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STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT
PROBATE DIVISION
FIRST JUDICIAL DISTRICT

Court File No. 10-PR-16-46

In Re the Estate of:

Prince Rogers Nelson,

Decedent.

PETITION HEIRS' JOINT MEMORANDUM OF LAW IN RESPONSE TO OBJECTIONS TO PROTOCOL PRIOR TO GENETIC TESTING

I. INTRODUCTION

This memorandum is submitted jointly by the brothers and sisters of Prince Rogers Nelson ("Prince"), who are identified in the Petition for Formal Appointment of Special Administrator—namely John R. Nelson, Norrine Nelson, Sharon Nelson, Alfred Jackson, Omarr Baker, and Tyka Nelson (collectively the "Petition Heirs"). The Petition Heirs concur with the Special Administrator's interpretation of the interplay between the Uniform Probate Code (Minn. Stat. Ch. 524) and the Parentage Act (Minn. Stat. §§ 257.01 through 257.75) with respect to heirship claims in this matter, as set forth in the Special Administrator's Memorandum of Law in Response to Darcell Gresham Johnston's Objection to Protocol Prior to Genetic Testing, dated June 24, 2016, and as argued at the hearing on June 27, 2016. The genetic testing protocol developed and implemented to date by the Special Administrator is consistent with Minnesota law and provides any person with a legitimate claim to heirship under the Probate Code and Parentage Act with an appropriate opportunity to establish their claims.

In the interest of judicial economy, the Petition Heirs join but will endeavor not restate arguments previously set forth by the Special Administrator. However, out of respect for our brother Prince and his biological and genetic parents—John Nelson and Mattie Della Shaw—we write separately to emphasize certain factual and legal realities that cannot be ignored or rebutted

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by persons attempting to establish heirship claims in this matter, and to encourage the Special Administrator and the Court to resolve heirship claims as expeditiously as possible.

II. ARGUMENT

A. As a Matter of Law, John Nelson and Mattie Della (Shaw) Have Been Determined to Be the Genetic Parents of Prince For all Purposes.

Under the Parentage Act, a "parent and child relationship" means the legal relationship between a child and the child's parents "to which the law confers or imposes rights, privileges, duties and obligations." Minn. Stat. § 257.52 (2014). A "judgment or order of the court determining the existence or non-existence of the parent and child relationship is ***determinative for all purposes***." Minn. Stat. § 257.66, subd. 1 (2014) (emphasis added); *see also In re Trusteeship of Trust Created Under Trust Agreement dated December 31, 1974*, 674 N.W.2d 222, 231 (Minn. Ct. App. 2004) (holding adjudication of parentage in divorce proceeding cannot be collaterally attacked by petitioner in a trust-clarification action). If a father-child relationship is established based on a paternity presumption created under the Parentage Act, then the Probate Code clearly states that the "genetic father" of that child under intestacy laws means "***only the man for whom that relationship is established***[,]" irrespective of whether another man fertilized the egg that gave rise to the child. Minn. Stat. § 524.1-201(22) (2014) (emphasis added).

The Petition Heirs have no doubt that John Nelson fertilized the egg of Mattie Della Shaw that gave rise to Prince, and are thus the "genetic parents" of Prince in that sense. More importantly at this juncture, however, is the fact that the parent-child relationship between Prince, John, and Mattie has been determined in at least two orders of the Minnesota District Court, which are legally determinative of the existence of the relationship "for all purposes," Minn. Stat. § 257.52 (2014), including intestacy, *see* Minn Stat. § 524.1-201(22) (2014), and cannot be collaterally attacked in this action. *In re Trust Agreement dated December 31, 1974,*

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674 N.W.2d at 231 (holding adjudication of parentage in divorce proceeding cannot be collaterally attacked by petitioner in a trust-clarification action).

The first order conclusively determining the parent-child relationship between Prince, John, and Mattie was entered on September 24, 1968 in the marriage dissolution proceedings involving John and Mattie. In that order, the Hennepin County District Court: (a) found that John and Mattie had two children—"a daughter, Tyka Evene Nelson…and a son, Prince Rogers Nelson….;" and (b) ordered John to pay child support for each child. (Affidavit of Tyka Nelson, Ex. B at 2, Findings of Fact ¶ 4; *id.* at 3, Conclusions of Law ¶ 3.) For all intents and purposes, this order is identical to the marriage dissolution decree the Minnesota Court of Appeals found to be determinative of parentage in *In re Trust Agreement dated December 31, 1974*. In the *Trust Agreement* case, the determinative document was a marriage "dissolution decree," which was reduced to judgment, acknowledged the divorcing father "was the younger children's father," and established his "child-support obligations" for those children. 674 N.W.2d at 229.

The second order conclusively determining the parent-child relationship between Prince, John, and Mattie was entered on October 5, 2001 by the Carver County District Court in probate proceedings involving John's estate. These proceedings were commenced by Prince himself, who served as personal representative of the estate. Prince commenced the proceedings by filing an Application for Informal Appointment of Personal Representative (Intestate), which he signed under penalty of perjury, and in which he identified himself as John's "son with an interest in expediting probate of his estate." (Affidavit of Norrine Nelson Ex. I at 2, Question 17.) In an order granting Prince's application, the Court found Prince "had priority and is entitled to be appointed personal representative" of his father's estate precisely because he identified himself as John's son, which the Court found to be true. (Affidavit of Norrine Nelson Ex. J at 1, ¶ 8.)

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These judicial determinations of a parent-child relationship between Prince, John, and Mattie are precisely the kind of determinations that cannot be attacked collaterally in these proceedings by any person attempting to establish a sibling or half-sibling relationship with Prince. In other words, because of these determinations, Minnesota law prohibits any person from attempting to establish a sibling or half-sibling relationship with Prince by suggesting that anyone other than John and Mattie are Prince's biological or genetic parents. *In re Trust Agreement dated December 31, 1974*, 674 N.W.2d at 232-33 (noting the Minnesota Parentage Act "provides limited opportunity for certain specified individuals to challenge a determination of paternity previously adjudicated in a divorce proceeding[,]" and prohibiting a collateral attack on such a determination in violation of the standing and timeliness requirements of the Parentage Act).

Even if Minnesota law permitted a collateral attack on these judicial determinations of Prince's parentage (it does not), the Parentage Act limits the class of persons who could mount such an attack and establishes a short time frame within which such an attack must be made. Minn. Stat. § 257.57 (2014). In fact, only the child, the child's biological mother, or a person presumed to be the child's father under the Parentage Act has standing to bring an action to declare the non-existence of a presumed father-child relationship, and such actions generally must be commenced before the child's third birthday. *Id.*; *In re Estate of Jotham*, 722 N.W.2d 447, 455-56 (Minn. 2006) (in a probate action, "a Parentage Act paternity presumption may be rebutted only by one who meets the standing and timeliness requirements for an action to declare the nonexistence of the presumed father-child relationship" under the Act); *DeGrande v. Demby*, 529 N.W.2d 340, 343-44 (Minn. Ct. App. 1995) (holding: (a) the "Minnesota Parentage Act preempts all other means by which an action to declare non-paternity may be brought"; and (b)

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"[e]ven in the face of scientific evidence excluding [a father's] biological paternity, the three year-statute of limitations contained in the Minnesota Parentage Act is an absolute bar to an action to declare the father-child relationship nonexistent"), *review granted* (Minn. May 16, 1995), *appeal dismissed* (Minn. July 27, 1995)

In sum, the parent-child relationship between Prince, John Nelson, and Mattie Della Shaw has been conclusively and irrebutably established as a matter of law. Under the Parentage Act and the Probate Code, no person may attempt to establish an heirship claim in this matter by demonstrating, through genetic evidence or otherwise, that Prince's parents are anyone other than John and Mattie. Even if the law permitted such claims (it does not), the applicable statute of limitations on a collateral attack of the parentage presumption at issue has long since passed, and standing requirements preclude anyone claiming to be a sibling or half-sibling of Prince (or their descendants) from mounting such an attack.

B. The Special Administrator Should Reject Heirship Claims that Do Not Allege Facts Sufficient to Establish a Reasonable Possibility of Heirship.

On a more practical level, the Parentage Act also requires application of evidentiary safeguards to preclude frivolous claims of paternity. One such safeguard is the requirement that, before any genetic testing is ordered in connection with a parentage claim, an affidavit must be filed "either alleging or denying paternity and setting forth facts that establish the reasonable possibility that there was, or was not, the requisite sexual contact between the [alleged parents]." Minn. Stat. § 257.62, subd.1 (emphasis added).[1] The Minnesota Supreme Court has described this evidentiary requirement as an "additional protection . . . against frivolous claims of paternity . . . ." *Witso v. Overby*, 627 N.W.2d 63, 69 (Minn. 2001).

1 The Probate Code is silent with respect to genetic testing and parentage. The only applicable statute that speaks to genetic testing in this context is contained in the Parentage Act. *See* Minn. Stat.§ 257.62.

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In probate proceedings, Minnesota courts apply this evidentiary safeguard to protect against frivolous claims that either challenge or attempt to establish parentage. For example, in *In re Estate of Martignacco*, 689 N.W.2d 262, 264-65 (Minn. Ct. App. 2004), a party sought to establish a claim on the decedent's estate by alleging that he was the decedent's biological son; he asked for the disinterment of the decedent's body to conduct genetic testing and vet his parentage claim. The court granted this request, but only because the requesting party submitted the affidavit of his mother, who explained that her son (the requesting party) was conceived as a result of an extramarital affair with the decedent while she was married to another man. *Id.* at 264. The mother also testified that the decedent's name was not identified on her son's birth certificate in order to avoid embarrassment and humiliation, and that the truth surrounding his parentage was limited to a very small group of people. *Id.*

Similar evidentiary safeguards must be applied here. Any legitimate claim of relevant parentage must be supported by credible, first-hand testimony that establishes "the reasonable possibility that there was, or was not, the requisite sexual contact" between the alleged parents. Minn. Stat. § 257.62, subd. 1. Claims based on hearsay, second hand accounts, and speculation of a potential relationship to Prince do not warrant genetic testing in these proceedings. This evidentiary safeguard should be strictly applied by the Special Administrator and the Court in order to stem the tide of frivolous paternity claims and challenges in this matter, which are a disservice to Prince and his Estate.

C. Legal Questions Regarding the Interplay Between the Probate Code and Parentage Act Cannot Be Certified to the Court of Appeals.

At the June 27 hearing, the Court suggested it would consider certifying legal questions regarding the interplay between the Probate Code and Parentage Act to the Minnesota Court of Appeals, presumably for a prompt appellate-level resolution of such questions. While the

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Petition Heirs share the Court's interest in reaching a final determination of heirs as quickly and efficiently as possible, the Court does not have the authority to certify such questions to the Court of Appeals at this juncture.

Appealable judgments and orders are defined in Minnesota Rule of Civil Appellate Procedure 103.03. Under the rule, a trial court may certify a question to the Court of Appeals only if it finds the question is "important and doubtful," and only if the question arises from an order denying a motion to dismiss for failure to state a claim or from an order denying a motion for summary judgment. Minn. R. Civ. App. P. 103.03(h). Neither standard is met here. Although the legal issues presented by the interplay between the Parentage Act and Probate Code are important, they are not doubtful. *Emme v. C.O.M.B., Inc.*, 418 N.W.2d 176, 180 (Minn. 1988) ("A question is doubtful if there is no controlling precedent.") As explained above and in filings by the Special Administrator, the applicable provisions of the Parentage Act and Probate Code, as interpreted by Minnesota courts, provide the Special Administrator and the Court with clear guidance on the heirship determinations that must be made. Moreover, the Court has not ruled on or been presented with a motion to dismiss or for summary judgment. For all of these reasons, certification to the Court of Appeals is not permitted.

CONCLUSION

As noted above, the Petition Heirs desire a final determination of heirship as quickly and efficiently as possible, and in a manner that is consistent with Minnesota law. For the foregoing reasons, the Petition Heirs concur with the Special Administrator's interpretation of the Probate Code and Parentage Act, and we ask the Court to reaffirm its Order Approving the [Genetic Testing] Protocol developed by the Special Administrator.

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