

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,
Decedent.

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

**MEMORANDUM IN SUPPORT OF
MOTION TO APPOINT
SPECIAL MASTER**

Omarr Baker (“Baker”), Alfred Jackson (“Jackson”), and Tyka Nelson, by and through counsel, bring this Memorandum in Support of their Motion to Appoint the Honorable James H. Gilbert of Gilbert Mediation Center, Ltd. (“Justice Gilbert”) as Special Master pursuant to Minnesota Rule of Civil Procedure 53.

BACKGROUND

The late Prince Rogers Nelson died in Carver County on April 21, 2016. As a result of Prince’s death, his Estate is currently in probate in this Court. Tyka Nelson, Baker, and Jackson are three of Prince’s six named heirs. (Order Determining Intestacy, Heirship, and McMillan Motions, dated May 18, 2017.) Tyka Nelson, Baker, and Jackson’s counsel moved the Court for an award of attorneys’ fees pursuant to Minnesota Statutes, § 524.3-720. The Court granted in part and denied in part those motions. (Second Order and Memorandum Approving Payment of Attorneys’ Fees and Costs, dated April 5, 2017; Third Order & Memorandum Approving Payment of Attorneys’ Fees and Costs, dated May 15, 2017.)

Baker and Jackson’s counsel appealed the Court’s orders to the Minnesota Court of Appeals. (Notice of Appeal to Court of Appeals, dated June 5, 2017.) On January 22, 2018, the Court of Appeals issued its opinion affirming in part, reversing in part, and remanding the fee

awards the Court filed on April 5, 2017 and May 15, 2017. *In the Matter of the Estate of Prince Rogers Nelson, Decedent*, No. A17-0880, 2018 WL 492639 (Minn. Ct. App. Jan. 22, 2018). The Court of Appeals entered Judgment on March 16, 2018 and no party sought review by the Minnesota Supreme Court.

The Court issued an order stating that by March 2, 2018, the parties shall submit any memoranda to assist the Court in supplementing its findings in connection with the decisions filed on April 5, 2017 and May 15, 2017 in response to the Minnesota Court of Appeals decision filed on January 22, 2018. (Order for Submissions Regarding Remanded Attorney Fee Orders, dated Jan. 25, 2018, the “January 25 Order”.) The parties then agreed to mediate the fee issues in connection with the decisions filed on April 5, 2017 and May 15, 2017. In order to facilitate mediation, the parties agreed to continue the deadline in the Court’s January 25 Order. The parties later stipulated to continue deadline until July 2, 2018. (Stipulation and Order, dated May 2, 2018.)

Tyka Nelson, Baker, and Jackson now move to appoint the Justice Gilbert as Special Master pursuant to Minnesota Rule of Civil Procedure 53. Justice Gilbert has indicated he will accept the Special Master role if the Court appoints him.

ARGUMENT

Minnesota Rule of Civil Procedure 53 gives the Court authority to appoint a Special Master to “(1) perform duties consented to by the parties; (2) hold trial proceedings and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by (A) some exceptional condition; or (B) the need to perform an accounting or resolve a difficult computation of damages; or (3) address pretrial and post-trial matters that cannot be addressed effectively and timely by an available district judge.” Minn. R. Civ. P. 53.01(a). The Court has authority to appoint a Special Master to determine attorneys’ fees issues. *Brickner v.*

One Land Dev. Co., 742 N.W.2d 706, 712 (Minn. Ct. App. 2007) (affirming “appointment of a special master to determine cost and attorney fees. . .”).

Tyka Nelson, Baker, and Jackson seek to appoint Justice Gilbert as Special Master regarding the remanded fees issue. The duties of the Special Master will be to conduct conferences or hearings, request and review written submissions, and promote the prompt and efficient disposition of the fee issue that the Minnesota Court of Appeals remanded to this Court on January 22, 2018. This is within the duties envisioned under Rule 53.

The Estate has already retained Justice Gilbert to mediate this issue, so the Estate will compensate Justice Gilbert as Special Master at the same rate he was compensated as a mediator. Baker’s counsel has discussed this Special Master motion with the Personal Representative, Comerica Bank & Trust, N.A. (“Comerica”). (Affidavit of Thomas P. Kane in Support of Motion to Appoint Special Master, ¶ 3.) Baker and Jackson’s counsel have also discussed this Special Master motion with counsel for Sharon, Norrine, and John Nelson (“SNJ”), who did not agree to move to appoint Justice Gilbert to act as Special Master on this issue. (*Id.*, ¶ 5.) As the Court held in its order dated May 15, 2018, SNJ “have consistently objected to basically all of the actions of the Personal Representative and, for the most part, the opinions of the other Heirs.” (Order on the Appointment of Heirs Representatives, dated May 15, 2018, p. 2.) The scope of the Special Master’s duties are detailed in the accompanying Proposed Order.

CONCLUSION

For all the above reasons, Omarr Baker, Alfred Jackson, and Tyka Nelson respectfully requests this Court appoint Justice Gilbert as Special Master.

Dated: May 17, 2018

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