

STATE OF MINNESOTA

FIRST JUDICIAL DISTRICT

COUNTY OF CARVER

DISTRICT COURT
PROBATE DIVISION

In re:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**MEMORANDUM OF LAW IN SUPPORT
OF GRAY PLANT MOOTY'S
APPLICATION FOR DETERMINATION
AND ESTABLISHMENT OF
ATTORNEY'S LIEN AND ENTRY OF
JUDGMENT FOR LIEN AGAINST
TYKA NELSON'S INTEREST IN THESE
ESTATE PROCEEDINGS**

INTRODUCTION

Gray, Plant, Mooty, Mooty & Bennet, P.A. (“GPM”) served as counsel of record for Tyka Nelson (“Tyka”) from the commencement of these proceedings in April 2016 until September 27, 2016. During that time and on occasion thereafter, GPM provided valuable legal services to or for the benefit of Tyka for which GPM remains unpaid. GPM submits this memorandum in support of its Application for Determination of Attorney’s Lien and Entry of Judgment for Lien Against Tyka’s Interest in These Estate Proceedings. GPM’s Application arises out of two statutes: Minn. Stat. § 481.13, subd. 1(a)(1) and Minn. Stat. § 525.491. Under both statutes, GPM’s lien attached to Tyka’s interest in this Estate upon the commencement of these proceedings and takes priority over all third party claims.

FACTUAL BACKGROUND

In April 2016, Tyka retained GPM to represent her in connection with the administration of the Estate of Prince Rogers Nelson (“Estate”), and to commence these proceedings by filing a Petition for the Appointment of a Special Administrator. (Affidavit of Matt Shea (“Shea Aff.”)) ¶

2.) GPM served as Tyka's counsel of record until September 27, 2016, at which point Holland & Knight assumed that role. (*Id.*)

Before and after its formal representation of Tyka ended, GPM invested a substantial amount of attorney time and paid disbursements in connection with Estate related work. In orders dated November 3, 2016 and March 10, 2017, the Court determined that much GPM's work benefitted the Estate as a whole, as opposed to Tyka individually, and approved payments from the Estate to GPM in the total amount of \$226,652.25. (Shea Aff. ¶ 3.) As a result of these payments, a balance of \$116,652.11 remains due and owing to GPM from Tyka. (*Id.* ¶¶ 4-7 and Exs. A and B.) This balance is the amount GPM asks the Court to determine and establish as the amount of its lien against Tyka's interest in these proceedings, and to enter judgment accordingly.

On November 27, 2018, GPM filed its Application with the Court and served it on Tyka, the personal representative of the Estate, counsel for Tyka in these Estate proceedings who were retained after GPM (Holland & Knight and then Barnes & Thornburg), and counsel for other Estate beneficiaries that filed applications for attorney's liens against the interests of their former clients (Lommen Abdo and Skolnick & Joyce).

ARGUMENT

GPM's Application for an attorney's lien arises out of two statutes: Minn. Stat. § 481.13, subd. 1(a)(1) and Minn. Stat. § 525.491. Under both statutes, GPM's lien attached upon the commencement of these Estate proceedings and takes priority over all third party claims.

A. GPM's Lien Takes Priority Over Third Party Claims.

Minn. Stat. § 481.13, subd. 1(a)(1) applies to non-probate actions and recognizes that an attorney has a lien for compensation "upon the cause of action from the time of . . . the commencement of the proceeding" The Minnesota Supreme Court has held that a "cause-of-

action” attorney’s lien arising out of subdivision 1(a)(1) attaches immediately upon commencement of the action, and that “the attorney need not do anything after the attorney’s cause-of-action lien has attached for it to have priority over the claims of third parties.” *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592, 596 (2016).

Minn. Stat. § 525.491 applies to attorney’s liens arising from probate proceedings. This statute simply states that if an attorney has been retained to provide services to the beneficiary of an estate, the attorney may perfect a lien for compensation for those services against the beneficiary’s interest “by serving upon the personal representative before distribution is made, a notice of intent to claim a lien for agreed compensation, or the reasonable value of services.” By perfecting a lien in this fashion, the attorney’s lien may be enforced and the amount of the lien may be determined by the Court. *Id.*

GPM’s cause-of-action lien attached against Tyka’s interest in this Estate in April 2016, when GPM filed a petition commencing these proceedings on Tyka’s behalf. Minn. Stat. § 481.13, subd. 1(a)(1). GPM perfected its lien on November 27, 2018, when it served notice of its intent to claim a lien on the personal representative. Minn. Stat. § 525.491. Under Minnesota law, GPM’s lien takes priority over all third party claims. *City of Oronoco*, 883 N.W.2d 596.

B. GPM’s Claim Should Be Determined, Established, And Entered As A Judgment In An Amount Certain.

The Affidavit of Matthew Shea filed in support of this Application establishes the amount of the attorney’s lien GPM asks the Court to determine and reduce to judgment against Tyka’s interest. As explained above and in the Shea Affidavit, GPM’s lien should be determined in an amount equal to \$116,652.11. (Shea Aff. ¶¶ 4-7 and Exs. A and B.) Judgment should be entered in favor of GPM and against Tyka’s interest in this Estate in that amount.

