Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Court File No.: 10-PR-16-46

Estate of Prince Rogers Nelson,

REDACTED

Deceased.

MEMORANDUM IN OPPOSITION TO MOTIONS TO APPROVE PAYMENT OF ATTORNEY'S FEES AND COSTS

Sharon L. Nelson, Norrine P. Nelson and John R. Nelson ("Sharon," "Norrine," and "John") submit this Memorandum in Opposition to motions submitted by Holland & Knight LLP ("H&K") and Gray Plant Mooty, Mooty & Bennett P.A. ("GPM") seeking approval of payment of attorney's fees and costs from the Estate of Prince Rogers Nelson (the "Estate").[1] These former attorneys for Tyka Nelson ("Tyka") seek over $880,000 in attorneys' fees and cost reimbursement for efforts that allegedly benefited the Estate. These fees are primarily the result of Tyka attempting to usurp the role of the special administrator contrary to Minnesota law, precedent, and practice despite the appointment of a special administrator and her limited standing as just one of six non-excluded heirs. Indeed, her attorneys have incurred these expenses in less than nine months despite no formal adjudication of her interest. Accordingly, Sharon, Norrine, and John object to

[1] Redactions with respect to GPM's submissions are made in accordance with GPM's designations. Further redactions are pursuant to the Court's designations.

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

these requests as they seek compensation that is not just, reasonable, or commensurate with the benefit, if any, to the Estate from the recovery made from such services.[2]

FACTUAL BACKGROUND

Initial Proceedings

Following Prince Rogers Nelson's untimely death on April 21, 2016, Tyka Nelson petitioned to have Bremer Trust, National Association ("Bremer Trust") appointed Special Administrator for the Estate. At that time, she retained GPM to represent her. The pleadings identified six living siblings and half-siblings of Prince Rogers Nelson as interested parties who will likely be determined to be the legal heirs of the Estate: Sharon, Norrine, John, Alfred, Omarr, and Tyka. Bremer accepted the appointment and was formally appointed following an emergency conference call on April 27, 2016. (Apr. 27, 2016 Order of Formal Appointment of Special Administrator.)

Bremer retained counsel and promptly acted to administer the Estate. Since that time, Bremer and its attorneys performed extensive work regarding heirship issues, Paisley Park Museum, Court Matters, Communications and negotiations with potential heirs, Entertainment Issues, Intellectual Property Protection and Enforcement, Real Estate, Litigation and Claims, and Other Estate Matters. (Mem. in Support of Mot. to Approve Payment of Special Administrator's and Att'ys' Fees and Costs Through Sept. 30, 2016 at pp. 3-7.) In addition, Bremer sought to retain entertainment industry experts

---

[2] Sharon, Norrine, and John take no position regarding by Lommen Abdo, P.A.'s claim for payment of attorney's fees and costs.

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

and the Court granted that request. (June 8, 2016 Findings of Fact, Order & Mem. Authorizing Special Administrator's Employment of Entertainment Industry Experts.")

Bremer's Interaction with the Non-Excluded Heirs

As reflected in the submitted billing statements, pleadings, and correspondence at issue, Bremer and its attorneys have had constant contact with the non-excluded heirs, including voluminous issues related to the Estate from tax liability to tribute concerts.

Tyka changed counsel from GPM to H&K on or about September 23, 2016. (Dec. 12, 2016 Aff. of Vivian L. Thoreen in Supp. of Mot. to Approve Payment of Non-Entertainment Att'ys' Fees, at ¶3.) [redacted]

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

H&K also participated in contested matters involving third parties despite Bremer's involvement. [redacted]

Tyka's Previous Attorneys Seek Fees and Costs

H&K has submitted two motions, bifurcating claims for entertainment and non-entertainment fees. (Dec. 12, 2016 Mem. in Supp. of Mot. to Approve Payment of Non-Entertainment Attorney's Fees.) H&K's claims for non-entertainment fees include 446.8 hours of work performed between September 26 and November 15, 2016. (Dec. 12, 2016 Aff. of Vivian L. Thoreen at ¶ 7.) Over a dozen attorneys worked on the matters with only one who is licensed to practice in Minnesota. (*Id.* at Ex. A.) Although multiple attorneys for the other non-excluded heirs and Bremer also litigated the claims, H&K claims over $70,000 in fees for "[redacted]" (*Id.* at ¶ 10.) H&K also seeks over $100,000 for [redacted] (*Id.* at ¶ 17.) That time includes billing for [redacted] (*Id.* at ¶ 16.) Of note, H&K sent multiple attorneys to the meetings with prospective representatives and to participate in related conference calls. (Sayers Aff. at ¶ 6.)

H&K's non-entertainment claim also includes an additional $88,249.50 for [redacted]

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

[redacted] (Thoreen Aff. at ¶ 18)(*emphasis added.*) Throughout the request for fees and costs, H&K does not provide a detailed valuation for the benefits purportedly obtained through their work, address duplicative work performed by the Special Administrator or other non-excluded heirs' counsel, address what fees were paid by Tyka individually, or explain the need for multiple attorneys to attend hearings and meetings. In addition, H&K fails to provide any billing statements.

In addition to the non-entertainment work fees, H&K seeks another $385,101.50 for 587.9 hours of legal services over less than two months [redacted] (Labate Aff. at ¶¶ 16, 39.) H&K again has not provided actual billing statements. (*Id.* at ¶ 16.) Of that amount, H&K seeks over $90,000.00 for work associated with [redacted] (*Id.* at ¶¶ 18-19.) The Motion and supporting affidavit provide limited detail regarding the benefit to the Estate resulting from the claimed services. For example, H&K seeks $158,910.50 for [redacted]

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

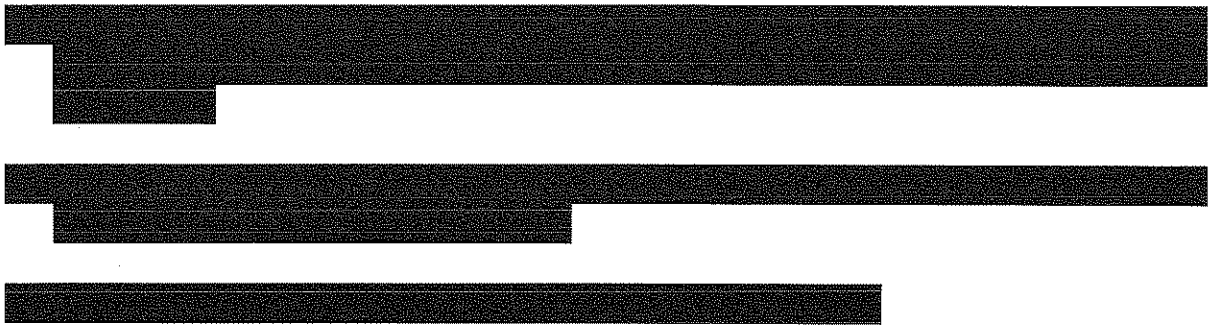
GPM subsequently sought payment as well. (Dec. 27, 2016 Mem. of Law in Supp. of Gray Plant Mooty's Mot. for Approval of Payment from the Estate for Services that Benefitted the Estate as a Whole.) Unlike H&K, GPM included billing statements for review while claiming $228,525.95 in fees and $2,121 in costs from [redacted]. (Dec. 27, 2016 Affidavit of Matthew Shea at ¶ 2, Exs. A and B.) Much of the work appears to be work also performed by Bremer. Indeed, GPM lists the following:

[redacted]

(Mem. at pp. 3-4.) The charges also delineate work arguably performed for the individual heirs. By way of just a few examples, bills and charges include entries for the following:

[redacted]

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN



(*See* Shea Aff. at Exs. A and B.) With respect to benefit analysis, the current GPM filings say little about how the Estate benefited while instead emphasizing that Tyka did not benefit. (Mem. at p. 6.)

ARGUMENT

I. H&K and GPM Fail to Establish that the Attorney's Fees and Expenses Incurred Benefitted the Estate

The party seeking to recover fees and expenses from an estate has the burden to demonstrate that the fees and expenses incurred actually benefitted the estate. *Cf. In re Estate of Evenson*, 505 N.W.2d 90, 92 (Minn. Ct. App. 1993). Absent statutory authority, the general rule is that there is no allowance made out of an estate for services rendered by an attorney not employed by the estate's personal representative. *See generally Distributors Supply Co. v. Shablow's Estate*, 253 Minn. 1, 8, 92 N.W.2d 83, 88 (1958). Even when authorized by statute, the ability to allow fees should be cautiously exercised. *Id.* at 88. As the court in *Shablow's Estate* noted:

> A doctrine which permits a decedent's estate to be so charged, should, however, in our opinion, be applied with caution and its operation limited to those cases in which the services performed have not only been distinctly beneficial to the estate, but became necessary either by reason of laches, negligence, or fraud of the legal representative of the estate.

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

253 Minn. 1, 9, 92 N.W.2d 83, 89 (quoting *Becht v. Miller*, 279 Mich. 629, 638, 273 N.W.2d 298 (1937)).

Minnesota statute permits an estate to pay fees for the services performed for an interested person that benefit the state:

> [T]he services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person, such attorney shall be paid such compensation from the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services.

Minn. Stat. § 524.3-720 (2016).

The courts have not clearly defined "benefit" to the estate, but have allowed recovery from an estate in varying circumstances. *See, e.g., Gellert v. Eginton*, 770 N.W.2d 190, 198 (Minn. Ct. App. 2009) (recovery of real estate allegedly conveyed to another party benefited the estate when gift deed returned to the estate); *In re Estate of Van Den Boom*, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999) (interested person, acted for the benefit of the estate by keeping a major asset intact). The courts, however, have consistently held that attorney's fees are not granted when a beneficiary is acting for his or her personal benefit and not for the benefit of the estate as a whole. *In re Estate of Van Den Boom*, 590 N.W.2d at 354.

In granting attorney fees, a district court has discretion. Minn. Stat. §§ 525.515, 524.3-720 (2016); *See In re Estate of Wesberg*, 242 Minn. 150, 64 N.W.2d 370 (1954) (holding that the district court's decision to reduce the requested amount of attorney's fees was not an abuse of discretion). However, the decision "is discretionary only in the sense that no fixed rules determine the proper allowance, and it is not discretionary in the

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

sense that courts are at liberty to give anything more than a fair and reasonable compensation." *In re Simmons' Estate*, 214 Minn. 388, 388, 8 N.W.2d 222, 222 (1943).

In the present case, the services provided by H&K and GPM appear to be largely duplicative and redundant such that they failed to provide benefit to the estate. The actions of Tyka's attorneys suggested that she sought a greater right to influence administration of the Estate than provided for by Minnesota law. Absent limiting instruction from a court, a special administrator has powers similar to a personal representative. Minn. Stat. § 524.3-617. Those powers are quite broad as they allow the administrator to work to "to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and applicable law, and as expeditiously and efficiently as is consistent with the best interests of the estate." Minn. Stat. § 524.3-703(a). This provides broads power and discretion to carry out the duty to "take all steps reasonably necessary for the management, protection and preservation of" the estate property. Minn. Stat. §§ 524.3-709, 524.3-711. This power generally may be exercised without notice, hearing, or order of court. Minn. Stat. § 524.3-715.

Tyka acted through her attorneys seeking greater influence than that legally afforded to just one of six likely heirs. In essence, she sought to act as a special administrator despite the role of Bremer, the entity she sought to appoint, as special administrator. Recent correspondence for her current attorney confirms that intent [redacted]

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

[redacted]

In summary, awarding attorney fees to Tyka's attorneys will only encourage additional expense to the Estate as any "interested party" will seemingly be entitled to recouping attorney's fees for responsibilities assigned to the Special Administrator and subsequent personal representative. This is what the courts sought to avoid over half a century ago in noting that awarding fees to individuals unaffiliated with the personal representative should be the exception, not the norm. Accordingly, the claims should be denied to the extent they seek payment for services provided by Bremer.

II. H&K and GPM seek Payment of Attorney's Fees and Costs that are not Commensurate with the Value of any Benefit to the Estate.

After determining a party is entitled to attorney's fees from an estate, questions of fact remain regarding the value of the attorney services. *In re Baumgartner's Estate*, 274 Minn. 337, 346, 144 N.W.2d 574, 580 (1966); *In re Estate of Van Den Boom*, 590 N.W.2d at 354. In determining whether the attorney's fees sought are just and reasonable, a court weighs the following factors:

(1) The time and labor required;

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

(2) The experience and knowledge of the attorney;

(3) The complexity and novelty of problems involved;

(4) The extent of the responsibilities assumed and the results obtained; and

(5) The sufficiency of assets properly available to pay for the services.

Minn. Stat. § 525.515(b)(2016). Consideration shall be given to all of the factors listed above, and the estate's value shall not be the controlling factor in determining the reasonableness of attorney's fees. Minn. Stat. § 525.515(c). However, "[t]he courts have a duty to prevent dissipation of estates through the allowance of exorbitant fees to those who administer them." *In re Weisberg's Estate*, 242 Minn. 150, 152, 64 N.W.2d 370, 372 (1954).

Examples of unreasonable or excessive work can include excessive hours or multiple attorneys representing a client in a single court proceeding. *Cf. Jones v. Liberty Mut. Ins.*, 474 N.W.2d 18 (Minn. Ct. App. 1991) (trial court did not abuse its discretion in deciding that attorney fees were unreasonable when two attorneys represented the employee at trial proceedings that were concluded in a single day); *Am. Cast Iron Pipe Co. v. Granite Re, Inc.,* No. CIV. 02-3467-ADM/JSM, 2003 WL 22477696, at *4 (D. Minn. Oct. 31, 2003) (stating that the court may limit fees if "an unusually high number of hours" are spent on tasks that are not complex in nature and rather straightforward, "or are charged for performance by multiple attorneys of the same service"). In addition, parties are not entitled to fee reimbursement for unnecessary proceedings. In *In re Freeman's Trust*, the Minnesota Supreme Court stated that "attorney's fees and expenses incurred in good faith in litigation brought and prosecuted for the benefit of the estate

may be allowed by the court. Not so if the issues are immaterial or trifling or if the party bringing the proceeding unnecessarily creates expenses for the estate." *In re Freeman's Trust*, 247 Minn. 50, 57, 75 N.W.2d 906, 911 (1956).

In the present case, the claims asserted by H&K and GPM fail for several reasons. First, H&K's submissions fail to allow for proper review in light of the failure to include billing statements and make it impossible to determine whether the work was performed for Tyka's exclusive benefit. Indeed, given the amount of fees incurred, it may be that Tyka has incurred minimal individual fees despite her need for individual representation. H&K's objection to producing billing statements based on attorney client privilege and work-product is overbroad. Billing statements generally do not convey attorney advice to constitute attorney client privilege and generally do not contain work product. *See City Pages v. State*, 655 N.W.2d 839, 844–46 (Minn. Ct. App. 2003). Indeed, GPM seemingly recognized the need to provide statements as evidenced by its supporting exhibits. Absent production of billing statements, H&K's claim should be denied in its entirety.

Second, both moving parties fail to meet their burden to establish benefit to the Estate resulting from their services that is commensurate with the claimed expenses. As noted above, many of the claimed services are for work that was also performed by Bremer, its attorneys, and its expert music industry advisors. In essence and as noted above, much of the claimed expenses are for work that was already performed. Even if one assumes that the work was not in fact duplicative, H&K and GPM fail to establish their work contributed to any benefits or that Bremer would not have obtained similar results. For example, H&K asserts that it [redacted]

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

simply by way of its involvement. [redacted] Moreover, H&K fails to establish that any purported beneficial changes otherwise obtained justified the fees incurred. Indeed, less than two months of work [redacted] generated $385,101.50 in fees and H&K does not quantify any correlating recovery.

H&K similarly fails to establish the correlating benefit from the additional $250,000 for non-entertainment expenses. This appears to be for work that was, again, to be performed by the special administrator. Moreover, H&K admits that these charges were at least in part for "[redacted]" (Thoreen Aff. at ¶ 18.) When combined with the claim asserted by GPM, Tyka's attorneys are seeking over $880,000 in fees and costs for about eight months of work.

Finally, much of the work provided was unnecessarily duplicative from a staffing perspective. Similar to the cases referenced above, multiple attorneys were unnecessarily involved tasks or issues that simply did not require that type of professional manpower. Here, multiple attorneys met with personal representative candidates and attended the same hearings.

CONCLUSION

For the foregoing reasons, Sharon, Norrine, and John respectfully request that the Court deny the motions for payment of attorney's fees and costs from the Estate. While third parties may have provided some benefit to the Estate, the current claims fail to

Filed in First Judicial District Court
1/9/2017 4:10:02 PM
Carver County, MN

justify further depleting the Estate's assets. To suggest otherwise leaves the door open to each non-excluded heir to incur unnecessary expenses for the Estate while each moves forward as a pseudo special administrator and later personal representative contrary to Minnesota law.

Respectfully submitted,

Dated: January 6, 2017

HANSEN, DORDELL, BRADT,
ODLAUG & BRADT, P.L.L.P.

By _____
Randall W. Sayers, #130746
Nathaniel A. Dahl, #390096
Adam J. Rohne, #392430
3900 Northwoods Drive, #250
St. Paul, MN 55112
(651) 482-8900
rsayers@hansendordell.com
ndahl@hansendordell.com
arohne@hansendordell.com

Attorneys for Sharon L. Nelson, Norrine P. Nelson and John R. Nelson