

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,

**OBJECTION TO PHOTOGRAPHY,
VIDEO RECORDING, AND AUDIO
RECORDING OF PROCEEDING AND
LEGAL CONSIDERATIONS
REGARDING MINN. STAT. § 257.70**

The Special Administrator, in conjunction with all interested parties of record who have previously appeared before the Court claiming to be an heir of the Decedent, hereby objects to the requests for still photography, video recording, and audio recording of the June 27, 2016 hearing.

In addition, although objections to the Special Administrator's determinations pursuant to the Court's Protocol Prior To Potential Genetic Testing are not yet due, and thus the agenda for the June 27, 2016 hearing not fully determined, the Special Administrator has advised the potential heirs of the courtroom closure provision within the Parentage Act and understands that several of the potential heirs intend to lodge a request for closure of the courtroom on June 27, 2016 based upon Minn. Stat. § 257.70 and Minn. Gen. R. Prac. 4.02(c). The focus of the Special Administrator is on the substance of the heir determinations before the Court. Nevertheless, the Special Administrator believes it appropriate, given its Court appointment, to alert the Court of the conflicting legal issues to be raised, including the desire of the potential heirs for privacy in

this probate proceeding over Parentage Act matters and the public interest in how this Court applies Minnesota's laws of intestacy in family circumstances.

I. Introduction

On May 18, 2016, the Court entered an Order Regarding Claims Pursuant to the Parentage Act and the Probate Code ("Parentage Act Order"). In the Parentage Act Order, the Court sets forth the procedure pursuant to the Parentage Act, Minn. Stat. §§ 257.51 to 257.74, to govern the process for individuals claiming to be an heir of the Decedent.¹ The Parentage Act Order also sets a hearing for June 27, 2016, at which motions or objections arising from the Special Administrator's implementation of the Parentage Act Order and/or Protocol will be heard ("Parentage Act Hearing"). Because the Parentage Act Hearing may address (at least generally) objections to the Special Administrator's determinations of whether individuals claiming to be heirs of the Decedent have met the initial burden of proof under the Protocol so as to warrant genetic testing, the Parentage Act Hearing will likely involve sensitive and private information related to several of the claimants' personal family histories. *See, e.g.*, Minn. Stat. § 257.55 and § 257.57 (setting forth the applicable presumptions under the Parentage Act, the limited class of persons who can challenge such presumptions, and the time limits within which such challenges must be made).

II. Because the Parentage Act Hearing Involves Paternity Matters, Audio or Visual Coverage Would Not Be Appropriate.

Numerous members of the media have filed Notices of Audio/Video Coverage Requests pursuant to Minn. Gen. R. Prac. 4.03(a). Because the Parentage Act Hearing involves paternity

¹ By Order dated June 6, the Court approved the Special Administrator Proposed Protocol Prior to Genetic Testing (the "Protocol"), which sets forth additional steps that are to be followed by persons claiming a genetic relationship to the Decedent.

proceedings, the Special Administrator, on behalf of all interested parties of record, hereby objects to audio or visual coverage of the hearing.

Consistent with the other provisions of Minnesota law providing for special considerations and protections for proceedings under the Parentage Act, Rule 4.02(c) of the Minnesota General Rules of Practice provides in relevant part:

A judge may authorize...without the consent of all parties in civil proceedings, the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

...

- (vi) **There shall be no audio or video coverage in cases involving...paternity proceedings.**

Minn. Gen. R. Prac. 4.02(c) (emphasis added).

The Special Administrator appreciates that the role of the Parentage Act in the upcoming hearing is likely to lead to the question of whether Minn. Stat. § 257.70 requires closure of the courtroom altogether. The Special Administrator believes that at a minimum, the Court should sustain the objection of the potential heirs to bar audio and video coverage as paternity issues are discussed, particularly since the proceedings are at a juncture where many family relationships are at issue. No matter how the Court ultimately assesses the public interest in this probate proceeding, the Special Administrator requests that the Court also give due consideration to the desire of the family to not have their sensitive family histories and discussions regarding those histories broadcast to the world.

The broad language of Rule 4.02(c), which references cases “involving” paternity proceedings, provides the Court discretion to balance the privacy interest of the potential heirs against the public’s interest in this proceeding.

III. The Question of Courtroom Closure in Light of Minn. Stat. § 257.70.

The question of whether the courtroom must be closed on June 27, 2016 arises because Minn. Stat. § 257.70(a), a provision of the Parentage Act, states:

Notwithstanding any other law concerning public hearings and records, any hearing or trial held under sections 257.50 to 257.74 shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the state Department of Human Services or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

Minn. Stat § 257.70(a).² There is not a consensus among all interested persons of record who have previously appeared before the Court claiming to be an heir of the Decedent, whether Minn. Stat. § 257.70(a) requires that the courtroom be closed for the Parentage Act Hearing. Furthermore, the agenda for that hearing is yet to be fully determined, in part because objections to the Special Administrator's initial determinations pursuant to the Protocol Prior To Potential Genetic Testing are not due to be lodged until June 20, 2016. For those reasons, the Special Administrator does not take a position on the question, but instead provides the Court with the pertinent legal authority given our Court appointment.

For the Court's reference, the Parentage Act includes several provisions that suggest an intent to safeguard the private nature of and confidentiality concerns implicated by proceedings

² It should be noted that unlike criminal proceedings, there is no First Amendment right of access to civil proceedings. *Webster Groves School District v. Pulitzer Publishing Co.*, 898 F.2d 1371, 1374 (8th Cir. 1990). And while there is a common law right to inspect and copy civil court records, that right is not absolute. *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W. 2d 197, 202 & 205-06 (Minn. 1986). Here, if the Court finds that the provisions of the Parentage Act governing closing the courtroom and sealing documents apply to the upcoming hearing, the common law balancing test need not be employed. However, if the Court determines the Parentage Act does not apply to this issue, the Court must determine which interest prevails. The interests supporting access, along with a presumption in favor of access, is balanced against the interest asserted for denying access. *Schumacher*, 392 N.W. 2d at 205-06.

held pursuant to the Parentage Act. *See e.g.*, Minn. Stat. § 257.61 (providing that the public “shall be barred” from any pretrial hearings where an action to declare the existence or nonexistence of the father and child relationship has been brought under the Parentage Act) (emphasis added); Minn. Stat. § 257.73 (providing that where a father and child relationship has been established pursuant to the Parentage Act, the evidence upon which the replacement birth certificate was made as well as the original birth certificate “shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases upon an order of the court for good cause shown.”). Moreover, Rule 4 of the Rules of Public Access to Records of the Judicial Branch found in Appendix A to the Minnesota Government Data Practices Act also provides that case records relating to pre-adjudication paternity proceedings pursuant to the Parentage Act are not accessible to the public. R. Pub. Acc. Rec. Jud. Branch 4(1)(n).

Minnesota’s Probate Code incorporates the Parentage Act into probate proceedings in certain situations. *See, e.g.*, Minn. Stat. § 524.1-201(22) (section of the Minnesota Probate Code confirming that father-child relationships established under a presumption of the Parentage Act are controlling for determination of a child’s “genetic parents”). And while the Probate Code does not expressly incorporate or reference the sections of the Parentage Act regarding closed proceedings or sealed records, it has been held in a different context that if a section of the Parentage Act is applied to a probate proceeding, the entire act must be applied. *See In re Estate of Jotham*, 722 N.W. 2d 447, 452 (Minn. 2006) (applying an earlier provision of probate law, holding that if a party to a probate proceeding seeks to establish paternity under the Parentage Act, as they are entitled to do, the Parentage Act procedures to determine heirs must be applied in their entirety).

From the perspective of the Special Administrator, these legal considerations present the Court with two sets of questions: one legal and one factual or procedural.

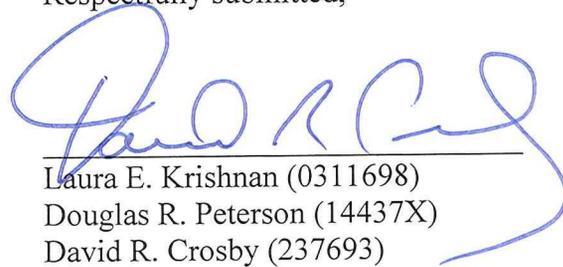
The legal question turns on whether the Minnesota Probate Code's adoption of the Parentage Act procedures for determining heirs necessarily incorporates the companion provision of Minn. Stat. § 257.73 requiring closure of the proceedings. If Section 257.70(a) applies, that provision does not contemplate a balancing of factors such as different approaches for adults versus children. At the same time, not every probate proceeding presents the same sensitivities as parentage proceedings and other circumstances. What is clear is that the methodology and presumptions for determining parentage under the Parentage Act are to be employed when determining heirs under the Probate Code.

The factual, or procedural, question presented is whether the positions of the parties and the nature of the agenda for the Parentage Act Hearing will evolve to where a more tailored approach can be found, consistent with the law. As a general matter, courts favor limited sealing, redactions, and other tailored approaches to the removal of filed documents and proceedings from the public eye. *See, e.g., IDT Corp. v. eBay*, 709 F.3d 1220 (8th Cir. 2013). (non-Parentage Act context) Here, the Special Administrator anticipates that for some parties, the Special Administrator's determination of their status as heirs will not be contested. As to those potential heirs lodging objections, the degree to which it will be necessary to discuss sensitive and confidential information pertaining to their familial relationships is not yet known. The potential heirs clearly have a genuine and well-founded concern about having a public debate about their parentage issues. This concern might well make closure appropriate, even if the Court concludes that the application of Parentage Act procedures in the probate context does not necessarily mandate closure.

IV. Conclusion

Because the purpose of the June 27, 2016 hearing in this matter is to hear and determine matters pertaining to claims arising under the Parentage Act, the Special Administrator, in conjunction with companion objections of all interested parties of record, respectfully requests, that at a minimum, no audio or visual coverage be allowed pursuant to Minn. Gen. R. Prac. 4.02(c).

Respectfully submitted,



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