

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
PROBATE DIVISION
FIRST JUDICIAL DISTRICT
Court File No.: 10-PR-16-46
Judge Eide

In Re:
Estate of Prince Rogers Nelson,

**MEMORANDUM OF LAW IN
SUPPORT OF VENITA JACKSON
LEVERETTE'S OBJECTION TO
PROTOCOL PRIOR TO GENETIC
TESTING**

Deceased.

INTRODUCTION

Contrary to the requirements of the Probate Code, Minnesota Statute Chapter 524 and Minnesota common law, Bremer Trust's ("the Special Administrator") currently approved genetic testing protocol, unfairly and with grave prejudice, prematurely eliminates certain claims of heirship, through the application of the Minnesota Parentage Act ("the Parentage Act"), Minn. Stat. §§257.01 through 257.75. At the time of this Court's Order of May 18, 2016, permitting the Special Administrator to unilaterally establish a genetic testing protocol, Venita Jackson Leverette ("Ms. Leverette") was not a party to this action. Had she been, she would have strongly objected to the Special Administrator's request to the Court to permit it to establish the current testing protocol. Nevertheless, based upon the reasons set forth in this Memorandum, Ms. Leverette now objects to the Special Administrator's genetic testing protocol.

FACTS

On May 6, 2016, this Court entered an Order authorizing genetic testing of the Decedent's blood. In a separate Order regarding claims pursuant to the Parentage Act and Minnesota Uniform Probate Code ("Probate Code"), filed May 18, 2016, the Court permitted the

genetic testing of those claiming to be an heir of the Decedent, but subject to a Genetic Testing Protocol that was to be developed by the Special Administrator. On June 6, 2016, the Court entered an Order approving the Special Administrator's proposed Genetic Testing Protocol. In both the May 18, 2016 and the June 6, 2016 Orders, the Court stated that on June 27, 2016, it would hear any party's motion or objection regarding the Genetic Testing Protocol.

On June 14, 2016, Ms. Leverette filed an Amended Certificate of Representation, claiming heirship and interest in Decedent's estate. Thereafter, on June 17, 2016, Ms. Leverette provided responses to questions set forth in the Genetic Testing Protocol of the Special Administrator via an affidavit. See attached hereto at Exhibit 1, Protocol Affidavit of Ms. Leverette. On this same date, per this Court's Order of June 6, 2016, Ms. Leverette also filed a condensed version of her heirship affidavit under seal. See attached hereto at Exhibit 2, Affidavit of Heirship of Ms. Leverette.

On or about June 16, 2016, counsel for Ms. Leverette had a telephone conversation with David Crosby, attorney for the Special Administrator, wherein attorney Crosby advised that the Special Administrator would be summarily denying Ms. Leverette's request for genetic testing and claim of heirship. Attorney Cosby stated that the decision would be based on the case of *In re Estate of Jotham*, 722 N.W.2d 447, 455-56 (Minn.2006), and thus, Ms. Leverette would not be permitted to take a DNA test.

At the time of counsel's telephone conversation with attorney Crosby, the Special Administrator had not yet seen Ms. Leverette's responses to its Protocol questions. See attached hereto at Exhibit 3, Affidavit of Attorney James Selmer. Late in the afternoon on June 22, 2016, Ms. Leverette's attorneys received via email a letter from the Special Administrator's counsel,

denying her heirship claim and request for genetic testing. See attached hereto at Exhibit 4, letter from Special Administrator's Counsel, David Crosby.

On June 20, 2016, Darcell Gresham Johnston served and filed her Memorandum of Law in Support of her Objection to Protocol Prior to Genetic Testing ("Johnston Memorandum"), setting forth, among other reasons, the legal basis upon which the *Jotham* case and the Parentage Act should not apply to heirship interests in the probating of the Estate of Prince Rogers Nelson. Ms. Leverette also objects to the current genetic testing protocol established by the Special Administrator, and concurs with the arguments set forth in Ms. Johnston's Memorandum.

LEGAL ARGUMENT

In addition to the arguments set forth in Ms. Johnston's Memorandum objecting to the protocol, Ms. Leverette requests that the Court issue an Order stating that the Parentage Act does not apply to the determination of heirs in this matter.

As stated in detail in the Johnston Memorandum, the Special Administrator's proposal to filter all claims through the Parentage Act fails to comply with the Probate Code and common law. As a result, the questions subsequently asked of each claimant, including Ms. Leverette, are based solely on claims governed by the Parentage Act. As a result, it came as no surprise that the Special Administrator summarily denied her claim solely on that basis.

However, the claim made by Ms. Leverette does not seek to establish a right to inherit through the Parentage Act and the Probate Code does not make exclusive use of the Parentage Act when someone dies intestate. In the circumstances of the instant case, siblings and half-siblings that share at least one genetic parent with a decedent may be determined to be heirs. Minn. Stat. § 524.2-103(3). The Probate Code further states that the determination of whether someone is a parent does not entail a finding with regard to marital status. Minn.Stat. §§ 524.2-

114, 524.2-119, or 524.2-120. These statutes regard individuals related through two lines of relationship, adopted children, and adopted children's genetic parents, and no provision of the Probate Code has ever mandated the use of the Parentage Act to determine heirs in an intestate Probate proceeding.

Moreover, the Special Administrator's reliance on *Jotham*, as the sole basis for allowing the genetic testing of claimants, is misplaced. At no point does *Jotham* state that the Parentage Act is the only way to determine potential heirs. In fact, the *Jotham* court limited its application to distinct factual situations and found that where a party relies on the benefits from the Parentage Act's presumption of paternity, "its provisions must apply in their entirety." *Id.* at 452. This Court, in its June 22, 2016 Order denying audio and video recording at the June 27, 2016 hearing, also recognized the limitations of having the Parentage Act serve as the exclusive means to determine heirship.

Ms. Leverette neither relies on, nor seeks to establish, an inheritance right under the Parentage Act, but seeks only to determine a sibling relationship with the decedent. As stated in *In re Estate of Palmer*, 658 N.W.2d 197 (Minn.2003), the Probate Code, through the use of the term "may," explicitly provides that the Parentage Act is not the exclusive means of determining parentage for the purposes of intestate succession. Clear and convincing evidence can be used to establish parentage, apart from the Parentage Act, and its time limitations. *Id.* at 199-200; *see also Estate of Martignacco*, 689 N.W.2d 262 (Minn.Ct.App.2004) review denied (Minn. January 26, 2005) (not allowing the use of the Parentage Act). These cases are consistent with the changes to the Probate Code that occurred in 2010, when the permissive use of the Parentage Act language was removed.

This should come as no surprise given the fact that the Parentage Act and the Probate Code are independent statutes designed to address different rights. As artfully stated in *Palmer*, “the purpose of the Parentage Act is to establish the legal relationship * * * between a child and the child's natural or adoptive parents, incident to which the law confers or imposes rights, privileges, duties, and obligations. Child support is the major concern under the Parentage Act. The purpose of the Probate Code, on the other hand, is to determine the devolution of a decedent's real and personal property.” See *Palmer*, 658 N.W. 2d at 200.

The Special Administrator's use of the Parentage Act as the sole criteria to allow genetic testing is diametrically opposed to the criteria set forth in the Probate Code and the cited cases. The fact that the permissive use of the Parentage Act was removed from the Probate Code's language in 2010 is but another justification for applying the standard set forth in *Palmer* of “clear and convincing” evidence. The only way Ms. Leverette can establish such evidence is if the Special Administrator allows her to test genetically to determine if she meets the Probate Code's definition of a half-sibling. As shown herein, Ms. Leverette has supplied the Special Administrator with significant evidence supporting the claim that she is a half-sibling of the Decedent. The evidence is clearly sufficient to allow her to proceed with genetic testing. In spite of this, the evidence was totally disregarded via Special Administrator's use of the Parentage Act as the sole criteria to reach a decision regarding genetic testing.

Neither the administration of the estate by the Special Administrator, nor the rights of other potential heirs, will be prejudiced by allowing Ms. Leverette to determine if she is the genetic half-sibling of the Decedent. Ms. Leverette will incur the costs associated with such testing at no cost to the estate. Conversely, if Ms. Leverette is not allowed to genetically test, she will have no opportunity to establish her claim, she loses any opportunity to determine if she is a

half-sibling, and her rights are significantly prejudiced. Other heirs with a potential half-sibling relationship would be prejudiced in a similar manner by the Special Administrator's decision to use the Parentage Act as the sole criteria for genetic testing.

Finally, the primary goal of the Special Administrator should be to determine the legitimate heirs of the estate, rather than simply cutting off the rights of potential heirs. By using the Parentage Act as the sole criteria for allowing genetic testing, not only are the Special Administrator's actions at odds with this goal, its actions could enrich individuals who could be genetic strangers to the Decedent, with no right to inherit under the Probate Code.

CONCLUSION

Based upon the arguments and authorities set forth above, Ms. Leverette requests that the Court issue an Order stating that the Parentage Act does not apply to her determination of heirship, that the Special Administrator must use the *Palmer* standard, and that Ms. Leverette should be allowed to undergo genetic testing immediately.

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Dated: June 24, 2016

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