

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Case Type: Special Administration
Court File No.: 10-PR-16-46
Judge: Kevin W. Eide

Estate of Prince Rogers Nelson,
Decedent.

**OMARR BAKER, ALFRED JACKSON,
JOHN NELSON, NORRINE NELSON,
SHARON NELSON, AND TYKA
NELSON'S REPLY IN SUPPORT OF
MOTION TO DETERMINE HEIRS**

INTRODUCTION

Omarr Baker, Alfred Jackson, Sharon Nelson, Norrine Nelson, John R. Nelson, and Tyka Nelson (the "Non-Excluded Heirs") bring this Reply in Support of their Motion to Determine Heirs.

Prince Rogers Nelson (the "Decedent"), an international music icon, died just over a year ago. His death was highly publicized. The proceedings in his estate, the Estate of Prince Rogers Nelson (the "Estate"), have similarly been highly publicized. The excluded heirs appealing the Court's decision have had the opportunity to come forward, submit to the protocol, and have their heirship claims formally evaluated before this Court. Their claims would not be affected by a present determination of heirship. Any additional potential heirs have one full year from the Court's determination of heirs to come forward.

Based upon the present record, there is no dispute that the Non-Excluded Heirs are the Decedent's surviving siblings, and the time has come for the Court to determine they are the Decedent's heirs. Any further delay will serve only to increase the costs to the Estate and the Court

and impede an efficient administration of the Estate. As such, the Non-Excluded Heirs respectfully request the Court determine they are the Decedent's heirs.

ARGUMENT

A. The Court Should Use Its Broad Authority and Discretion to Determine the Non-Excluded Heirs Are the Decedent's Heirs.

Minnesota's Uniform Probate Code provides this Court with broad authority and discretion to administer an estate in the interests of justice. *See* Minn. Stat. § 524.1-302. The Probate Code provides the Court with "jurisdiction over all subject matters relating to the estates of decedents, including construction of wills and **determination of heirs** and successors of decedents." *Id.* (emphasis added). To date, "[t]here has been no credible, documented claim that any applicant is a surviving spouse of the Decedent." (*See* Amended Order re: Genetic Testing Protocol and Heirship Claims Following the June 27, 2016 Hearing and Judgment, filed Aug. 11, 2016, p. 10 ("August 11 Order").) Similarly, there has been no credible claim that any applicant is a surviving child of the Decedent. (*Id.*, pp. 11-13.) The Court should use its broad discretion make a determination of the heirs at this time.

B. A Timely Determination of Heirs Would Not Prejudice the Excluded Heirs Appealing to the Minnesota Court of Appeals.

Brianna Nelson and V.N., Venita Jackson Leverette, Darcell Gresham Johnston, Loya Janel Wilson, Orrine Gresham, and Loyal Games Gresham III (the "Objectants") oppose the Motion to Determine Heirs.¹ Notably, the Objectants have all appealed the Court's decision to

¹ *See* Brianna Nelson and V.N.'s Objection to Omarr Baker, Alfred Jackson, John Nelson, Norrine Nelson, Sharon Nelson, and Tyka Nelson's Motion to Determine Heirs, filed May 1, 2017 ("Brianna's Mem.") and Venita Jackson Leverette's Memorandum in Opposition to Motion to Determine Heirs, filed May 2, 2017 ("Venita's Mem."). On May 4, 2017, Darcell Gresham Johnston, Loya Janel Wilson, Orrine Gresham, and Loyal Games Gresham III joined the memoranda filed by Brianna Nelson and V.N. and Venita Jackson Leverette. *See* Letter to Judge Eide, filed May 4, 2017.

exclude them as heirs. The crux of their argument is that the Court will determine the heirs before disposition of their appeals pending before the Minnesota Court of Appeals. (*See* Brianna’s Mem., pp. 2-4 (“the time to petition to vacate a testacy order determining heirs would pass before the appeals were settled”); Venita’s Mem., pp. 1-3 (“[t]he better approach, instead, is to defer the heirship determination until after the pending appeals have run their course”).) Citing to Minnesota Statutes § 524.3-412, the Objectants argue that the appeals would take so long that they would run out the time periods envisioned by the statute. The Objectants do not state and could not state that if the Court determines heirship now, they would be prejudiced—because they will not.

Respectfully, the Objectants misinterpret Minnesota probate law and the argument propounded in the Non-Excluded Heirs’ Memorandum of Law in Support of the Motion to Determine Heirs (“Non-Excluded Heirs’ Mem.”). Minnesota Statutes § 524.3-412 provides a safeguard for individuals who claim to be heirs to come forward within at least one year after an order determining the heirs. *See* Minn. Stat. 524.3-412(3). As the Objectants accurately stated, the appeals would take years potentially, running out the statute of limitations envisioned by this statute. (*See* Brianna’s Mem., p. 4; Venita’s Mem., p. 3.) This statute of limitations will not preclude their claim if the appellate court reverses this Court’s decision to exclude them as heirs. In fact, this is one of the many reasons the Non-Excluded Heirs and the Personal Representative, Comerica Bank & Trust, N.A. (the “Personal Representative”) support an heirship determination now—to ensure “a speedy and efficient system” to liquidate the Estate. (*See* Non-Excluded Heirs Mem., pp. 11-12; Personal Representative’s Response in Support of Motion to Determine Heirs, filed May 1, 2017, pp. 1-2 (the “Personal Representative’s Mem.”).)

The Objectants complain that Minnesota Statutes § 524.3-412 does not help them. But this statute is not their sole source of relief, and has little applicability to their specific claims. There is

no dispute that the Non-Excluded Heirs *are* the siblings of Prince Rogers Nelson under the present record. This fact is undisputed by this Court, the Special Administrator, and the Personal Representative. In the rare event that a spouse or child comes forward after the Court's heirship determination, the newly discovered heir can move to vacate the heirship order. In their initial motion, the Non-Excluded Heirs argued that this statute provides the relief needed for new individuals claiming to be heirs, while allowing the Court a safeguard to determine the heirs now.

The appealing Objectants are not new heirs envisioned by Minnesota Statutes § 524.3-412. However, citing to this statute, the Objectants incorrectly argue that they have no relief in the event the appellate court reverses this Court. Should the Minnesota Court of Appeals or the Minnesota Supreme Court reverse this Court and find that Objectants are the Decedent's heirs, Minnesota Statutes § 524.3-412 would apply *in conjunction with* Minnesota Statutes § 524.3-1001(b).

First, pursuant to Minnesota Statutes § 524.3-412(4), any order² the Court enters at this time regarding heirship can and should explicitly provide that no matter when the appeals are resolved, the current appellants' rights will not be prejudiced by the order. In other words, if the Minnesota Court of Appeals affirms, the Objectants successfully petition for review to the Minnesota Supreme Court, and the Minnesota Supreme Court does not issue an order until, say, September 2018, the Objectants will still have any right to relief consistent with the Minnesota Supreme Court's ruling. *See* Minn. Stat. § 524.3-412(4) (“[t]he order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs”).

² Along with this reply, the Non-Excluded Heirs filed a proposed order for the Court's consideration.

Second, pursuant to Minnesota Statutes § 524.3-1001(b), in the event that “one or more heirs or devisees were omitted as parties in . . . a previous formal testacy proceeding,” this Court has the ability to “confirm or alter the previous order of testacy as it affects all interested persons as appropriate in light of the new proofs.” *See* Minn. Stat. § 524.3-1001(b). This statute provides “a procedure for correcting an omission or other error in the testacy proceeding.” *In re Estate of Wille*, C0-98-1765, 1999 Minn. App. LEXIS 522, at *10 (Minn. Ct. App. May 18, 1999); *see also* 1 Robert A. Stein, *STEIN ON PROBATE* § 7.01(a)(1), at 137 (3rd ed. 1995) (if an heir was omitted as party in previous formal testacy proceeding, the court may cure defect at termination of estate).

Therefore, if the Minnesota Court of Appeals reverses this Court, the district court can issue the appropriate order to protect the present appellants. *See* Minn. Stat. § 524.3-412(4); Minn. Stat. § 524.3-1001(b). The Court may confirm or alter the heirship determination “at the termination of the estate.” Minn. Stat. § 524.3-1001(b). This gives the Objectants ample time for their appeals pending before the Minnesota Court of Appeals while still providing (1) this Court with the opportunity to determine the heirs, (2) any potential new heirs the opportunity to come forward within one year pursuant to Minnesota Statutes § 524.3-412, and (3) the Personal Representative with the opportunity to efficiently administer the Estate.³

C. Delaying the Determination of Heirs Impedes the Probate Code’s Intent to Promote a Speedy and Efficient Administration of the Estate.

The Objectants further contend that an heirship determination while the appeals are pending would not advance the goal of a “speedy and efficient system” of estate administration

³ In addition to the above-stated reasons, the Non-Excluded Heirs respectfully refer the Court to their Memorandum of Law in Support of the Motion to Determine Heirs filed on April 12, 2017. In the third section of the Memorandum, the Non-Excluded Heirs presented additional reasons why the Objectants’ interlocutory appeals do not stay the Court’s ability to determine the heirs. *See* Non-Excluded Heirs’ Mem., pp. 15-17.

envisioned by Minnesota Statutes § 524.1-102. (*See Venita's Mem.*, p. 3; *Brianna's Mem.*, pp. 4-5.) The Objectants go so far as to state that “the Estate, the Court, the Personal Representative, and other interested parties would be harmed if the heirs are determined prior to resolution of the appeal.” (*See Brianna Mem.*, p. 5.) However, as set forth in the Non-Excluded Heirs' Memorandum and the Personal Representative's Memorandum, a delay in the heir determination would cause substantial prejudice to the Personal Representative, the Estate, and the potential heirs. A delay to accommodate the pending decisions from the appellate court only expends the resources of the Court, the Estate, the Personal Representative, the Non-Excluded Heirs, and the excluded heirs.

The Non-Excluded Heirs will continue to expend legal fees to protect their claimed rights, and they will continue to have less than full rights to discuss their view of the Estate. As time progresses, additional parties may raise issues with the Estate, potentially increasing the legal and administrative fees to all the parties involved, and in particular increasing fees for the Personal Representative and the Non-Excluded Heirs. This includes claims by potential heirs, claims by potential creditors, claims by vendors, and negotiations with financial institutions.

For example, the Non-Excluded Heirs direct the Court to the costs associated with responding to the newest applicant, Joshua Matthew Essex, who filed an “Affidavit in Support of Genetic Testing” on April 25, 2017. As the Personal Representative noted, this summary affidavit did not comport with the Court's requirements. (*See Personal Representative's Mem.*, p. 2 fn 1.) If Mr. Essex cannot establish a right to genetic testing and the Court excludes him as an heir, he may appeal. Because of the unique nature of this Estate, it is reasonably expected that additional potential heirs like Mr. Essex will keep coming forward. If the Court waits until all their appeals are finally resolved, the Estate could go on for years without a determination of the Decedent's

heirs. Moreover, if an additional claimant like Brianna Nelson and V.N. comes forward (i.e., a claim not based upon genetic testing), the Non-Excluded Heirs and the Personal Representative will be forced to brief the issue before the Court. The costs and time expended could be potentially endless.

For this reason, the Personal Representative supports the Non-Excluded Heirs' motion to determine heirs at this time:

From the perspective of the Personal Representative, a determination of heirship now (rather than at some later date after all appeals are finally resolved) will facilitate the administration of the Estate. Among other benefits, such a determination would remove any uncertainty for the Personal Representative and the Estate's business partners regarding the individual who will ultimately receive the assets of the Decedent, including the Decedent's real estate and entertainment assets. Additionally, **such a determination will promote finality and reduce future administrative costs associated with responding to, and litigating with, other purported heirs, none of which to date have presented a credible claim of heirship.**

(See Personal Representative's Mem., pp. 1-2, emphasis added.)

As the Personal Representative stated, there is no benefit to further delaying the determination of heirs. Since the Estate will not make any distributions at this time, there is no harm to determining the heirs at this stage. To delay any longer would cause further inefficiency in the administration of the Estate. If the Court waits to determine the heirs until after all the appeals are resolved, it could add months (or possibly years) to the waiting period. This invalidates the "speedy and efficient system" the drafters of the Probate Code envisioned in Minnesota Statutes § 524.1-102. Considering the undisputed identity of the Non-Excluded Heirs as the Decedent's siblings, a determination of heirs is both timely and proper.

D. In Addition to Determining the Heirs, the Court Should Issue a Formal Adjudication of Intestacy.

Pursuant to Minnesota’s Uniform Probate Code, the Court has technically determined the Decedent’s intestacy. *See* Minn. Stat. § 524.1-201(54) (defining “testacy proceeding” as “a proceeding to establish a will or determine intestacy”). At the July 2016 hearing and subsequent hearings, the Court proceeded with the understanding that the Decedent died intestate. (*See* Transcript of June 27, 2016 Proceedings, p. 9; August 11 Order; Transcript of Jan. 12, 2017 Proceedings, pp. 31-32; Findings of Fact, Conclusions of Law Order & Memorandum on Roc Nation’s Petition for Allowance of Claim and Additional Relief, filed Jan. 31, 2017, p. 1 (“Decedent Prince Rogers Nelson died intestate on April 21, 2016.”).)

In December 2016, the Non-Excluded Heirs—along with their requests to appoint a personal representative—requested the Court adjudicate intestacy and determine the heirs pursuant to Minnesota Statutes § 524.3-401. While the Court has technically determined the Decedent died intestate, to date, the Court has not determined the heirs, and, to date, the court has not held a formal adjudication of intestacy pursuant to Minnesota Statutes § 524.3-409. The Non-Excluded Heirs echo the Personal Representative’s request for a formal adjudication of intestacy, in addition to a determination of heirs. (*See* Personal Representative’s Mem., pp. 2-3.)

CONCLUSION

Because there is no dispute that Omarr Baker, Alfred Jackson, Sharon Nelson, Norrine Nelson, John Nelson, and Tyka Nelson are the surviving siblings of Prince Rogers Nelson—and pursuant to Minnesota Statutes § 524.2-103 they are the rightful heirs under the laws of intestacy—the Court should determine they are Prince Rogers Nelson’s heirs.

