

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Case Type: Special Administration
Court File No.: 10-PR-16-46
Judge: Kevin W. Eide

Estate of Prince Rogers Nelson,
Decedent,

REDACTED

And

Tyka Nelson,
Petitioner.

**MEMORANDUM IN SUPPORT OF
OMARR BAKER AND TYKA NELSON'S
OBJECTION TO SPECIAL
ADMINISTRATOR'S REQUEST FOR
LEGAL FEES THROUGH
DECEMBER 31, 2016**

INTRODUCTION

Omarr Baker and Tyka Nelson (“Objectants”), by and through their counsel, hereby object to the Special Administrator’s request for the payment of Stinson Leonard Street’s legal fees through December 31, 2016 from the Estate of Prince Rogers Nelson (“Estate”).

The Special Administrator bears the burden of proving both the amount and the reasonableness of the attorneys’ fees for which it seeks reimbursement from the Estate. And yet, the Special Administrator has provided no affidavits in support of its fees, and no way for the Court to determine their reasonableness. What is more, although the Special Administrator requested legal fees through December 31, 2016, it failed to provide Objectants with its invoices for the entirety of that period. For the invoices it actually provided—October and November 2016—the Special Administrator seeks an astonishing total of \$1,078,997.34.

Objectants hereby object to payment of the Special Administrator’s fees on the basis that the fees are not just and reasonable or commensurate with the benefit to the Estate. Among other

issues, the fees include thousands of dollars for the planned Tribute at U.S. Bank Stadium (which never occurred) and fees that arguably relate to claims outside the special administration of this Estate (for which the Special Administrator should not receive reimbursement). There are many similar issues to which the Special Administrator should be required to respond. Objectants therefore respectfully request that the Special Administrator's request for fees through December 31, 2016 be scheduled for a formal hearing.

FACTS

Following Prince Rogers Nelson's death on April 21, 2016, Tyka Nelson petitioned to have Bremer Trust, National Association ("Bremer") appointed Special Administrator for the Estate. Bremer accepted the appointment and was formally appointed following an emergency conference call on April 27, 2016. (*See* Order of Formal Appointment of Special Administrator.)

Bremer retained Stinson Leonard Street ("Stinson") as counsel and began to administer the Estate. Since that time, Bremer and its attorneys have performed work for the Estate. On October 28, 2016, the Court granted Bremer's initial attorneys' fees and set forth a procedure for approving future fees. Under the procedure, within 30 days of the end of each month, Bremer is authorized to pay its fees. (*See* Order Approving Fees and Costs and Expenses and Establishing Procedure for Review and Approval of Future Fees and Costs and Expenses ("Order"), p. 7.) Pursuant to the Order, on a quarterly basis, the Special Administrator is required to submit to the Court an affidavit attaching unredacted copies of all itemized billing statements. The Special Administrator is required to serve unredacted copies to counsel for the non-excluded heirs. (*Id.*) The non-excluded heirs have 10 days after service to submit written objections. (*Id.*)

On December 16, 2016, the Special Administrator filed its Petition for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator ("Petition"). The

Petition requests the Estate pay the Special Administrator's legal fees through December 31, 2016. In the Petition, the Special Administrator represented that it "will file its legal fees through December 31, 2016 prior to the January 12, 2017 hearing." At the time of filing its Petition, the Special Administrator did not provide to the Objectants its itemized billing statements, even for the completed months of October and November 2016.

On December 19, 2016, the Court entered an order holding that any objections to the Petition must be filed with the Court prior to or raised at the hearing scheduled for January 12, 2017. (*See* Notice and Order of Hearing on Petition for Order Approving Accounting, Distribution of Assets and Discharge of Special Administrator.) The Court's December 19 Order did not specify whether the Special Administrator's request for attorneys' fees would also be heard on January 12. The Court's subsequent order, dated December 28, 2016, similarly did not give any indication.

On January 5, 2017, nearly twenty days after filing the Petition, the Special Administrator finally served the Objectants with its October and November invoices ("Requested Fees"). However, it did not provide its December invoice, nor did it serve a copy prior to the January 12 hearing. At the January 12 hearing, the Special Administrator's request for attorneys' fees was not discussed in detail by the Special Administrator or by the Court.

Following the procedure as outlined in the Court's October 28 Order, Objectants hereby bring this objection 10 days after receipt of the Requested Fees. Objectants submit that the Requested Fees are facially excessive and it is unclear from the material submitted as to whether there was a benefit to the Estate. The Special Administrator filed no affidavit from any qualified person stating that Stinson's invoiced fees are reasonable. As such, the Objectants respectfully request the Court schedule the Special Administrator's request for attorneys' fees for a formal hearing and require Bremer to respond to discovery to facilitate a meaningful hearing.

ARGUMENT & AUTHORITIES

1. The Special Administrator Has Not Established that the Attorneys' Fees Incurred Benefitted the Estate

As party seeking to recover fees and expenses from the Estate, the Special Administrator has the burden to demonstrate that the fees incurred *actually benefitted the Estate*. *In re Estate of Evenson*, 505 N.W.2d 90, 92 (Minn. Ct. App. 1993).

Under Minnesota Statutes § 525.515(b), a personal representative (and by extension, a special administrator)'s counsel is entitled to *reasonable* compensation for services rendered on behalf of an estate. In assessing requests for attorneys' fees reimbursements in this context, the Court must consider the following factors; (1) the time and labor required; (2) the experience and knowledge of the attorney; (3) the complexity and novelty of problems involved; (4) the extent of the responsibilities assumed and the results obtained; and (5) the sufficiency of assets properly available to pay for the services. *Id.*; *see also Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 621 (Minn. 2008). The Court has wide discretion in approving and denying motions for reimbursement of attorneys' fees from an estate. *In re Estate of Balafas*, 225 N.W.2d 539, 541 (Minn. 1975).

Even when authorized by statute, the ability to allow fees should be cautiously exercised. While Minnesota courts have not clearly defined "benefit" to the estate, they have allowed recovery from an estate in varying circumstances. *See, e.g., Gellert v. Eginton*. 770 N.W.2d 190, 198 (Minn. Ct. App. 2009); *In re Estate of Van Den Boom*, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999).

In granting attorneys' fees, a district court has discretion. *See* Minn. Stat. §§ 525.515, 524.3-720 (2016); *In re Estate of Wesberg*, 64 N.W.2d 370 (Minn. 1954) (holding that the district court's decision to reduce the requested amount of attorneys' fees was not an abuse of discretion). However, the decision "is discretionary only in the sense that no fixed rules determine the proper allowance, and it is not discretionary in the sense that courts are at liberty to give anything more

than a *fair* and *reasonable* compensation.” *In re Simmons’ Estate*, 8 N.W.2d 222, 222 (Minn. 1943) (emphasis added).

In the present case, the services provided by Stinson appear to be internally largely duplicative and redundant. It is unclear how the Requested Fees produced work that exclusively benefitted the Estate. It is well-established that Bremer, as special administrator, has powers similar to a personal representative (*see* Minn. Stat. § 524.3-617)—powers which are quite broad as they allow the administrator to work to “to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and applicable law and as expeditiously and efficiently as is consistent with the best interests of the estate.” Minn. Stat. § 524.3- 703(a). This provides broads power and discretion to carry out the duty to “take all steps reasonably necessary for the management, protection and preservation of the estate property. Minn. Stat. §§ 524.3-709, 524.3-711. This power generally may be exercised without notice, hearing, or order of court. Minn. Stat. § 524.3-715.

Objectants acknowledge the Special Administrator’s important role in the Estate. However, the Objectants also have an important role and are entitled to object to fees that do not comport to the standards courts have set for determining if the fees are reasonable. A careful examination of the Requested Fees demonstrates that the Requested Fees are clearly excessive—especially in light of the exceptional work done by counsel for the Non-Excluded Heirs. Since Bremer’s appointment as Special Administrator, counsel for the Non-Excluded Heirs have worked tirelessly to ensure the Estate is administered fairly—and have, at times, corrected mistakes by the Special Administrator.

Additionally, since the Court appointed the Special Administrator in April 2016, it has become clear that Stinson’s fees are much greater than the fees approved and paid to Bremer. (*See, e.g.,* Order at p. 9; Oct. 14, 2016 Mem. in Support of Mot. to Approve Payment of Special Administrator’s and Attorneys’ Fees and Costs Through Sept. 30, 2016 at p. 2). Not only are

Stinson's fees substantially greater than Bremer's fees, the fees also appear to be duplicitous of the work Bremer has done. It is the Objectants' position that the Requested Fees are internally duplicative, redundant, and constitute in large part of work that Bremer delegated to Stinson. Before the Court approves the Requested Fees, it should hold a formal hearing to ensure they are just and reasonable and commensurate with the benefit to the Estate.

What is more, the Special Administrator has flaunted the orders of this Court. Pursuant to the procedure established in the Order, the Special Administrator is required to submit to the Court for review a "Special Administrator Fee Affidavit" that details its fee approval request. (*See* Order at p. 7.) The Special Administrator did not provide any affidavit to support the Requested Fees. Actually, the Special Administrator did not even provide invoices for *all* of the fees requested. Just 7 days before the January 12 hearing, the Special Administrator provided copies of its October and November 2016 invoices. There was no indication of when the Non-Excluded Heirs would receive copies of its December 2016 invoice—in fact, the Special Administrator did not provide the invoice in advance of the January 12 hearing, as promised in its Petition, and to date has still not provided it.

Without the required fee affidavit, the Objectants have no way of determining whether some of the questionable entries in the Requested Fees did in fact benefit the Estate. What is more, at the hearing on January 12, 2017, counsel for the Special Administrator stated on the record that Stinson was performing work regarding potential claims against Bremer. Objectants cannot determine from the descriptions provided what work Stinson did that benefitted Bremer directly. The Court should not reimburse Bremer for any legal fees with respect to claims against Bremer personally—the only fees for which the Special Administrator is entitled to reimbursement is legal work that benefitted the Estate. If the Court awards the Requested Fees without question, it will only encourage the Special Administrator to continue with its questionable recordkeeping and

billing practices. Accordingly, the Objectants respectfully request the Court deny the Requested Fees in their entirety, or, in the alternative, to put the Requested Fees to a formal hearing and require the Special Administrator to comply with the procedure outlined in the Court's October 28 Order.

2. The Special Administrator Has Failed to Establish that the Requested Attorneys' Fees Are Commensurate with the Value of any Benefit to the Estate.

Whether attorneys' fees benefitted the Estate is a question of fact for the trial court. *In re Baumgartner's Estate*, 144 N.W.2d 574, 580 (Minn. 1966); *In re Estate of Van Den Boom*, 590 N.W.2d at 354. In determining whether the attorneys' fees sought are just and reasonable, a court weighs the factors set forth in Minnesota Statutes § 525.515(b). The Court will consider all the factors, and the estate's value *shall not* be the controlling factor in determining the reasonableness of attorneys' fees. *See* Minn. Stat. § 525.515(c). "The courts have a duty to prevent dissipation of estates through the allowance of exorbitant fees to those who administer them." *In re Weisberg's Estate*, 64 N.W.2d 370, 372 (Minn. 1954).

In the present case, the claims asserted by the Special Administrator fail to establish how they benefitted the Estate. First, as established above, the Special Administrator failed to provide a Fee Affidavit outlining the fees requested and the purported benefit to the Estate. This makes it impossible—in situations in which the descriptions on the invoices are unclear—to determine whether the work was performed to benefit the Estate. As stated above, the Special Administrator has stated outright that it is addressing claims against Bremer personally. The Court should make sure that Bremer is not reimbursed for these fees, and others, that clearly did not benefit the Estate. Second, the Special Administrator failed to meet its burden to establish benefit to the Estate resulting from their services that is commensurate with the claimed expenses. For example, many of the claimed services are for work for the Tribute that was to take place at U.S. Bank Stadium. As is well-known to the Court, that Tribute never took place. [REDACTED]

[REDACTED]

[REDACTED] In essence, much of the claimed expenses are for work that was never realized and did not benefit the Estate.

Finally, much of the work provided was unnecessarily duplicative from a staffing perspective. More than twenty-five timekeepers were unnecessarily involved in tasks or issues that simply did not require that type of professional manpower. As stated above, Stinson's fees requested from the Estate greatly exceed Bremer's fees. And yet, there is no explanation for this discrepancy. Nor has there been any explanation as to whether Bremer directly or indirectly assigned to Stinson its tasks as Special Administrator. The Court, the Estate, and the Objectants deserve an explanation.

CONCLUSION

For all the foregoing reasons, Omarr Baker and Tyka Nelson respectfully request the Court deny the Special Administrator's for payment of attorneys' fees from the Estate. In the alternative, Omarr Baker and Tyka Nelson respectfully request the Court compel the Special Administrator to adhere to the procedure outlined in the Court's October 28, 2016 Order and submit all invoices and the required Fee Affidavits, and put the requested attorneys' fees to a formal hearing.

Dated: January 17, 2017

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