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via U.S. Mail by depositing a true and correct copy thereof in the United States Mail with postage prepaid thereon.

s/ Judith M. Heglund
Judith M. Heglund

Subscribed and sworn to before
me on 22nd day of April, 2019

s/ Judith A. Adam
Notary Public

NOS. A19-0503
A19-0507

STATE OF MINNESOTA
IN COURT OF APPEALS

In re the Estate of Prince Rogers Nelson, Deceased

INFORMAL MEMORANDUM OF THE ESTATE OF
PRINCE ROGERS NELSON
ADDRESSING THE JURISDICTIONAL QUESTIONS
RAISED BY THIS COURT'S APRIL 2, 2019 ORDER

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Second Special Administrator to the Estate of Prince Rogers Nelson

By Order dated April 2, 2019, this Court, *sua sponte*, raised an issue as to the appealability of the Order filed on March 11, 2019, by the Honorable Kevin W. Eide, Judge of the Minnesota District Court, County of Carver, First Judicial District. In this Court's April 2, 2019, Order four (4) issues were presented on which the parties to this Appeal were directed to address in informal jurisdictional memoranda.

The Second Special Administrator to the Estate of Prince Rogers Nelson submits the following on the question of whether the March 11, 2019 Order is immediately appealable.

A. The District Court's March 11, 2019 Order Did Not Finally Determine the Second Special Administrator's Motion for Return of Fees.

The District Court's March 11, 2019 Order ("the District Court Order") provisionally directed appellants CAK Entertainment, Inc. ("CAK") and NorthStar Enterprises Worldwide, Inc. ("NorthStar") (CAK and NorthStar collectively, "the Advisors" or "Appellants") to return fees to the Estate of Prince Rogers Nelson ("the Estate") deemed unreasonable pursuant to Minnesota Statute Section 524.3-721. The fees to be refunded were those retained by the Advisors from two separate transactions involving the Estate on the one hand, and Jobu Presents, LLC ("Jobu") and Universal Music Group a/k/a Universal Recordings, Inc. ("UMG") on the other. Jobu terminated its Agreement with the Estate, and the UMG Agreement was rescinded pursuant to Court Order. As a result, the Estate received no financial benefit from either transaction and, with respect to UMG, refunded to UMG \$3.1M paid directly to and retained by the Advisors. Nonetheless, Appellants, who were monetization experts to the Estate, retained

sums paid to them in respect of the transactions and refused to refund those amounts to the Estate. Those amounts are the subject of the provisional District Court Order.

Based upon the Advisors' claims of due process, the District Court determined not to "make a final determination as to the Estate's entitlement to a refund of the Advisor fees without a full record and consideration of the provisions of the Advisor Agreement." The District Court directed the Advisors to refund the commissions to a designated escrow account. The fees associated with the Jobu transaction were to be held until the completion of associated litigation (see District Court file no. 10-CV-17-368). The District Court obliged the Advisors, allowed for discovery and an evidentiary hearing on the ultimate decision in respect of the fees associated with the UMG transaction. After discovery and an evidentiary hearing, the District Court resolved to make a final determination as to what fees, if any, should be refunded to the Estate from the rescinded UMG transaction. The holding of the fees in escrow was a "temporary order" designed to "protect the assets of the Estate."

"[A] final order is one that ends the proceeding as far as the court is concerned or that finally determines some positive legal right of the appellant relating to the action." *In re Estate of Janecek*, 610 N.W.2d 638, 642 (Minn. 2000) (quoting *Weinzierl v. Lien*, 296 Minn. 539, 540, 209 N.W.2d 424, 424 (1973)) (emphasis added). The District Court's Order did not "finally determine" the Advisors' right to compensation or the Estate's right to a refund. The District Court deferred a final determination until after either the completion of related litigation and an evidentiary hearing. The District Court appears to have done this out of an abundance of caution that its statutorily granted

authority, *see* Minn. Stat. § 524.3-721, arguably implicated Appellants’ due process rights. By the plain words of the District Court Order, the determination of the Advisors’ rights to the unrefunded fees is not final.

This Court recently resolved this issue in a trust matter. *Matter of Trusteeship under that Certain Indenture of Trust Dated as of April 1, 2010, by and between Econ. Dev. Auth. of City of Vadnais Heights and U.S. Bank Nat’l Ass’n*, this Court held A16-1133, 2017 WL 1210137, at *2 (Minn. App. April 3, 2017). There, U.S. Bank acted as trustee for bondholders of a city project. *Id.* at *1. During the release and discharge process, the district court issued an order on February 19, 2015 directing U.S. Bank to “prepare a summary of receipts and disbursements” and file it with the court and distribute to bond holders. *Id.* A bond holder took issue with the fees and expenses for U.S. Bank’s outside counsel. *Id.* The court issued a December 29, 2015 order directing U.S. Bank to “prepare a properly detailed final accounting...with enough information for [the bondholder] to reasonably determine whether the fees and expenses were legitimate and proper expenditures.” *Id.* (internal quotations omitted). The district court ultimately approved U.S. Bank’s fees and expenses and the bondholder appealed. *Id.* at *2.

On appeal, U.S. Bank argued this Court lacked jurisdiction because the bondholder failed to appeal from the February 19, 2015 order. *Id.* This Court disagreed. Because the February 19, 2015 order directed U.S. Bank to take further action and the district court conducted further proceedings, the order was not final and appealable. *Id.* The District Court Order fits squarely within this paradigm. It directs the Advisors to deposit their unearned fees into escrow, and then allows for discovery and an evidentiary

hearing prior to a final decision and order. In fact, the District Court expressly reserved making a final determination on the refund amount until further proceedings, at the insistence of the Advisors, take place. The District Court Order is not final.

B. The District Court's March 11, 2019 order is not appealable under Minnesota Statute Section 525.71(a)(15) or Minnesota Rule of Appellate Procedure 103.03(g).

Minnesota Statute Section 525.71(a)(15) states, "an order made directing, or refusing to direct, the payment of representative's fees or attorneys' fees, and in such case the representative and the attorney shall each be deemed an aggrieved party and entitled to appeal." Minnesota courts "interpret the words in a statute according to their plain and ordinary meaning" absent statutory definitions. *Douglas v. Stillwater Area Pub. Schs., Indep. Sch. Dist. 834*, 899 N.W.2d 546, 552 (Minn. App. 2017). The District Court Order did not "refuse" to direct payment to the Advisors. Rather, the District Court Order directed, temporarily at this time, a deposit of the Advisors' fees into an escrow account pending decision and a final order. Put another way, the Advisors' fees had already been "directed" to them at the time of the Jobu and UMG transactions. Once it became clear those transactions were failures and resulted in no benefit to the Estate, the District Court reconsidered the propriety of those payments. The District Court could not "refuse to direct" payments that were already in the Advisors' hands. Thus, the District Court Order is not appealable under Section 525.71(a)(15).

Minnesota Rule of Appellate Procedure 103.03(g) allows an appeal from "a final order, decision or judgment affecting a substantial right made in an administrative or other special proceeding." The District Court Order is not a "final order," *see supra*, at 2-

4, or a judgment. As a matter arising out of probate, it is facially obvious the District Court Order is not the product of an administrative proceeding. Thus, appellants are left with demonstrating the District Court order is a “decision affecting a substantial right” and arising out of a “special proceeding.”

Likely the District Court Order constitutes a “decision.” *See In re Estate of Joseph*, 1994 WL 323386, at *2 (Minn. App. July 5, 1994) (noting “[t]he decision to award attorney fees in a probate proceeding lies within the district court’s discretion”); *but see Am. Family Mut. Ins. Co. v. Peterson*, 380 N.W.2d 495, 496–97 (Minn. 1986) (holding when a district court determines that a party is entitled to attorney fees, but the court reserves for a “later order the actual monetary award of attorney fees,” the “appeal period does not begin to run until the entry of [an] amended judgment finally adjudicating all issues, including the” outstanding dispute over the amount of attorney fees).

But, what constitutes a “substantial right” is fact specific. *In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 756 (Minn. 2005). Generally, a substantive right appears to be “[a]n essential right that potentially affects the outcome of a lawsuit and is capable of legal enforcement and protection, as distinguished from a mere technical or procedural right.” Black’s Law Dictionary (10th ed. 2014). There do not appear to be any Minnesota cases finding an attorney or agent of an estate has a substantial right in their fees associated with a probate. A substantial right in such contexts appears associated with non-monetary concerns. *See, e.g., Janecek*, 610 N.W.2d at 642 (suggesting the right to be represented by an attorney of one’s choice is a substantial right).

The Advisors do not have a “substantial right” in the underlying probate proceedings. They are not beneficiaries. They are not a personal representative of the Estate. Their involvement ended when the Estate terminated their status as agents (i.e., entertainment advisors). The Advisors cannot effect the outcome of the probate proceeding. The District Court Order addresses the discreet issue of whether the Advisors received excessive compensation. The District Court Order does not affect a substantial right of the Advisors related to the probate. *Cf. In re Kelly's Estate*, 85 Minn. 117, 88 N.W.2d 430 (1901) (holding an order denying a motion to affirm the allowance of an account of an executor did not constitute a final order affecting a substantive right).

A “special proceeding” has been defined as one that:

may be commenced independently of a pending action by petition or motion, upon notice, in order to obtain special relief. Its existence is not dependent upon the existence of any other action and it therefore is not an integral part of the original action but is separate and apart. It adjudicates by final order a substantial right distinct from any judgment entered upon the merits of the original action.

Willeck v. Willeck, 286 Minn. 553, 554 n.1, 176 N.W.2d 558, 559 (1970); *see also GlaxoSmithKline*, 699 N.W.2d at 756 (citing *Willeck* for the definition of a “special proceeding”); *Janecek*, 610 N.W.2d at 642 (“[A] special proceeding is a generic term for a remedy that is not part of the underlying and that is brought by motion or petition, upon notice, for action by the court independent of the merits of the underlying action.”)

At first glance, the District Court’s ultimate determination of the propriety of the Advisors’ compensation may appear to be a special proceeding. Yet, the predicate parts are missing. The District Court Order is not the product of a special proceeding because

the District Court has not “adjudicate[d] by final order a substantial right.” *Willeck*, 286 Minn. at 554 n.1. Rule 103.03(g) does not confer jurisdiction.

C. The District Court’s March 11, 2019 order is not a mandatory temporary injunction.

The District Court Order is facially not a mandatory temporary injunction. In order for jurisdiction to lie, appellants must demonstrate the District Court Order is in effect a mandatory temporary injunction. *See Howard v. Svoboda*, 890 N.W.2d 111, 114 (Minn. 2017) (suggesting orders not labeled injunctions may nonetheless be considered injunctions in effect and be appealable under Rule 103.03(b)). The Minnesota Supreme Court has laid out three criteria for this analysis: (1) the styling of the order, (2) whether the district court applied the equitable factors required for granting a temporary injunction, and (3) whether the district court granted any of the substantive relief sought in the complaint.

First, the District Court Order is not styled as a temporary injunction; it is an order provisionally directing the return of unreasonable fees.

Second, the District Court did not consider any of the factors required for issuing a temporary injunction. *See Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274–75, 137 N.W.2d 314, 321–22 (1965). Tellingly, the District Court did not order equitable relief. The provisional relief ordered by the District Court is monetary only.

Third, the District Court did not grant or deny any of the substantive relief sought in the underlying probate. The District Court’s provisional relief stems from its statutory authority and a motion by the Estate. The relief related “only to the conduct or progress

of the litigation.” *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279, 108 S.Ct. 1133, 99 L.Ed.2d 296 (1988). The reasonableness of the Advisors’ fees does not “touch the merits” of the probate. *Switz. Cheese Ass’n, Inc. v. E. Horne’s Market, Inc.*, 385 U.S. 23, 25, 87 S.Ct. 193, 17 L.Ed.2d 23 (1966).

The District Court Order lacks the characteristics of an injunction. Jurisdiction for an appeal is lacking on this basis.

D. The District Court’s March 11, 2019 order is not an appealable contempt order.

The District Court Order is not a contempt order. The District Court Order states the Advisors will be held in contempt if they fail to pay the unreasonable fees into escrow pending discovery and an evidentiary hearing. However, because the Advisors filed this appeal, the District Court has stayed that provision of the Order. Thus, there is no contemplation of contempt currently active. Even if the Advisors are ultimately held in contempt, it is doubtful such order is appealable unless the Advisors are physically restrained as a result. *See Maher v. Maher*, 393 N.W.2d 190, 195 (Minn. App. 1986) (“Because the order directed immediate incarceration it is appealable under Minn. R. Civ. App. P. 103.03(e).”) So too is jurisdiction for an appeal lacking on this basis.

Dated: April 22, 2019

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief complies with the requirements of Minn. R. Civ. App. P. 132 in that it is printed in 13-point proportionally spaced typeface font, and the length of this brief is 2,238 words. This document was prepared using Microsoft Word 2010.

Dated: April 22, 2019

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