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STATE OF MINNESOTA
DISTRICT COURT

COUNTY OF CARVER
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,

SUPPLEMENTAL OBJECTION OF BRIANNA NELSON AND V.N. TO THE PROTOCOL PRIOR TO POTENTIAL GENETIC TESTING PROPOSED BY THE SPECIAL ADMINISTRATOR

Brianna Nelson and V.N., through her mother Jeannine Halloran, hereby submit their Supplemental Objection to the Protocol Prior to Potential Genetic Testing proposed by the Special Administrator. Brianna Nelson and V.N. appreciate the additional time the Court has granted them to fully investigate the relationship between the current Minnesota Probate Code and Minnesota Parentage Act as well as the continuing validity of several Minnesota Supreme Court decisions in light of recent amendments to the Probate Code. As a result of that research and analysis, Brianna Nelson and V.N. hereby withdraw their previous Objection to the Proposed Genetic Testing Protocol and submit this Supplemental Objection in its stead.

Under the proposed genetic testing protocol, there are exactly two ways for a person to be considered an heir in this intestacy proceeding: (1) satisfying the requirements of the Parentage Act; or (2) demonstrating a direct genetic link to Decedent Prince Rogers Nelson. The Minnesota

Probate Code does not limit heirs in this way. Even if the Probate Code did permit such limtations, the protocol's blanket exclusion of entire classes of family relationships violates the fundamental protections of due process and equal protection according by the United States Constitution.

INTRODUCTION

Brianna and V.N. are the niece and grandniece, respectively, of Decedent Prince Rogers Nelson. Brianna and V.N. are the daughter and granddaughter, respectively, of Prince's brother, the late Duane J. Nelson.

There was no family member who had as close a relationship with Prince as Duane Nelson. In junior high school and high school, Prince and Duane referred to each other as brothers and spent a great deal of time together playing basketball and hanging out. When Duane finished college, he returned to the Twin Cities to live near his family – the Nelson family. Prince put Duane in charge of his personal security. When Prince traveled, Duane was with him. When Prince was at Paisley Park, Duane was with him.

Prince and Duane were both sons of John L. Nelson. They had different mothers so they did not grow up in the same home. Although John Nelson was married to Prince's mother (Mattie Shaw Nelson) when Duane was born, his name and Vivian Nelson's name appear on Duane's birth certificate.

John Nelson was proud to be Duane's father. He was proud that Duane college and was a successful high school and college basketball player. John Nelson traveled from the Twin Cities to Milwaukee a number of times to visit Duane.

John Nelson held himself out as the father of both Duane and Prince during his life and other family members recognized Duane as their brother. For example, Duane was identified the son of John Nelson and brother of Prince in his own 2011 obituary as well as the obituary of his sister Lorna Nelson – both written by his sister Norinne Nelson. In a lawsuit for copyright infringement brought by Lorna, the defendants are identified as Lorna's "half-brother Prince Rogers Nelson; her brother, Duane J. Nelson; her father, John L. Nelson; and PRN Productions, Inc." *Nelson v. PRN Productions, Inc*., 873 F.2d 1141, 1141 (8th Cir. 1989).

Duane's relationship with Prince deteriorated as he succumbed to mental illness. Duane's behavior changed over the years, becoming more disruptive. Eventually Prince fired Duane. Duane's mental state further declined. For the last decade of his life, Duane was a recluse who seldom left his apartment or answered his door.

THE PROPOSED GENETIC TESTING PROTOCOL

The proposed protocol does not recognize family relationships like that which Duane had with John Nelson, Prince, and other family members. The proposed protocol does not recognize the fact that Prince likely spent more time with his brother Duane than anyone else and that Prince held him out as his brother. The proposed protocol does not recognize that John Nelson held out Duane as his son.

The protocol proposed by the Special Administrator recognizes just two of the ways that a person might be an heir in an intestacy proceeding. Under the protocol the only two ways to demonstrate that a person is an heir are: (1) satisfying the requirements of the Parentage Act; or (2) demonstrating a direct genetic link to Decedent Prince Rogers Nelson.

The Special Administrator concludes that this narrow definition of potential heirs is valid based upon a single reference to the Paternity Act in the definition of "genetic father." From that single solitary clause, the Special Administrator concludes that the Paternity Act controls all determinations of parent-child relationships.

The term "genetic father" was not included in the Probate Code until 2010. Thus, the term is relatively new and has not yet been interpreted by the courts. Under the Probate Code, the term "genetic father" is defined as follows:

> "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. ***If the father-child relationship is established under the presumption of paternity under chapter 257*** [Paternity Act], "genetic father" means only the man for whom that relationship is established.

Minn. Stat. 524.1-201(22) (emphasis added). From this one definition, the Special Administrator argues that the Minnesota legislature intended that the Paternity Act be the supreme authority in determining parent-child relationships for the purposes of intestate succession. The Special Administrator pushes even farther arguing that section 524.2-103(3) means:

> To qualify as a sibling or half-sibling, the person must be a direct descendant of one or both of Decedent's parents. In other words, brothers or sisters of one of Decedent's half siblings only qualify as heirs if they share a common genetic parent with Decedent.

June 24, 2006 Response of Special Administrator, at 2. That is a stretch from the statutory language stating "if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation." Minn. Stat. 524.2-103(3). Yet, the Special Administrator argues that the definition of "genetic father" somehow transforms this statutory provision into a requirement of a genetic relationship with Prince's parents.

THE PROBATE CODE PROVIDES FOR A NUMBER OF WAYS TO ESTABLISH THAT A PERSON IS A DESCENDANT

Recently, the Minnesota legislature enacted substantial changes to the Minnesota Probate Code including additional ways to establish that a person is a descendant of a decedent for the purposes of intestate succession. Those amendments are in the 2010 Minnesota Act S.F. No. 2427 (the "2010 Amendments" attached as Exhibit A).

The 2010 Amendments did not change the Probate Code's use of parent-child relationships to determine the identity of descendants for the purposes of intestate succession. The definition of "descendant" did not change. It remains as follows:

> "Descendant" of an individual means all of the individual's descendants of all generations, with the ***relationship of parent and child*** at each generation being determined by the definition of child and parent contained in this section.

Minn. Stat. 524.1-201(11) (emphasis added). Rather, the 2010 Amendments broadened the types of relationships that constitute parent-child relationships.

The Probate Code does not define "parent-child relationship" in the definition section. Nor does the Probate Code define "parent," "mother," or "father." The way that the Probate Code defines a parent-child relationship is through a number of provisions describing them and their effects. The 2010 Amendments included the following six provisions addressing different parent-child relationships:

Effect of Parent-Child Relationship	Section 524.2-116
Parent-Child Relationship with Genetic Parents	Section 524.2-117
Adoptee and Adoptee's Adoptive Parent or Parents	Section 524.2-118
Adoptee and Adoptee's Genetic Parents	Section 524.2-119
Child Conceived by Assisted Reproduction	Section 524.2-120
No Effect on Equitable Adoption	Section 524.2-122

Section 524.2-116 provides: "Except as otherwise provided in section 524.2-119, subdivisions 2 to 5, if a parent-child relationship exists or is established under this part [the Probate Code], the parent is the parent of the child and the child is the child of the parent for the purpose of intestate succession." Section 524.2-117 provides that a parent-child relationship exists between genetic parents and a child, regardless of the parents' marital status: "Except as otherwise provided in section 524.2-114, 524.2-119, or 524.2-120, a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status."

Another section expressly provides for the recognition of a parent-child relationship in the absence of a genetic or formal legal relationship. In Section 524.2-122, the Minnesota legislature provides "This chapter does not affect the doctrine of equitable adoption." Thus, a parent-child relationship may be established in the absence of a genetic relationship or formal legal proceeding like the Parentage Act.

Other sections address parent-child relationships established through various legal and genetic means. Under these provisions a child could simultaneously have a parent-child relationship for intestate succession purposes with genetic parents and adoptive parents. See Minn.

Stat. 524.2-118-119. In cases of assisted reproduction, the Probate Code specifies when it will rely upon birth records to establish presumptive paternity and when it will rely upon the father's behavior. See Minn. Stat. 524.2-120.

The Minnesota legislature expressly directs that equitable principles should govern the application of the Probate Code – not formalistic legal rules. To guide courts in interpreting the Code, the Minnesota legislature set forth the purpose of the Probate Code and the applicable rules of construction in Minn. Stat. 524.1-102. That section states, that the Probate Code "[s]hall be liberally construed and applied to promote the underlying purposes and policies." The underlying purposes and policies of the Probate Code are identified as:

> (1) to simplify and clarify the law concerning affairs of decedents, missing persons, protected persons, minors and incapacitated persons;
>
> (2) to discover and make effective the intent of a decedent in distribution of property;
>
> (3) to promote a speedy and efficient system for liquidating the estate of decedent and making distribution to successors;
>
> (4) to make uniform the law among the various jurisdictions.

Minn. Stat. 524.1-102(b). The Minnesota legislature further directs courts that "unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions." Minn. Stat. 524.1-103.

In sum, the Probate Code recognizes a number of ways to establish a parent-child relationship for purposes of intestate succession. A parent-child relationship may be established through genetic testing or a formal legal proceeding such as an adoption or divorce proceeding.

The Probate Code includes provisions establishing a parent-child relationship based upon identification of a father on a birth certificate and testimonial and other evidence of a parent-child relationship. The Probate Code provides for certain circumstances in which a child may inherit through intestate succession from genetic and adoptive parents.

THE PROBATE CODE DOES NOT DEFER TO THE PARENTAGE ACT'S REQUIREMENTS FOR DETERMINING A PARENT-CHILD RELATIONSHIP

Although the language of the Minnesota Probate Code does not defer to the Minnesota Parentage Act for the determination of a parent-child relationships, the Special Administrator maintains that this is so. The Special Administrator bases its position on its reading of the Probate Code's definition of "genetic father" in isolation as well as several Minnesota cases. The definition of "genetic father" is discussed above. With respect to the cases cited by the Special Administrator, we hereby adopt the positions of Darcell Gresham Johnston's June 20, 2016 Objection at pages 4-8 and Estabon Bennermon's July 7, 2016 Objection at pages 8-12 concerning the reasoning of *Estate of Jotham*, 722 N.W.2d 447 (Minn. 2006), *Estate of Martignacco*, 689 N.W.2d 262 (Minn. Ct. App. 2004), and *Estate of Palmer*, 658 N.W.2d 197 (Minn. 2003).

The Probate & Trust Section of the Minnesota Bar Association ("Probate and Trust Section") reached the same conclusion when the 2010 Amendments were adopted. In June 2010, the Minnesota State Bar Association Probate & Trust Section presented a session on the 2010 Amendments -- enacted under S.F. No. 2427. Attached as Exhibit B. These materials provide guidance on each section of the 2010 Amendments as well as the Section's analysis of the interplay between the Parentage Act and the Probate Code.

The Probate & Trust Section noted several times that the 2010 Amendments do not require that a determination of parent-child relationships be made under the Minnesota Parentage Act:

> **Section 524.2-116** states that a parent-child relationship established under these provisions is conclusive for purposes of inheritance rights. ***This eliminates the prior statute's reliance on the Parentage Act provisions, which could conflict with these provisions or have differing policy considerations supporting it.***
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> * * *
>
> **Section 524.2-120** addresses assisted reproduction and extends and clarifies current law. Currently, under Minnesota Parentage Act, a third party donor of sperm is not considered a parent, however it is not clear that a third party donor of an egg is not a parent. In addition, that law has not caught up with technology that currently exists and is commonly used to conceive and bar children. Also, ***because it is possible that there could develop inconsistencies between the Parentage Act's and the Probate Code's treatment of parent-child relationships, it is preferable for the Probate Code to specifically address these issues, rather than defer to the Parentage Act.***

Exhibit B at 4 (emphasis added). The language of the Probate Code as amended is clear – the 2010 Amendments eliminate the Probate Code's reliance upon the Parentage Act, particularly when the Parentage Act is inconsistent with the Probate Code.

The Probate & Trust Section commented on the new definitions of "genetic parent," "genetic father," and "genetic mother." In this commentary, the Probate & Trust Section recognized that a child can have a genetic parent and an adoptive parent:

> **(22) (23) (24)** Add definitions of "genetic parent," "genetic father" and "genetic mother," to provide that those terms mean the person who provides the genetic material (sperm or egg) to create the child. ***The genetic parent must be distinguished from an adoptive parent or a person determined by the later rules governing assisted reproduction to be the parent.*** A person determined to be a father under Minnesota's existing Paternity Act is treated as a genetic father for purposes of these proposed provisions.

Exhibit B at 2 (emphasis added). While a Parentage Act proceeding is one route to conclusively establish a parent-child relationship, it is not the only route under the Probate Code. The Probate & Trust Section certainly does not agree with the Special Administrator's interpretation of the definition of "genetic father." The Probate & Trust Section clearly concluded that the determination of a parent-child relationship under the Probate Code is not limited to the Paternity Act.

THE PROPOSED PROTOCOL VIOLATES CONSTITUTIONAL PROTECTIONS OF EQUAL PROTECTION AND DUE PROCESS

Even were the proposed genetic testing protocol consistent with the Probate Code, it would still violate the equal protection and due process clauses of the U.S. Constitution. The Supreme Court has often struck down classification schemes that draw distinctions that exclude children born outside of wedlock (often called illegitimate children) from treatment as siblings. As the Supreme Court noted, a classification scheme based upon irrebuttable presumptions must be "carefully tailored to eliminate imprecise and unduly burdensome methods of establishing paternity." *Trimble v. Gordon*, 420 U.S. 762, ftn. 14 (1977).

The Supreme Court has invalidated a number of rigid classification schemes such as the proposed protocol. *See, e.g., Stanley v. Illinois*, 405 U.S. 645, 656-7 (1972) (invalidating statute that presumed all unwed fathers were unfit to have custody of children); *Trimble v. Gordon*, 420 U.S. 762 (1977) (invalidating legal presumption in intestate succession proceedings that children of born to unwed parents could not be heirs of fathers). As the *Stanley* Court has noted:

> Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure … explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.

Stanley v. Illinois, 405 U.S. 645, 656-7 (1972). Blanket exclusions are prohibited when more precise tests are available. *Id.* at 655. As the Court observed in *Weber v. Aetna Casualty & Surety Co*., the essential inquiry into any classification system is: "What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?" 406 U.S. 164, 173 (1972) (invalidating statute barring dependent unacknowledged illegitimate children from recovering workers' compensation benefits on an equal basis with dependent legitimate children).

The Special Administrator will undoubtedly point out that the Court has on occasion found that irrebuttable presumptions of paternity comport with the requirements of equal protection and due process. Certainly, the Special Administrator will point out the Court's decision in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), where the Court upheld a California statute establishing an irrebuttable presumption of a husband's paternity. In *Michael H.*, the Court noted that [w]here, [] the child is born into an extant marital family, the natural father's unique opportunity [to be a parent] conflicts with the similarly unique opportunity of the husband of the marriage; and it is not unconstitutional for the State to give categorical preference to the latter." *Id.* at 129. Thus, a plurality of the Court concluded that permitting the genetic father to proceed with an action to establish paternity and obtain visitation with a minor child born into an existing marital relationship would be "destructive of family integrity and privacy." *Id.* at 120.

Where, as here, the inquiry into parentage and granting of rights is not going to destroy the family integrity and privacy of a family, the use of irrebuttable presumptions are not defensible.

For the above-stated reasons, Brianna Nelson and V.N. respectfully object to the genetic testing protocol.

Respectfully submitted,

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