Filed in District Court
State of Minnesota
7/8/2020 4:54 PM

EXHIBIT B

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0503
A19-0507

In re the Estate of Prince Rogers Nelson, Deceased.

Filed November 25, 2019
Affirmed in part, reversed in part, and remanded
Reilly, Judge

Carver County District Court
File No. 10-PR-16-46

Barbara P. Berens, Erin K. Fogarty Lisle, Carrie L. Zochert, Berens & Miller, P.A., Minneapolis, Minnesota; and

John J. Rosenberg (pro hac vice), Rosenberg, Giger & Perala P.C., New York, New York (for appellants CAK Entertainment, Inc. and Charles Koppelman)

Alan I. Silver, Andrea E. Reisbord, Bassford Remele, Minneapolis, Minnesota (for appellants NorthStar Enterprises Worldwide, Inc. and L. Londell McMillan)

Peter J. Gleekel, William J. Tipping, Bradley R. Prowant, Larson • King, LLP, St. Paul, Minnesota (for respondent Estate)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Reilly, Judge.

SYLLABUS

The plain and unambiguous language of Minn. Stat. § 524.3-721 (2018), allows a district court, upon a proper motion, to review the reasonableness of compensation received by a specialized agent employed by the estate, to order appropriate refunds if the compensation received is determined to be excessive, and to fashion interim injunctive relief if warranted after analysis of the factors set forth in *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965).

OPINION

REILLY, Judge

In these consolidated appeals from an order in which the district court directed appellants to refund to respondent estate commissions they previously received, appellants argue that the district court (1) erred by allowing the estate to proceed with its claim under Minn. Stat. § 524.3-721; (2) denied appellants due process of law by allowing the estate to proceed under Minn. Stat. § 524.3-721; (3) erred by granting a temporary injunction without addressing the *Dahlberg* factors; and (4) abused its discretion by holding appellants, including their officers, directors, shareholders, employees, agents, assigns and successors, to be jointly and severally liable to the estate for the funds to be refunded. We affirm in part, reverse in part, and remand.

FACTS

Recording artist Prince Rogers Nelson (Prince) died on April 21, 2016. Shortly thereafter, the district court granted a petition, brought by Prince's sister, to appoint Bremer Trust N.A. (Bremer) as Special Administrator of the Estate of Prince Rogers Nelson (the Estate). Bremer subsequently moved for authorization to negotiate with and potentially employ entertainment industry experts to assist Bremer with management and preservation of the wide-ranging intellectual property of the Estate. The district court granted Bremer's motion, and Bremer later retained appellant L. Londell McMillan (McMillan) on behalf of appellant NorthStar Enterprises Worldwide Inc. (NorthStar), and appellant Charles

Koppleman (Koppleman) on behalf of appellant CAK Entertainment Inc. (CAK), to act as advisors to monetize the Estate's intellectual property.[1]

The "Advisor Agreement" between Bremer and Advisors provided:

> 5. **Services:** During and throughout the Term, Advisor[s] agree[] to be available to perform and shall undertake to perform services in the Entertainment Industry and advise and counsel [Bremer] in all aspects of [Bremer's] business in the Entertainment Industry related to [Prince] . . . . During the Term, [Bremer] agrees to promptly refer to Advisor[s] and to instruct all third parties to refer to Advisor[s] for advice and counsel all verbal and written leads, communications, or requests in connection with all engagements and arrangements that are within the scope of this Agreement.

In exchange for their services, the Advisor Agreement provided that Advisors would be paid a fixed ten-percent commission on "all Gross Monies" paid to the Estate pursuant to agreements entered into by the Estate that resulted from services provided by Advisors. Section 6 of the Advisor Agreement stated that Advisors' commissions were deemed to have been earned by Advisors "simultaneously with the payment to" the Estate of any amounts due under such agreements.

Advisors were paid commissions in connection with two contracts that were entered into by the Estate. The first contract was with Jobu Presents LLC (Jobu) to organize and promote a Prince tribute concert. Under the terms of Jobu's proposal, Jobu would guarantee an advance payment to the Estate of $7 million, one-third of which would be payable to the Estate shortly after the agreement was signed. Bremer accepted Jobu's

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[1] NorthStar and CAK will be hereinafter referred to as "Advisors."

proposal on July 7, 2016. Jobu then advanced a portion of the required one-third payment to the Estate and directly paid McMillan $116,666, his half of the ten-percent commission. CAK was not paid its half of the ten-percent commission.

Later, the agreement with Jobu collapsed and Jobu demanded repayment of its advance under the threat of litigation. The Estate refunded the entire advance, including McMillan's $116,666 commission. And Jobu later sued Bremer, Koppleman, CAK, McMillan, and NorthStar, alleging that they fraudulently induced Jobu to enter into the Jobu Agreement (Jobu litigation).

In addition to the contract with Jobu, the Estate contracted with Universal Music Group (UMG) for the distribution and marketing of certain recordings. Pursuant to this agreement, UMG agreed to pay $31 million to the Estate, and, as dictated by terms of the Advisor Agreement, a ten-percent commission would be paid by UMG to Advisors. Bremer submitted the proposed UMG agreement, along with several other proposed agreements, to the district court for approval. Certain heirs opposed the UMG transaction, arguing that the transaction would violate an earlier agreement between Prince and Warner Brothers Records Inc. (WBR). These heirs also challenged, among other things, the reasonableness of the ten-percent commission to be paid to Advisors under the Advisor Agreement.

The district court granted Bremer's motion to approve the UMG agreement. UMG paid the Estate approximately $28 million, which consisted of the $31 million contract price, less Advisors' commissions. UMG also directly paid to Advisors $3.1 million, as their ten-percent of the $31 million contract price, allocated equally between Advisors.

January 31, 2017 marked the final day of Advisors' term as advisors to the Estate and Bremer's appointment as special administrator. The next day, Comerica Bank & Trust N.A. (Comerica) was appointed as personal representative of the Estate. Shortly thereafter, WBR contacted Comerica, claiming an interest in certain recordings that were part of the Estate's agreement with UMG. Because it was concerned about potential litigation with WBR, the Estate rescinded the UMG agreement and refunded the entire advance, including the $3.1 million in commission paid to Advisors.

The district court appointed Peter Gleekel and the law firm Larson • King LLP as second special administrator (SSA) of the Estate and granted the SSA authority to conduct "an independent examination of the facts, circumstances and events relating to the rescission of the UMG Agreement." The SSA's authority was later expanded to include an independent examination related to the Jobu Agreement.

Following its investigations, the SSA filed two reports, finding actionable conduct by Advisors in connection with both transactions. The SSA brought a motion under Minn. Stat. § 524.3-721, seeking an order requiring Advisors to refund commissions paid in connection with the terminated agreement with Jobu and the rescinded agreement with UMG. The district court granted the motion in part on March 11, 2019, concluding that under Minn. Stat. § 524.3-721, "it is appropriate that the Advisors be required to refund the Jobu and UMG commissions to the Estate." The district court ordered that within 30 days of the entry of the order, appellants, "including [their] officers, directors, shareholders, employees, agents, assigns and successors . . . shall refund to the Estate all compensation received as a result of the terminated Jobu transaction and rescinded UMG transaction," and that failure to adhere to the order would result in Advisors "being held in contempt of court." The district court also "deemed" the order "temporary" in "order to protect the assets of the Estate," and ordered that the "refunded commissions . . . be held in a designated escrow account by the attorneys for the Estate and not distributed until further order of the Court." Finally, the district court held Advisors to be "jointly and severally liable to the Estate" for the commissions ordered to be refunded.

Advisors each filed notices of appeal. This court consolidated the appeals and questioned whether the March 11, 2019 order was appealable as a matter of right. After the parties filed informal memoranda, this court concluded that "[b]ecause the March 11, 2019 order has the characteristics of a temporary mandatory injunction, the order is appealable under Minn. R. Civ. App. P. 103.03(b)," and accepted jurisdiction over this appeal.

ISSUES

I. Did the district court err by determining that Advisors are subject to the provisions of Minn. Stat. § 524.3-721?

II. Did the district court's application of Minn. Stat. § 524.3-721 in the context of a temporary injunction deny Advisors due process of law?

III. Did the district court err by granting a temporary injunction in favor of the Estate without analyzing the *Dahlberg* factors?

IV. Did the district court abuse its discretion by holding Advisors, including their officers, directors, shareholders, employees, agents, assigns and successors, jointly and severally liable to the Estate for the commissions ordered to be refunded?

ANALYSIS

I.

Advisors challenge the district court's grant of injunctive relief, arguing that Advisors are not subject to the provisions of Minn. Stat. § 524.3-721. This argument presents a question of statutory interpretation, which is reviewed de novo. *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716 (Minn. 2014).

The object of statutory interpretation is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018); *see also Linn v. BCBSM, Inc.*, 905 N.W.2d 497, 501 (Minn. 2018). This court applies the plain meaning of a statutory provision if the legislative intent "is clear from the unambiguous language of the statute." *Staab*, 853 N.W.2d at 716–17. We also "give effect to all of the statute's provisions," and "no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 33 (Minn. 2015) (quotation omitted). "We construe nontechnical words and phrases according to their plain and ordinary meanings" and "look to dictionary definitions to determine the plain meanings of words." *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014).

Minnesota Statutes section 524.3-721 provides:

> After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for personal representative services, may be reviewed by the court. Any

> person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

The district court concluded that Advisors are "subject to the provisions of Minn. Stat. § 524.3-721" because they fall into the category of specialized agents. The district court noted that although the Advisor Agreement "includes details as to when commissions are to be paid to Advisors, it is silent as to when, or the circumstances under which, commissions would be refunded to the Estate." The district court also stated that, although it "is aware that many factors were involved in the termination of the Jobu agreement and rescission of the UMG agreement," it "is deeply concerned that the Estate may be out over 3 million dollars as a result." The district court, therefore, required Advisors "to refund the Jobu and UMG commissions to the Estate," and ordered the commissions to "be held in a designated escrow account by the attorneys for the Estate." But the court stated that it would "not . . . make a final determination as to the Estate's entitlement to a refund of the Advisor fees without a full record and consideration of the provisions of the Advisor Agreement."

Advisors argue that section 524.3-721 is not applicable because that statute generally applies to accountants and attorneys hired by the estate. And Advisors contend that although section 524.3-721 refers to "specialized agents," they are not "specialized agents" within the meaning of the statute. We disagree. The term "specialized agent" is not defined by the probate statutes. Consequently, we look to the plain meaning of the term. *De Guardado v. Guardado Menjivar*, 901 N.W.2d 243, 247 (Minn. App. 2017). To determine the plain meaning of a word in a statute, courts often consider dictionary definitions. *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016). Plain meaning also assumes the ordinary usage of words that are not statutorily defined. *Occhino v. Grover*, 640 N.W.2d 357, 359 (Minn. App. 2002), *review denied* (Minn. May 28, 2002).

A "special agent" is "[a]n agent employed to conduct a particular transaction or to perform a specified act." *Black's Law Dictionary* 77 (10th ed. 2014). And "specialize" means "[t]o provide something particular or have something as a focus: *The shop specializes in mountain-climbing gear.*" *The American Heritage Dictionary of the English Language* 1681 (5th ed. 2011). Here, Advisors were specifically appointed as entertainment industry experts to monetize the Estate's intellectual property. Advisors were appointed to conduct particular, specialized acts. The district court therefore did not err by concluding that Advisors are "specialized agents" within the meaning of Minn. Stat. § 524.3-721.

Advisors also argue that the district court's interpretation of section 524.3-721 "is directly contrary to the plain intent and purpose of the statute and contravenes both established Minnesota law and the [district] Court's own prior orders." To support its argument, NorthStar broadly asserts that the district court's reliance on section 524.3-721 was "not appropriate in light of the complexity and disputed facts that are present in connection with the UMG and Jobu Transactions." NorthStar contends that because the issue before the district court required "more analysis, including presentation of testimony and exhibits," it was "not appropriate for consideration by the court on a summary basis by an administrative motion" under Minn. Stat. § 524.3-721.

We are not persuaded. Despite arguing that any consideration of the Estate's claim under Minn. Stat. § 524.3-721 contravenes the "intent" of the statute, NorthStar fails to demonstrate how the statute is ambiguous. It is well settled that, "[w]here the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). And "a particular provision of a statute cannot be read out of context but must be taken together with other related provisions to determine its meaning." *Kollodge v. F. & L. Appliances, Inc.*, 80 N.W.2d 62, 64 (Minn. 1956). We must, therefore, "read and construe a statute as a whole," and "interpret each section in light of the surrounding sections to avoid conflicting interpretations," *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000), in order to "harmonize and give effect to all its parts," *Van Asperen v. Darling Olds, Inc.*, 93 N.W.2d 690, 698 (Minn. 1958).

The district court has jurisdiction over "all subject matter relating to estates of decedents," and the power "to take all . . . action necessary and proper to administer justice in the matters which come before it." Minn. Stat. § 524.1-302 (2018); *see also In re Estate of Sangren*, 504 N.W.2d 786, 789 (Minn. App. 1993) (concluding that the "[district] court has jurisdiction over all problems that arise in resolving an estate except those issues excluded by statute"), *review denied* (Minn. Oct. 28, 1993). The plain language of section 524.3-721 provides that the power afforded the district court includes the authority to review the "reasonableness of the compensation of any person" employed by the personal representative, as well as to order the refund of excessive compensation received. But, as the district court acknowledged and the parties agree, there is no published caselaw in Minnesota discussing section 524.3-721, in the unique circumstances presented in this case.

Nonetheless, Minn. Stat. § 524.3-721 is modeled after the Uniform Probate Code (UPC) § 3-721. *See In re Beachside I Homeowners Ass'n*, 802 N.W.2d 771, 774 (Minn. App. 2011) (stating that "Minnesota has largely adopted the provisions of the [UPC]"). When interpreting a uniform law, an appellate court "will consider" other jurisdictions' interpretations of their uniform acts. *City of Rochester v. Kottschade*, 896 N.W.2d 541, 546 (Minn. 2017); *see also* Minn. Stat. § 645.22 (2018) ("Laws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them."). In *In re Estate of Sweetland*, the Maine Supreme Court discussed 18-A.M.R.S.A. § 3-721, which is modeled after section 3-721 of the UPC, and stated that the "plain language of the statute vests the [district] Court with the authority to order appropriate refunds from any person who has received excessive compensation." 770 A.2d 1017, 1020 (Me. 2001) (quotation omitted).

Here, we acknowledge that the size and complexity of Prince's estate undoubtedly presents unique circumstances. But as indicated by the Maine Supreme Court, the plain language of 18-A.M.R.S.A. § 3-721, which is almost identical to Minn. Stat. § 524.3-721, is unambiguous. *Id.* And under the plain and unambiguous language of Minn. Stat. § 524.3-721, an interested person may move the district court to review "the reasonableness of the compensation" received by a "specialized agent" employed by the estate. The statute also plainly and unambiguously allows the district court to order any specialized agent who has "received excessive compensation from an estate for services rendered" to "make appropriate refunds." Minn. Stat. § 524.3-721. Nothing in the statute indicates that when the estate is complex, a challenge to the reasonableness of compensation received by a specialized agent must be brought in a plenary action under the rules of civil procedure as suggested by Advisors.

Moreover, the procedure followed by the district court in this case is consistent with the comments to section 3-721 of the UPC, which state:

> In view of the broad jurisdiction conferred on the probate court by Section 3-105, description of the special proceeding authorized by this section might be unnecessary. But, the Code's theory that personal representatives may fix their own fees *and* those of estate attorneys marks an important departure from much existing practice under which fees are determined by the court in the first instance. Hence, it seemed wise to emphasize that any interested person can get judicial review of fees if he desires it. Also, if excessive fees have been paid, this section provides a quick and efficient remedy.

UPC § 3-721 cmt.

As indicated by the comment to section 3-721 of the UPC, Minn. Stat. § 524.3-721 provides for a "quick and efficient" procedure for challenging the reasonableness of compensation paid to a specialized agent employed by the estate. *See id.* The complexity of the issues presented does not change the plain and unambiguous language of Minn. Stat. § 524.3-721. Moreover, the district court recognized the complexities involved in this case, stating that it would "not . . . make a final determination as to the Estate's entitlement to a refund of the Advisor fees without a *full record* and consideration of the provisions of the Advisor Agreement." (Emphasis added.) And in considering the fact that related litigation may impact the outcome of its decision, the district court further ordered that "[n]o determinations on rights to the funds from the Jobu transaction shall be made until after completion of [the Jobu litigation]." This demonstrates that the district court was not intending to decide the issue "on a summary basis" as claimed by NorthStar, but instead would decide the issue after the presentation of testimony and exhibits. Advisors simply appealed the district court's order granting a temporary injunction before such a hearing could take place.

Similar to NorthStar, CAK also contends that the district court's interpretation of Minn. Stat. § 524.3-721 "runs afoul of both the plain intent and purpose" of the statute. But CAK's argument goes a step further than the broad argument made by NorthStar. Specifically, CAK argues that because the "Advisors' compensation was fixed by the Advisor Agreement and, in respect of the UMG Transaction, by the [district] Court's approval of the UMG Agreement," the issue raised by the Estate is "not one of subjective reasonableness," but is "instead one of contract interpretation" that "can only properly be resolved in the context of a plenary action."

CAK is correct that the district court's September 30, 2016 order approved the UMG agreement. And the order also impliedly approves the terms of the Advisor Agreement that allows Advisors to collect a ten-percent commission for their services. But CAK's argument that Minn. Stat. § 524.3-721 cannot now be applied in light of the September 30, 2016 order misconstrues both the September 30 order and the plain language of the statute, by confusing the approval of the *reasonableness of the rate of compensation* with approval of the *reasonableness of the compensation for services actually rendered.*

As stated above, Minn. Stat. § 524.3-721 plainly allows an interested person to seek review by the district court of the "reasonableness of the compensation" paid to a specialized agent. The statute also allows the district court to order a refund of "excessive compensation" paid for "services rendered." Minn. Stat. § 524.3-721. So hypothetically an attorney may negotiate, and a district court may approve, an attorney's $300 per hour billing rate to perform legal services for an estate. And after a legal bill is submitted by the attorney, and paid by the estate, an interested person may bring a motion under Minn. Stat. § 524.3-721 challenging the amount paid to the attorney and asserting that the bill was excessive or unreasonable based on the services performed. The interested person is not challenging the rate of compensation; rather the challenge is to the amount of compensation paid for services performed. This hypothetical mirrors this case. The Estate is not challenging the ten-percent commission rate established in the Advisor Agreement. That rate was impliedly approved in the September 30 order. Instead, the Estate is challenging the reasonableness of Advisors' compensation in light of the terminated and rescinded contracts under which the Estate received nothing of value. Under the plain language of Minn. Stat. § 524.3-721, the challenge is authorized.

Advisors further argue that the district court's order ignores the controlling language of the Advisor Agreement. Advisors argue that, because the Advisor Agreement is controlling, the Estate's claim is contractual in nature, and must be resolved in a plenary action. In fact, NorthStar appears to argue the merits of the original motion, claiming that under the terms of the Advisor Agreement, Advisors were entitled to their commissions because "there is no provision [in the Advisor Agreement] requiring the Advisors to return commissions earned on an original contract that is later modified or substituted after the term."

To the extent that Advisors argue that they are entitled to their commissions under the Advisor Agreement, that argument is beyond the scope of our review. Minnesota Rule of Civil Appellate Procedure 103.04 provides that an appellate court has the authority to review orders "affecting" the order being appeal. *See* David F. Herr & Mary R. Vasaly, *Appellate Practice in Minnesota: A Decade of Experience With the Court of Appeals*, 19 Wm. Mitchell L. Rev. 613, 618–19 (1993) ("The scope of review . . . determines which matters raised in the [district] court are properly before the appellate court on a particular appeal."). Here, the narrow issue before us concerns the district court's authority to resolve the Estate's motion under Minn. Stat. § 524.3-721. Although the Estate's motion before the district court sought a refund of Advisors' commissions stemming from the Jobu and UMG transactions, the court did not make a final determination on the issue. Instead, the district court required that Advisors refund the commissions received from the Jobu and UMG transactions, but ordered that these funds be held in escrow until final decisions are made. Because these final decisions have not been made, addressing the merits is premature.

Moreover, Advisors' assertion that the district court failed to consider the Advisor Agreement in making its decision is premature. The district court's order acknowledged the Advisor Agreement, but ultimately did not decide the merits of the Estate's motion. The district court specifically stated that it would not make "a final determination as to the