

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT

Court File No. 10-PR-16-46

In re Estate of Prince Rogers Nelson,
Decedent.**MOTION FOR RELIEF FROM ORDER AND
JUDGMENT OF COURT (RULE 60.02)**Motion

Corey D. Simmons hereby moves for relief from the Court's *Order Regarding Genetic Testing Protocol and Heirship Claims Following the June 27, 2016 Hearing and Judgment*, which was filed July 29, 2016. Mr. Simmons respectfully requests that the Court amend that order to include him in the section entitled "Applications Based Upon Claims Of Being A Descendant of Duane Nelson".

Relationship to Decedent

Corey D. Simmons is a nephew of his uncle, Prince Rogers Nelson. He was born to Duane Joseph Nelson, Sr., who was his father, and Carolyn Renee Simmons, his mother. Accompanying the filing of this motion, Corey D. Simmons has also filed his fully prepared Court Ordered Protocol information form and two affidavits, one from himself and one from his mother to support his submission as an heir. He has also filed herewith a third affidavit from himself in support of this motion.

Carolyn Renee Simmons met Duane Joseph Nelson, Sr. when they were both attending college at University of Wisconsin Milwaukee. They began dating and became sexually intimate. Corey D. Simmons was conceived by that union with Duane Joseph Nelson, Sr. See, Affidavit of Carolyn Renee Simmons.

The situation became stressful for Duane Joseph Nelson, Sr. and his grades suffered, which resulted in him leaving college and going back to Minnesota when Ms. Simmons was five months pregnant. *Id.*

Ms. Simmons did not see Duane Joseph Nelson, Sr. again for three years. Three years later, Mr. Nelson returned to visit with Ms. Simmons and his son, Corey D. Simmons. He remarked how much his son resembled him. *Id.*

Mr. Nelson's involvement and relationship with Ms. Simmons and Corey D. Simmons became strained after that and inconsistent on his part, but there were more visits. He received pictures of his son which he kept in his wallet. After a year of visits, Mr. Nelson

again stopped connecting with them, for years. Thereafter, in 1989 he called Carolyn Renee Simmons indicating he was in rehabilitation in New York. This was the last contact with Mr. Nelson. *Id.*

When his father, Duane Joseph Nelson, Sr. died in 2011 Corey D. Simmons became introduced to his father's family, as a result of Mr. Nelson's death and funeral. For the first time Corey D. Simmons met his sister, Brianna Nelson, and aunts he had previously not met. His father's family remain connected to this day. His relationship with Brianna Nelson is a happy and affectionate one, in which Brianna Nelson acknowledges him as her brother. See, Affidavit of Corey D. Simmons.

After the death of Prince Rogers Nelson, Mr. Simmons again spent quality time with his family, including his sister Brianna and his aunts Norrine and Sharon during this last summer of 2016, particularly at the funeral and gathering of family and friends of Prince Rogers Nelson which was held on August 12, 2016. *Id.*

Mr. Simmons never received any correspondence or notice regarding the estate of his uncle, Prince Rogers Nelson. See, Affidavit of Corey Simmons Supporting Motion for Relief from Order and Judgment of Court (hereinafter "Affidavit of Corey Simmons Supporting Motion").

The Court record shows that he is not listed on the petition for Special Administration filed by Tyka Nelson, nor is his father listed in the petition.

Mr. Simmons knew of the estate proceedings unfolding in the last few months. Although he knew of the death of his uncle and the proceedings, he has never received notice of any hearings or other Court proceedings relating to the estate. Mr. Simmons thought the Special Administrator should be doing something about his rights to the estate of his uncle, Prince Rogers Nelson. Affidavit of Corey D. Simmons Supporting Motion. Then, after urgings from his family, Corey D. Simmons contacted attorneys for the Special Administrator and talked to attorney Lauren Routhier, at Stinson Leonard Street. She said that her firm only represented the Special Administrator and could not represent him. She also sent him a follow-up email, a copy of which is attached to his Affidavit of Corey D. Simmons Supporting Motion. Ms. Routhier also attached to her email the form for the Protocol and the Court's Order Approving the Protocol. She properly indicated that these documents should be reviewed and filed by an attorney of Mr. Simmons' choosing, thus inviting him to make his claim. *Id.*

However, she did not mention nor inform him of this Court's July 29th *Order Regarding Genetic Testing Protocol and Heirship Claims Following the June 27, 2016 Hearing and Judgment*. Mr. Simmons then promptly engaged the undersigned counsel.

Corey D. Simmons Affidavit establishes his relationship to his family among his father's children and siblings, including his sister Brianna Nelson, demonstrating that he was not an unknown son of Duane Joseph Nelson, Sr. He also establishes that he reached out to Tyka Nelson, the petitioner who knew of his claim to relationship with Prince Rogers Nelson and Duane Joseph Nelson, Sr.

Tyka Nelson's petition for the appointment of Special Administrator of April 26, 2016, does not list or refer to Duane Joseph Nelson, Sr., nor to any of his descendants. Although Corey D. Simmons was never given notice, he remains an interested person and an heir of Prince Rogers Nelson.

The July 29th Order Should Be Amended

This Court's *Order Regarding Genetic Testing Protocol and Heirship Claims Following the June 27, 2016 Hearing and Judgment*, of July 29, 2016 (hereinafter, the "Heirship Claims Order") should be amended. In the Heirship Claims Order, Corey D. Simmons would have been included in the class the Court referred to as "Applications Based Upon Claims Of Being A Descendant of Duane Nelson", beginning on page 13 of the Order – but only if the Court had known of his existence and had he had notice of the opportunity to submit his information for the Protocol. He would clearly qualify for the same analysis and treatment by the Court as Brianna Nelson and the child V.N., since he was also a descendant of Duane Joseph Nelson, Sr.

The Court ruled that Brianna Nelson and the child V.N. had made satisfactory *prima facie* showing that they were potential heirs of Prince Rogers Nelson. This could also apply then to Corey D. Simmons, had his application preceded the Heirship Claims Order.

Further, the Heirship Claims Order is silent as to limiting the time for the claims of any other persons as to heirship who had not yet appeared at the time the order was issued. Such a time limitation has not yet been Ordered by the Court nor is Corey D. Simmons' application precluded by any procedural court rule or statutory deadlines, the Heirship Claims Order which authorizes the testing of only Brianna Nelson and the child V.N. should now include Corey D. Simmons.

Rule 60.02 on Minnesota's Rules of Civil Procedure states:

On motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final judgment (other than a marriage dissolution decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03;

(c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) The judgment is void;

(e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, **or it is no longer equitable that the judgment should have prospective application; or**

(f) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A Rule 60.02 motion does not affect the finality of a judgment or suspend its operation. **This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Rule 4.043, or to set aside a judgment for fraud upon the court.** Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. [emphasis of pertinent provisions added]

Closest in logical application to this complex situation, Rule 60.02 should apply and the Court should grant Mr. Simmons the right to now be recognized and participate, primarily for the failure of the initial petition to properly identify him and secondarily because he was never legally served.

Minnesota's probate code requires notice on any petition to commence a probate estate to be given to all interested persons. Minn.Stat. §524.1-401. In this case, the initial petition of Tyka Nelson should have indicated the existence of descendants of Duane Joseph Nelson, Sr., a class now clearly identified by the Court. It would be clear that the heirs of Prince Rogers Nelson would include descendants of such predeceased sibling. Not only was the entire class of descendants of Duane Joseph Nelson, Sr. excluded from the petition, but investigation into the identity of his descendants has been dealt with only passively by the Special Administrator. The Order of the Court appointing the Special Administrator specifically charges them with finding and determining heirs of the estate. Parties known by the Special Administrator and by Tyka Nelson, knew or should have known of the existence and nature of the descendants of Duane Joseph Nelson,

Sr. They were apparently never questioned for the family branch of Duane Joseph Nelson, Sr. has been entirely cut off. Those members of that family who have spoken up on their own, without the benefit of the notices required by law, include Brianna Nelson and the mother of V.N. These are descendants of Duane Joseph Nelson, Sr. now identified by the Court. Tyka Nelson and the Special Administrator should have discovered this information and given legal notice.

Any Implied Limitation in the Heirship Claims Order Does Not Bind Corey D. Simmons
Minnesota's Probate Code says that interested persons who are not served legal notice may nonetheless be bound by subsequent orders *but only if*

"(a) The pleadings appropriately and reasonably identify affected interests by name or by class. Minn.Stat. §524.1-403(1);"

or

"(b) An unascertained person who is not otherwise represented to the extent that person's interests are adequately represented by another party having a substantially identical interest in the proceedings." Minn.Stat. §524.1-403(2)(iii).

The name or class related to Duane Joseph Nelson, Sr. was not appropriately or reasonably identified in Tyka Nelson's pleadings by name or by class. Rather, Duane Joseph Nelson, Sr. and his descendants were entirely omitted. Brianna Nelson and the child V.N. appeared as interested persons despite not being identified in the pleadings commencing this estate. The fact that Corey D. Simmons has not been adequately represented in this matter by any other party is demonstrated by the fact that his existence is not included in the July 29th Heirship Claims Order, nor in the Court records up until this filing. He is therefore not bound by the Heirship Claims Order under the foregoing statute provisions because (a) the pleadings did not appropriately nor reasonably identify his affected interests by name or by class and (b) his interests were not at all adequately represented by anyone else. It appears to the undersigned that no limitation of this class of heirs was intended by the Heirship Claims Order. Corey D. Simmons should now be allowed to participate in the process, step into the testing requirement, which is still underway, and proceed with those "Applications Based Upon Claims Of Being A Descendant of Duane Nelson".

Lack Of Due Process And Legal Notice Is Not Resolved By Actual Knowledge

As to lack of legal service of process and notice to Corey D. Simmons, no defense of *laches* or some other similar assertion asserting delay in this filing will stand, since the

statutory scheme in probate requires *actual legal notice*. Minn.Stat. §§524.1-401, 524.3-401, 524.3-403(a), and 524.3-614(2). The procedural history that has excluded Corey D. Simmons was fatally flawed by those who initiated it and by lack of a reasonably thorough investigation for heirs. Both the Minnesota Probate Code and Minnesota case law demonstrate that principles of due process and notice standards are strict and jurisdictional. Mr. Simmons' participation as an heir should not be precluded simply because he did not act prior to this current motion. This is not to say that the entire Heirship Claims Order is void, but rather that it does not yet bind him and that it is not equitable that the judgment should have prospective application. The situation and lack of notice justifies giving him relief from the operation of the Heirship Claims Order. It should be amended so that he would now be entitled to join in with his other family members in the process.

Had he been served and had he an opportunity for counsel, he would have been a co-beneficiary of the Court's Heirship Claims Order and now proceeding towards genetic testing with his sister, Brianna Nelson and his niece, V.N. Rule 60.02 provides his right to request relief from the failure of other parties in identifying and serving him as required by these rules of law.

Analogous to this situation are cases regarding creditors' claims against estates, which can also only be precluded by prescribed procedural actions.

In *Estate of Kotowski*, 704 N.W.2d 522, 526 (Minn.App. 2005) the Minnesota Court of Appeals cited with approval the due process principle that actual knowledge of an estate, or of a proceeding in probate, does not itself supply sufficient notice to its creditors to preclude their claims under the Uniform Probate Code. Legal notice is required. *Citing, Armstrong v. Armstrong*, 130 F.R.D. 449, 453 (D.Colo.1990) and *Nat'l Bank of Commerce*, 606 N.W.2d at 756.

The Minnesota Court of Appeals, in *Estate of Thompson*, 484 N.W.2d 258, 261 has also held that the Due Process Clause of the United States Constitution requires the personal representative of an estate to provide legal notice of probate proceedings to known or reasonably ascertainable creditors. The mere publication of notice in a legal newspaper alone is not a constitutional basis to preclude such a claim. *Citing, Tulsa Professional Collection Servs., Inc. v. Pope*, 485 U.S. 478, 489-90, 108 S.Ct. 1340, 1347, 99 L.Ed.2d 565 (1988). The strict requirements of legal notice apply to creditors, how much more are they important and applicable to heirs at law?

