

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:

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

Estate of Prince Rogers Nelson,

Decedent.

**DECLARATION OF JOSEPH J.
CASSIOPPI IN SUPPORT OF MOTION
TO DISMISS COUSINS LAW, APA'S
PETITION FOR ALLOWANCE OF
PREVIOUSLY DISALLOWED CLAIM**

I, Joseph J. Cassioppi, declare and state as follows:

1. I am a shareholder at Fredrikson & Byron P.A., counsel for Comerica Bank & Trust, N.A. ("Comerica"), the Personal Representative of the Estate of Prince Rogers Nelson.

2. I submit this Declaration in support of Comerica's Motion to Dismiss Cousins Law, APA's Petition for Allowance of Previously Disallowed Claim.

3. Attached hereto as EXHIBIT A is a copy of a Hennepin County District Court Order Unsealing Court File, signed by the Honorable Thomas S. Fraser on August 15, 2016. In the Order, the court notes that Prince Rogers Nelson's divorce from Manuela Testolini was commenced in May 2006 and that the court issued its Findings of Fact, Conclusions of Law and Order for Judgment, Judgment and Decree in the divorce action on October 2, 2007.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.**

Dated: February 28, 2017

/s/ Joseph J. Cassioppi
Joseph J. Cassioppi

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

In Re the Matter of:

Court File No. 27-FA-06-3597

Manuela Nelson, *Now Known*
As Manuela Testolini,

Petitioner,

**ORDER UNSEALING
COURT FILE**

and

Bremer Trust, N.A., on behalf of
Prince Roger Nelson, *deceased*,

Respondent.

On August 4, 2016 the Court conducted a hearing on Star Tribune Media Company LLC's motion to intervene and unseal the files in this matter.

Leita Walker of Faegre Baker Daniels, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN, 55402 represented Star Tribune Media Company LLC ("Star Tribune").

Curtis Smith and Jana Deach of Moss and Barnett, 150 South Fifth Street, Suite 1200, Minneapolis, MN, 55402 represented Ms. Manuela Testolini, who was present.

Bruce Recher and Lisa Spencer of Henson & Efron, P.A., 220 South Sixth Street, Suite 1800, Minneapolis, MN, 55402 represented Bremer Trust, N.A.

Based on the record and arguments of counsel, the Court makes the following:

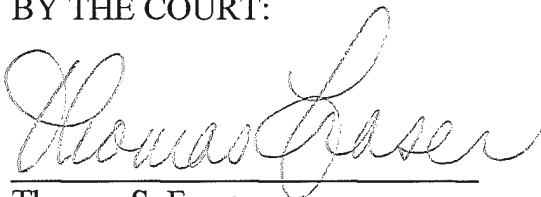
EXHIBIT A

ORDER

1. Star Tribune's motion to intervene for the sole purpose of asserting the public and press right of access to court records in this case is **GRANTED**.
2. This Order will not be sealed and will be accessible to the public.
3. Star Tribune's motion to unseal the files in this matter is **GRANTED**;
4. Except for documents or parts thereof deemed confidential under Minnesota General Rules of Practice 11.02, such as the confidential information form and any restricted identifiers on financial source documents, the court file shall be unsealed 30 days from the date of this order;
5. During this 30-day window, the parties may request, by motion and with notice to Star Tribune, redaction or sealing of additional individual documents in this court file; and
6. The attached memorandum is incorporated here.

August 15, 2016

BY THE COURT:



Thomas S. Fraser
Judge of District Court

MEMORANDUM

FACTS

Prince Rogers Nelson and Manuela Testolini were married in 2001. In May, 2006, Ms. Testolini commenced this dissolution proceeding against Mr. Nelson in Hennepin County District Court. On July 11, 2006, at the request of both parties and based on affidavits in support of a motion to seal, the presiding judge issued an order sealing the court file. The parties thereafter engaged in negotiations and a mediation, which led to a settlement. The parties submitted their written settlement agreement to the Court. On October 2, 2007, the Court issued its Findings of Fact, Conclusions of Law and Order for Judgment, and Judgment and Decree based on the parties' agreement. The Judgment and Decree contains a confidentiality provision.

Mr. Nelson died on April 21, 2016. Bremer Trust, N.A. was appointed as Special Administrator of his Estate by Order of the Carver County District Court Probate Division. Amidst the media flurry sparked by Mr. Nelson's death, Star Tribune Media Company LLC ("Star Tribune") tried to review the court file in this dissolution as part of its ongoing coverage of Mr. Nelson and investigation of his death. It was unable to do so because of the sealing order. Star Tribune now moves to intervene in this dissolution case for the limited purpose of unsealing the court file. Ms. Testolini and Bremer Trust oppose Star Tribune's motion, and request that the court file remain sealed.

The Court will first address the motion to intervene.

MOTION TO INTERVENE

Standard for Intervention

The requirements for intervention in a closed case are governed by Minnesota Rules of Civil Procedure 24.01, which provides as follows:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Citing this rule, the Minnesota Supreme Court established a four-part test for intervention. *Minneapolis Star Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986). The elements are: (1) a timely application for intervention; (2) an interest relating to the property or transaction which is the subject of the action; (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (4) a showing that the party is not adequately represented by the existing parties. *Id.* The Court will consider each of these elements in turn.

1. Timely Application for Intervention

The first *Schumacher* element is that the application for intervention must be timely. “The timeliness of the application to intervene, as in any case, will be based upon the particular circumstances involved and such factors as how far the suit has progressed, the reason for any delay in seeking intervention, and any prejudice to the existing parties because of a delay.” *Id.* at 207.

Star Tribune argues that its motion is timely, and claims it asserted its interest in public access within weeks of its reporter learning of the sealed file. Star Tribune Mem. at 3-4. In the view of Star Tribune, intervention can be timely even if it is exercised years after the case is decided. Otherwise, the only way for news organizations to preserve their right of access would be to intervene in every case where a motion to seal was filed -- a burdensome and unrealistic proposition.

Ms. Testolini and Bremer Trust contend the motion to intervene is untimely. They point to the fact that the dissolution action was sealed nine years ago, and note that two 2006 Star Tribune columns mention the sealing of this divorce file. Deach Aff. Exs. A, B. In the view of Ms. Testolini and Bremer Trust, these columns, written by a reporter who focuses on celebrities, constitutes knowledge on the part of Star Tribune of the existence of these sealed records. According to these litigants, Star Tribune should have attempted to intervene at the time the proceeding began or soon thereafter if they were interested in it.

“The case law regarding the requirement of timely intervention reveals that such a matter must be determined on a case-by-case basis.” *Engelrup v. Potter*, 224 N.W.2d 484, 488 (Minn. 1974). In making a determination on timeliness, the Court examines several factors, including how far the case has progressed at the time of intervention, the reason for delay, and the possible prejudice to the existing parties caused by that delay. *Schumacher*, 392 N.W.2d at 207; *see also SST, Inc. v. Minneapolis*, 228 N.W.2d 225, 230 (Minn. 1979). Post-trial interventions are often disfavored due to this potential prejudice. *Brakke v. Beardsley*, 279 N.W.2d 798, 801 (Minn. 1979).

a. Progression of case at time of intervention

This dissolution proceeding was completed nine years ago.

b. Reason for delay

Star Tribune argues that its motion at this point is not delayed and is timely because the dissolution proceeding has newfound significance to the public in the wake of Mr. Nelson's recent death. Star Tribune Mem. at 4-5. The ongoing investigation into Mr. Nelson's death, its cause, and the subsequent estate issues have sparked a massive amount of public interest in everything to do with Mr. Nelson. In Star Tribune's view, it is unfair to expect it to have foreseen this nine years ago when the dissolution was finalized.

Ms. Testolini and Bremer Trust assert that Star Tribune waited far too long to bring this motion, and that Star Tribune does so now only as a matter of opportunism shortly after Mr. Nelson's death.

The Court accepts Star Tribune's reasoning for bringing this motion at this juncture, and finds no delay in light of the particular circumstances of this case. It is not for the parties or the Court to sit in judgment on the media's determination of newsworthiness. The passage of several years does not necessarily bar a newspaper from intervening in sealed proceedings, including marital dissolutions. *See In Re Marriage of Fry*, Court File No. 27-FA-296122 (Hennepin Cty. Dist. Ct. October 18, 2011).

c. Possible prejudice to existing parties

Intervention by the media in a closed case does not present the potential for prejudice to litigants that normally arises when the case is still being litigated. “The Star Tribune's motion to intervene cannot impede the parties' efforts to conclude a painful process, one that most people wish could be private and quiet; the divorce is done.” *Fry* at 4.

Ms. Testolini and Bremer Trust argue they will be prejudiced if the record is unsealed. This is an argument directed at the merits of Star Tribune's claim, not its ability to assert its claim.

Ms. Testolini and Bremer Trust also note that Mr. Nelson was a private person, who can no longer personally defend his desire for privacy in this matter. But privacy rights do not necessarily survive a party's death. *Estate of Benson by Benson v. Minnesota Bd. of Medical Practice*, 526 N.W.2d 634, 637 (Minn. Ct. App. 1995).

The Court finds that no party is prejudiced due to the timing of the motion to intervene.

2. An Interest Relating to the Property or Transaction That is the Subject of the Action

The second *Schumacher* element is that the proposed intervenor must demonstrate an interest relating to the property or transaction that is the subject of the action. “This interest must be a legally protected one which can be found in the public's right to access ... The Star Tribune carries the banner of the public's right to know and its desire to gather information on a newsworthy matter.” *Fry* at 4-5. In *Fry*, the Court found that the

public's presumed right of access to court files in a marital dissolution proceeding amounted to a legally protected interest that the Star Tribune may assert. The facts of *Fry* are similar to the present case, and the same ruling applies. Star Tribune, as a large news organization in the region, has a legitimate interest in searching for newsworthy information on behalf of the public, and as such has a legitimate interest in this dissolution proceeding.

3. Circumstances Demonstrating That the Disposition of the Action May as a Practical Matter Impair or Impede the Party's Ability to Protect That Interest

The third *Schumacher* factor is that the proposed intervenor must demonstrate that disposition of the action may impede or impair their ability to protect their interest in the action. If Star Tribune or another media organization did not intervene, the record in this matter would remain sealed, thereby impairing the media's ability (and, consequentially, the public's) to glean any newsworthy information from it.

Ms. Testolini and Bremer Trust argue that Star Tribune's quest for information about Mr. Nelson's death and his estate would be better directed to the Carver County Sheriff or the probate file in that county. Although these sources are likely to have more current and relevant data, that is not a reason to deny intervention. The media has no restrictions on the number or nature of sources it seeks in an investigation. Nor is it the role of litigants or judges to second-guess the news-gathering strategy of the media.

Star Tribune has shown that the sealed file impedes its ability to protect its interest.

4. **A Showing That the Party is not Adequately Represented by the Existing Parties**

A proposed intervenor must also show that its interests are not adequately represented by existing parties. Star Tribune's interests in seeking open access to court files, and reporting on any newsworthy elements in that file, are certainly not represented by Ms. Testolini or Bremer Trust, who wish to avoid both scenarios. As Star Tribune argued at the hearing, sealing orders are often granted by agreement of the litigants when no media entity is present to object. The media is entitled to be heard when public access to court files is restricted.

Rule 24 should be construed liberally to allow intervention where possible. *Omegon, Inc. v. City of Minnetonka*, 346 N.W.2d 684 (Minn. Ct. App. 1984). Star Tribune has met the four factors of the *Schumacher* test and, as in that case and many others since, will be allowed to intervene for the limited purpose of moving to unseal the court file.

MOTION TO UNSEAL

The Court now turns to the merits of Star Tribune's motion to unseal. The right of access to civil court documents is considered "fundamental to a democratic state." *Schumacher*, 392 N.W.2d at 202. A presumption exists in favor of public access, though not an absolute one. To defeat this presumption and restrict access, a party must demonstrate a sufficiently strong interest in denying access. A court has much discretion in supervising its own records, and can deny access where it believes files may be used for improper purpose. *Id.*

A. The Common Law Right of Access to Inspect Civil Court Records

Schumacher frames two standards to weigh competing interests regarding public access to civil court records – a common-law standard, and a constitutional standard. *Id.* (citations omitted). While some jurisdictions have applied the constitutional standard, Minnesota courts generally apply the common-law standard. *Id.* at 205.

Under the common-law standard, the Court must apply a balancing test to determine whose interests should prevail. The interests of the party seeking access, including the presumption of public access, are weighed against the interests of the party seeking to prevent access, including the right to privacy, safety concerns, and potential for improper use of the sealed file. *Id.* at 202-03.

1. Right to Privacy

Ms. Testolini strongly desires that this matter remain sealed. She expresses fear of harassment, alleging several unpleasant encounters with fans and media over the past nine years while the record was sealed, and notes that such harassment has increased since Mr. Nelson's death. *Testolini Aff.* at 4.

Ms. Testolini is also concerned that unsealed information would immediately make its way onto the internet, and furnishes several message-board posts and comments from the original dissolution proceeding in support of this. *Testolini Aff. Exs. A, B.* She argues that the financial records in this matter are not of legitimate public interest, contends that the relative privacy she has enjoyed for the past nine years will be undone if the record is unsealed, and that this will have an adverse impact on herself and her family. *Id.* at 8-9. In the view of Ms. Testolini and Bremer Trust, Ms. Testolini relied on

the sealing of the file and the confidentiality provision in the Judgment and Decree for this relative privacy.

As Star Tribune observes, Ms. Testolini does not specify precisely how she relied on the sealing of the record or what she would have done differently had the record been public. To a certain degree, parties always rely on a sealing order in a case where one is present; if this alone were enough to bar intervention, no intervention would ever be granted. *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 790 (3d Cir. 1994). As such, reliance alone is not enough to prevent public access to sealed files.

Star Tribune argues that, as in *Fry*, most of the financial and personal information contained in the sealed file is likely “stale” after this amount of time. *Fry* at 11. It notes that if Ms. Testolini desired to stay out of the public eye, she should not have provided pictures of her children to *Us Magazine*. Star Tribune Reply at 11. Furthermore, Star Tribune claims that Ms. Testolini does not demonstrate any basis for her belief that unsealing this matter will have a corresponding impact on her personal life in Los Angeles, and that her argument is essentially a personal preference for privacy.

The Court agrees that Ms. Testolini does not show how the unsealing of nine-year-old dissolution documents will affect her personal life, particularly given her remarriage and relocation to Los Angeles several years ago. Many of the message-board posts and comments she cites were posted in the immediate aftermath of her divorce from an international celebrity. It is unclear that unsealing this matter will affect internet activity relating to Ms. Testolini. Even if it did, that alone is not sufficient to bar all public access

to court documents. Her marriage to Mr. Nelson put her in the public eye; this is true regardless of information in the sealed documents.

Ms. Testolini states that the sealed files have nothing to do with Mr. Nelson's death and its subsequent legal issues. Testolini Aff. at 3. If that proves to be true, information disclosed is unlikely to subject her to a higher level of unwanted public attention than she has already received.

Ms. Testolini's desire for privacy, while important to consider, does not outweigh the public's right of access to court documents. Ms. Testolini and Bremer Trust make clear their own preferences for privacy in this proceeding, but fail to show how these override the presumption of public access. Star Tribune correctly states that this case is unique only in that it involves an international celebrity, and that it would be unfair to grant special privacy rights based solely on this. The presumption of public access to court files outweighs individual wishes for privacy.

Ms. Testolini and Bremer Trust argue that Mr. Nelson's lifelong desire for privacy should continue posthumously and is an interest to be weighed in this proceeding. Star Tribune counters that there is a long-established rule in Minnesota that privacy rights do not survive an individual's death.

While no cases deal directly with this, Minnesota Statutes section 573.01 and *Estate of Benson by Benson v. Minn. Bd. of Med. Practice*, 526 N.W.2d 634, 637 (Minn. Ct. App. 1995) both support the principle that causes of action do not generally survive an individual's death, including invasion of privacy. As such, Mr. Nelson's purported desires will not be given significant weight posthumously.

The Court finds that the proposed unsealing would not violate Ms. Testolini's right to privacy. The public's presumptive right of access outweighs her preferences in this matter.

2. Safety Concerns

Denial of public access has been found appropriate if allowing access to the records could result in "thefts, exploitation, trespass and physical injury" to the parties. *Schumacher* at 200. Ms. Testolini invokes those grounds, citing several incidents over the past nine years as reason to keep this matter sealed. These include negative posts on online fora, harassment by media and paparazzi, and unwanted attention by the public and fans of Mr. Nelson. Testolini Aff. at 2-4. She fears that any unsealing will exacerbate these problems for herself and her family.

Neither Ms. Testolini nor Bremer Trust has shown how Ms. Testolini's unfortunate encounters with fans or paparazzi, either in person or online, would be affected by the unsealing of this file – particularly as Ms. Testolini is not an heir of Mr. Nelson nor a party in the current probate proceeding, and now lives two thousand miles from the eye of this media storm and investigation surrounding Mr. Nelson's death. By virtue of her marriage to Mr. Nelson, Ms. Testolini remains exposed to potential unwanted attention in person and online, but this would be the case even if the file remained sealed. It is doubtful that the unsealing of a nine-year-old dissolution file containing "stale" financial information would significantly change this.

In *Schumacher*, a significant risk of increased harassment to the parties led to restricted access to the court files. *Schumacher* at 206. This risk was based on intrusions

the parties had already experienced due to the significant public interest in their proceeding, as well as the potential impact that unsealed information might have had on other pending suits. *Id.* Here, the public's focus is directed at the current investigation of Mr. Nelson's death and probate proceeding, not at Ms. Testolini's closed dissolution proceeding.

The Court does not find that the potential for an increase in harassment or similar activities is sufficient to bar access to the file.

3. Potential for Improper Use

Ms. Testolini and Bremer Trust both express concerns that the information in the file may be improperly used if it is unsealed. In their view, even if this is not Star Tribune's intent, improper use may be an unintended consequence due to the disclosure of documents in the file. Bremer Trust Aff. at 13. They do not explain what this "improper use" might be or how this may occur, although the Court recognizes that this may be difficult to do without revealing information from the sealed file. Star Tribune responds that it is a reputable newspaper, and that its coverage has been and will remain responsible and fair.

The Court has no reason to assume that improper use will occur.

Bremer Trust is concerned that disclosure of many of the sealed documents could interfere with the ongoing Carver County proceedings. Bremer Trust Mem. at 11. Star Tribune responds that it does not seek access to financial source documents at this stage, but rather an opportunity to review the entire file generally, reserving requests for access to specific documents until after its review. Star Tribune Reply at 13-14.

It is unclear how nine-year-old documents could interfere with an ongoing probate proceeding in another county, but these and other specific concerns can be addressed by an in-camera review of specific documents.

B. Right of Access in Divorce Proceedings

In Star Tribune's view, the state is a third party to every civil dispute given the use of public courts for resolution of those disputes. Star Tribune's Mem. pp. 8-9. As such, Star Tribune argues that the public has a right of access to inspect court proceedings, and the media has an extensive right of access in all stages of judicial proceedings as a form of public monitoring. *Id.* Star Tribune contends that divorces are no different from any civil proceeding that uses public courts for resolution, and that all elements of the proceeding and related documents should be subject to the same high level of public access.

This view finds support in the case law. "Marriage is a civil contract, to which there are three parties: the husband, the wife, and the State . . . the public occupies the position of a third party; and it is the duty of the State . . . to guard the relation." *Kasal v. Kasal*, 35 N.W.2d 745, 746 (Minn. 1949).

Ms. Testolini and Bremer Trust contend that while there is a general presumption of access in dissolution proceedings, the documents sought by Star Tribune are settlement documents for which there is no historic or philosophical presumption of openness. Petitioner's Mem. at 12-13. In their view, this includes the Judgment and Decree. They argue that the Court was involved only to adopt the parties' stipulated Judgment and

Decree and did not preside over any other dissolution issues in this matter, and that consequentially, there should be no right of public access to these documents.

Star Tribune counters that the decree is a final judgment, and cites extensive case law to support its view that this type of document does indeed fall under the historic presumption of public access. Star Tribune's Reply Mem. at 15. Star Tribune argues that the presumption of access is in fact strongest regarding final judgments due to the legal weight they carry. *Id.*

In most civil cases, the parties are able to keep the terms of a settlement confidential because the law does not require the settlement agreement to be filed with the Court. *See Schumacher*, 392 N.W.2d at 204-05. Instead, the parties typically notify the Court that a settlement has been reached and request dismissal of the case.

The same is not true in divorce cases, where the Court has a statutory obligation to review the terms of any settlement to make sure that it is "just and equitable." Minn. Stat. § 518.58. "In dissolution cases, the court sits as a third party, representing all of the citizens of the State of Minnesota to see that a fair property distribution is made." *Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989) (citations omitted). Thus, whether the divorce decree is the product of the settlement or a trial, a court's duty is the same – to ensure that it is fair to both parties.

Where a court is charged with the duty to review the terms of a settlement, that settlement is not automatically entitled to any more confidentiality than a judge's decision or jury's verdict embodying the same terms. The Court agrees that the

Judgment and Decree in the dissolution proceeding is not a settlement document entitled to special protection.

Even if it were a settlement document, “strong countervailing reasons” must be demonstrated for access to be restricted. *Schumacher*, 392 N.W.2d at 206. These have not been demonstrated. The Court, while sympathetic to Ms. Testolini’s concerns of privacy and cognizant of her profound desire to keep the file sealed, does not find that these concerns override the general presumption of public access in dissolution proceedings. She and Bremer Trust will, however, have an opportunity to argue that specific documents, or portions thereof, should remain sealed.

The Court will order the file unsealed 30 days from the date of this Order to allow the parties to request, by motion and with notice to Star Tribune, redaction or sealing of individual documents in the court file.

TF