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Carver County, MN

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:

Estate of Prince Rogers Nelson,

Deceased.

Court File No. 10-PR-16-46
Honorable Kevin W. Eide

SPECIAL ADMINISTRATOR'S SUPPLEMENTAL SUBMISSION PERTAINING TO CLAIMS OF BRIANNA NELSON AND V.N.

Special Administrator Bremer Trust, N.A., respectfully makes this supplemental submission pursuant to the Court's Order dated September 1, 2016, regarding the legal basis for Brianna Nelson's ("Brianna") and V.N.'s claims that they be determined to be heirs of the Estate.

PRELIMINARY STATEMENT

On August 31, 2016, the Special Administrator raised a question with the Court regarding whether Minnesota law supports Brianna and V.N.'s intestacy petitions based on the facts and law contained within their August 25, 2016 Motion to Clarify or Reconsider. The Court, on September 1, 2016, ordered that Brianna and V.N. provide it with a memorandum of law regarding the legal basis for their heirship claims. Brianna and V.N. filed their memorandum on or about September 30, 2016.

From the outset of these proceedings, the Special Administrator's goal with respect to determination of heirs has been to act in accordance with existing Minnesota law. The Special Administrator (despite the suggestion within Brianna and V.N.'s memorandum to the contrary), has not been and is not "for" or "against" any particular person or persons ultimately being determined to be heirs. The Special Administrator has viewed its role as setting forth a

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procedure as to how it will make initial determinations of heirship, including the appropriateness of genetic testing, all subject to Court approval. To the extent there have been past challenges to the Special Administrator's initial determinations, the Special Administrator has filed responses with the Court explaining the legal bases for the positions it has taken. The Special Administrator's intent has been to apply Minnesota law equally and fairly to all claimants, again subject to ultimate approval by the Court.

Consistent with this position, the Special Administrator makes this submission not to advocate for one result over another, but to provide the Court with its understanding of existing Minnesota intestacy law. Similarly, the Special Administrator does not intend to retain an advocacy expert to opine on questions of Minnesota law.

DISCUSSION

The Special Administrator has already provided the Court with its understanding of the relevant Minnesota intestacy law in earlier filings in the proceeding, including its August 31, 2016 submission. Brianna and V.N.'s arguments in their memorandum have not altered the Special Administrator's understanding.

Brianna and V.N. base their argument almost exclusively on *Estate of James A. Palmer*, 658 N.W.2d 197 (Minn. 2003). Brianna and V.N. correctly note that *Palmer* applied a "clear and convincing" standard in an intestacy case where a question of the existence of a parent-child relationship was in doubt. But the *Palmer* decision was entirely based on the permissive language of the former Probate Code section 523.2-114(2). That section was eliminated from the Probate Code in 2010. The *Palmer* court relied on that statute to distinguish the case from an earlier Minnesota Supreme Court ruling, *Witso v. Overby*, 627 N.W.2d 63, 65-66 (Minn, 2001),

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in which the Court held that the Minnesota Parentage Act "provides the exclusive bases [sic] for standing to bring an action to determine paternity."

Brianna and V.N. also contend that Minn. Stat. § 524.2-116 expresses the statutory intention to recognize parent-child relationships that "exist" separate and apart from the Minnesota Probate Code. (Brianna and V.N.'s Mem. at 7.) It is clear that such parent-child relationships, consistent with *Witso v. Overby*, can "exist" due to the application of the Minnesota Parentage Act.[1] It is not clear to the Special Administrator, absent applying *Palmer* to these circumstances, that Minnesota law has recognized other ways in which the parent-child relationship can exist for intestacy purposes.[2]

Brianna's and V.N.'s submission raises certain additional novel questions of law that the Special Administrator believes the Court may need to address:

(1) Does estoppel or another limitation of actions preclude Brianna's and V.N.'s claims, given John L. Nelson's intestacy proceeding that determined his heirs, in which proceeding Duane Nelson did not participate or later seek to overturn the conclusions reached by the court?

(2) Is it possible that a child could inherit from two fathers (one by genetic testing or under a presumption of the Parentage Act, and another by the "clear and convincing" standard proposed by Brianna and V.N.)? If so, how does this result comport with Minn. Stat. § 524.1-201(22), which provides that a person can only have one genetic father?[3]

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[1] Based on their memorandum of law, the Special Administrator does not understand that Brianna and V.N. are contending that any of the presumptions within Minn. Stat. § 257.55 are applicable.

[2] The Probate Code does recognize the doctrine of equitable adoption; however, Brianna and V.N. apparently contend that the doctrine is inapplicable to these facts.

[3] Brianna and V.N. state that the Minnesota Probate Code permits a child to inherit from more than one father. (Brianna and V.N. Mem. at 11.) While this is true, such circumstances only apply in the area of adoption, and are very limited in scope. Minn. Stat. § 524.2-119, subds. 2, 4.

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CONCLUSION

It remains unclear to the Special Administrator whether Minnesota law supports Brianna and V.N.'s intestacy heirship petitions based upon the facts and law they have asserted to date.

Dated: October 14, 2016

s/ David R. Crosby

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