of this modified protocol during a call with counsel for potential heirs on July 15, 2016, and provided the specific proposal with counsel for potential heirs on July 20, 2016. As of this filing, the Special Administrator has not received any objections or particular requests for changes.

5. If a potential heir objects to any such proposed agreement within 24 hours of the notice of any such proposed agreement provided by the Special Administrator, the Special Administrator and potential heir will attempt to resolve the objection.
6. If the Special Administrator and an objecting potential heir fail to resolve the potential heir's objection, the Special Administrator and the objecting potential heir will request a telephone conference with the Court to address the objection, as permitted by Minnesota Rule of Civil Procedure 115.04(d), and the parties will also request that such a conference take place within 1 business day of their request if that timing is acceptable to the Court at that time.
7. To the extent that any confidential business documents, such as agreements, need to be filed with the Court in conjunction with any objection, parties are authorized to file such documents under seal in accordance with Minnesota Rule of Civil Procedure 11.06(a), subject to any later determinations by the Court about whether such documents should remain filed under seal, including whether they should remain under seal in whole or in part with redactions.
8. For clarity, the Special Administrator does not need to provide any notice of an agreement for a compulsory license in accordance with the United States Copyright Act, including 17 U.S.C. § 115, to counsel for potential heirs or to the Court given that the Special Administrator has no discretion in such circumstances.³

³ Section 115 of the Copyright Act provides a compulsory license to make and distribute musical recordings after a musical recording of a copyrighted work has been distributed to the public in the United States under authority of the copyright owner, subject to certain terms and conditions of use. *See, e.g.*, Compulsory License for Making and Distributing Phonorecords, Circular 73, United States Copyright Office, *available at* <http://www.copyright.gov/circs/circ73.pdf>.

Such a protocol will allow the Special Administrator to best administer and monetize the Estate's assets and also raise funds necessary for the payment of estate taxes, while also involving potential heirs to the extent practicable.

D. The Special Administrator Requests a Standing Order Permitting the Filing of Confidential Business Documents Under Seal.

To the extent that any confidential business documents must be filed with the Court, whether or not in conjunction with a modified protocol for confidential business agreements, the Special Administrator must retain the ability to file business documents under seal to protect confidential business information and perform its fiduciary duty. In particular, it would hinder the ability of the Special Administrator to enter into agreements to monetize assets of the Estate if the terms of such agreements would be available to other parties with whom the Special Administrator is negotiating. *Krishnan Aff.* ¶¶ 16-17. This is because the disclosure of confidential deal terms could significantly harm the negotiating position of the Special Administrator in future transactions. *Id.* In the entertainment marketplace in particular, potential business partners could seize upon the terms of past business agreements to attempt to use them against the business interests of the Estate in what would likely be different situations in terms of timing, scope, risk, and relationship, among other things.

Accordingly, the Special Administrator requests an order permitting the ongoing under-seal filing of confidential business documents in accordance with Minn. R. Civ. Proc. 11.06(a) (When Documents May Be Filed as Confidential or Under Seal) (“A party may submit a document for filing as a ‘confidential document’ or ‘sealed document’ only if one of these circumstances exists . . . The court has entered an order permitting the filing of the particular document or class of documents under seal or as confidential.”).

The Court has the authority to make such an order regarding the class of confidential business documents, to protect the confidentiality of the Estate's business negotiations and agreements. *See* Minn. R. Civ. Proc. 26.03(g) (Protective Orders) (providing that "the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.").

Even in the context of a court's ultimate determination on the merits of a case, courts recognize that the right of access to confidential information must be balanced against the litigant's confidentiality interests. For example, the United States Court of Appeals for the Eighth Circuit has recently explained that, although there is a "common-law right of access to a civil proceeding . . . that right is not absolute." *IDT Corp. v. eBay*, 709 F.3d 1220, 1222 (8th Cir. 2013) (internal quotation marks omitted); *see also Webster Groves School District v. Pulitzer Publishing Co.*, 898 F.2d 1371, 1376 (8th Cir. 1990) ("[T]here is 'a common-law right of access to judicial records.' . . . This right of access is not absolute, but requires a weighing of competing interests.").

Thus, a court must balance "the interests served by the common-law right of access . . . against the salutary interests served by maintaining confidentiality of the information sought to be sealed." *IDT Corp.*, 709 F.3d at 1223; *see also generally Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986) (holding that a common law balancing test applied to media access to court documents and that the trial judge had properly held that the privacy interests of the litigants outweighed the public interest of the Star & Tribune in access to the sought-after files).

The relevant decisions of the Minnesota Supreme Court and the United States Court of Appeals for the Eighth Circuit are all informed by the Supreme Court's decision in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978). The *Nixon* decision recognized the myriad interests of litigants that could justify precluding media access to court documents, including protecting confidential business information, like the Special Administrator needs to do with respect to this Estate:

It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes. For example, the common-law right of inspection has bowed before the power of a court to insure that its records are not "used to gratify private spite or promote public scandal" through the publication of "the painful and sometimes disgusting details of a divorce case." . . . *Similarly, courts have refused to permit their files to serve . . . or as sources of business information that might harm a litigant's competitive standing.*

Id. at 598.

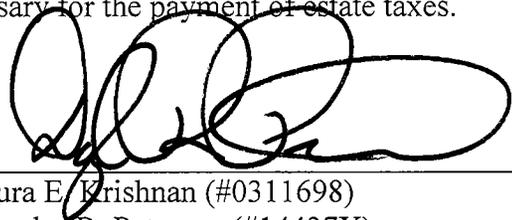
Here, in this Estate matter, revealing confidential business negotiations and agreements of the Estate to the public would harm the Estate's ability to monetize assets—in direct contravention of the Special Administrator's fiduciary duties. Moreover, confidential business negotiations and agreements of the Estate are not even related to the Court's ultimate determination of heirship. Thus, there is no reason that the confidentiality of business records should be disturbed in the interest of public access to such records.

III. Conclusion

The Special Administrator does not oppose the Media Coalition's Motion to Intervene for the Limited Purpose of Ensuring Access to Court Proceedings and Records, but the Special Administrator must retain the ability to file business documents under seal as needed to protect confidential business information. In addition, a modified protocol for business agreements

involving the Estate should be adopted to allow the Special Administrator to best administer and monetize the Estate's assets and also raise funds necessary for the payment of estate taxes.

Dated: July 21, 2016



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