

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

FIRST JUDICIAL DISTRICT
PROBATE DIVISIONFile No.: 10-PR-16-46
Judge Kevin W. Eide

In re:Estate of Prince Rogers Nelson,

Decedent.

**[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER
FOR JUDGMENT AND
JUDGMENT ESTABLISHING
ATTORNEYS' LIEN**

The above-referenced matter came on for hearing on January 23, 2019 at 8:30 a.m. before the Honorable Judge Kevin W. Eide, on Barnes & Thornburg LLP's ("Barnes & Thornburg") application pursuant to Minn. Stat. § 481.13 for the establishment of Barnes & Thornburg's cause-of-action attorney's lien, the amount of said lien and the entry of judgment adjudging the amount due Barnes & Thornburg on its attorneys' lien arising from Barnes & Thornburg's prior representation of Tyka Nelson ("Ms. Nelson") in the above-captioned probate proceeding (the "Application").

Shane Solinger appeared on behalf of Barnes & Thornburg, LLP.

John C. Holper of Winthrop & Weinstine, P.A. appeared on behalf of Holland & Knight, LLP.

Brian A. Dillon appeared on behalf of Gray, Plant, Mooty, Mooty & Bennett, P.A.

Ms. Nelson, appearing pro se, was also in attendance.

Other appearances were noted on the record.

The Court having considered Barnes & Thornburg's submissions on its application, and based upon the arguments presented at the hearing and all the Court's files, records, and

proceedings herein, makes the following Findings of Facts, Conclusions of Law, Order for Judgment and Judgment.

FINDINGS OF FACT

1. Barnes & Thornburg served as legal counsel for Ms. Nelson in the above-captioned probate proceeding (the "Proceeding") from January 19, 2018 through August 13, 2018 and provided valuable legal services to or for the benefit of Ms. Nelson in connection with this Proceeding for which Barnes & Thornburg remains unpaid.

2. Barnes & Thornburg's representation of Ms. Nelson was governed by a written engagement agreement which set forth the conditions of Barnes & Thornburg's representation.

3. In the written engagement agreement executed by Ms. Nelson, Ms. Nelson granted Barnes & Thornburg an attorney's lien as collection on an unpaid account. Ms. Nelson agreed that until Barnes & Thornburg is paid in full on all of her legal matters, and except to the extent otherwise prohibited or limited by law, Barnes & Thornburg shall have a lien on all papers and files in Barnes & Thornburg's possession related to any of the matters in which Barnes & Thornburg represented Ms. Nelson, and any property recovered or obtained as a result of our work on her behalf. Barnes & Thornburg terminated its representation of Ms. Nelson on August 13, 2018 due to non-payment of fees.

4. The compensation due Barnes & Thornburg for unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in the Proceeding is \$21,816.50, exclusive of collection costs.

5. All of the unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in connection with the Proceeding were necessary and reasonable for the proper and competent representation of Ms. Nelson by Barnes & Thornburg in the Proceeding.

6. Barnes & Thornburg's unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in connection with the Proceeding are specifically and adequately supported by the December 26, 2018 and October 12, 2018 affidavits of Lee A. Hutton, III, and the February 18, 2019 affidavit of Shane T. Solinger, submitted in this action.

7. Barnes & Thornburg's cause-of-action attorney's lien attached effective January 29, 2018 when Barnes & Thornburg filed its Substitution of Counsel and Consent to Substitution.

CONCLUSIONS OF LAW

1. Minn. Stat. § 481.13, subd. 1(a) provides that: "An attorney has a lien for compensation whether the agreement for compensation is expressed or implied (1) upon the cause of action from the time of the service of the summons in the action, or the commencement of the proceeding...."

2. Minn. Stat. § 525.491 extends this provision for attorneys appearing on behalf of an heir in a probate proceeding, providing:

"When any attorney at law has been retained to appear for any heir or devisee, such attorney may perfect a lien upon the client's interest in the estate for compensation for such services as may have been rendered respecting such 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. The perfecting of such a lien, as herein provided, shall have the same effect as the perfecting of a lien as provided in section 481.13, and such lien may be enforced and the amount thereupon determined in the manner therein provided."

3. If the attorney did not represent the client at the time of the commencement of the proceeding, the lien arises at the time the attorney first appears in the proceedings. *Williams v. Dow Chemical Co.*, 415 N.W.2d 20, 25-26 (Minn. Ct. App. 1987).

4. The value of a cause-of-action attorney's lien is determined based on the terms of the fee provisions of a retainer agreement. *Thomas A. Foster & Assocs., LTD v. Paulson*, 699 N.W.2d 1, 6 (Minn. Ct. App. 2005).

5. An attorney holding a cause-of-action lien need not file separate notice of the attorney's lien for that attorney's lien to have priority over third-party claims. *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592, 596 (Minn. 2016).

6. Once formed, a cause-of-action attorney's lien exists until it is satisfied and is not extinguished by the entry of judgment on the cause of action. *Williams*, 415 N.W.2d at 26 (citing *Desaman v. Butler Bros.*, 131 N.W. 463, 464 (Minn. 1911)).

7. Pursuant to Minn. Stat. § 4p81.13, subd. 1(a), Barnes & Thornburg has established a valid and enforceable cause-of-action attorney's lien on any proceeds that Ms. Nelson receives from the estate and on any distribution, award, judgment, settlement, or recovery she receives from any source, or that is obtained on Ms. Nelson's behalf or for her benefit, regardless of whether such distribution, award, judgment, settlement, or recovery is received or obtained in her capacity as a beneficiary of the estate, solely to the extent of Barnes & Thornburg's reasonable attorney's fees and costs incurred on Ms. Nelson's behalf and that remain unpaid at the time of any such distribution to Ms. Nelson or at the conclusion of Barnes & Thornburg's representation of Ms. Nelson.

8. The reasonable amount of Barnes & Thornburg's cause-of-action attorney's lien is \$21,816.50.

9. Barnes & Thornburg's cause-of-action attorney's lien attached and was effective against third- parties as of January 29, 2018, when Barnes & Thornburg first appeared in the

Proceeding on Ms. Nelson's behalf by filing a Substitution of Counsel and Consent to Substitution.
See City of Oronoco v. Fitzpatrick Real Estate, LLC, 883 N.W.2d 592, 596 (Minn. 2016).

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

ORDER FOR JUDGMENT

1. Barnes & Thornburg's Application is hereby GRANTED in its entirety.
2. Pursuant to Minn. Stat. § 481.13, subd. 1(c) judgment in favor of Barnes & Thornburg shall be immediately entered and docketed establishing that Barnes & Thornburg is the holder of a valid, enforceable and duly perfected cause-of-action attorney's lien in the amount of \$21,816.50. Barnes & Thornburg is further entitled to tax statutory costs incurred in seeking the establishment and determination of its cause- of-action attorney's lien.
3. Upon entry and docketing of judgment herein, Barnes & Thornburg's cause-of action attorney's lien shall be satisfied from any proceeds that Ms. Nelson receives from the estate and on any distribution, award, judgment, settlement, or recovery she receives from any source, or that is obtained on Ms. Nelson's behalf or for her benefit, regardless of whether such distribution, award, judgment, settlement, or recovery is received or obtained in her capacity as a beneficiary of the estate.
4. Barnes & Thornburg's cause-of-action attorney's lien is superior to, and has priority over, any claim, interest, or lien of any person or entity whose claim, interest or lien was not perfected prior to January 19, 2018.

IT IS SO ORDERED.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE IMMEDIATELY ENTERED AND DOCKETED.

Dated: _____, 2019

BY THE COURT

Kevin W. Eide
District Court Judge

JUDGMENT

I hereby certify that the above order constitutes the judgment of the Court.

Dated: _____, 2019

COURT ADMINISTRATOR

By: _____
Deputy Clerk