

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT

Court File No. 10-PR-16-46

In re Estate of Prince Rogers Nelson,
Decedent.**MEMORANDUM FOR PRESENTATION
OF PRIMA FACIE EVIDENCE OF
GENETIC RELATIONSHIP BETWEEN
DECEDENT AND COREY D. SIMMONS**Procedural History

The procedural history of this filing is important, as Corey D. Simmons is seeking to comply with multiple prior Court Orders, in order to pursue genetic testing.

On May 18, 2016, this Court filed its “Order Regarding Claims Pursuant To The Parentage Act And Probate Code” (May 18th Order), determining that any party claiming a genetic relationship to the decedent that may give rise to heirship must file an Affidavit with the Court setting forth the facts that establish “the reasonable possibility of the existence of such a relationship.”

On July 29, 2016 this Court filed its “Order Regarding Genetic Testing Protocol And Heirship Claims Following The June 27, 2016 Hearing And Judgment.” (July 29th Order) This Order directed genetic testing of Brianna Nelson, V.N., John Nelson, Norrine Nelson, Sharon Nelson and Tyka Nelson pursuant to the terms of the Special Administrator’s Court-approved Genetic Testing Protocol. See, July 29th Order, p.18, par. 3.

On September 26, 2016, Corey D. Simmons moved to be included in the class of persons to receive genetic testing pursuant to par. 3 of the July 29th Order. He had not been served notice of the proceedings. The motion was never contested. This Court Amended its Scheduling order to include him in the hearing on October 21, 2016.

On October 4, 2016, Corey Simmons also submitted *prima facie* evidence of genetic relationship required by the Court-approved Protocol of the Special Administrator. He provided an “Affidavit of Corey Simmons” (hereinafter Simmons’ Heirship Affidavit) in support of his claim. He also filed an affidavit from his mother, Carolyn Simmons. See, Exhibit 1 of “Exhibits Affidavit of Andrew M. Lehner” of November 17, 2016 (hereinafter Lehner Aff.). These documents were also filed with the Court. In addition, he served the Special Administrator a completed “REQUEST FOR PARENTAGE INFORMATION”

as required by the Genetic Testing Protocol, and the Special Administrator delivered the required written response to the same. See Exhibit 17.

The hearing on October 21, 2016 led to the filing of the “Order & Judgment Denying Heirship Claims Of Brianna Nelson, V.N. And Corey Simmons”, filed October 26, 2016. (October 26th Order).

Corey D. Simmons, through the undersigned, filed a letter requesting permission to make a motion for reconsideration. On Nov. 2, 2016, the Court filed its “Order Denying Request For Motion For Reconsideration”. (Nov. 2nd Order). However, the Nov. 2nd Order denying Mr. Simmons’ motion for reconsideration also requires him to provide to the Court “*prima facie* evidence of a genetic relationship between himself and Decedent Prince Rogers Nelson” and stated that “If such evidence is provided to the Court’s satisfaction [by November 25, 2016], the Court will vacate the Order automatically excluding Mr. Simmons as an heir to the Estate, and order Mr. Simmons to undergo genetic testing.”

Corey D. Simmons now files this Memorandum in order to present additional *prima facie* evidence of genetic relationship, along with supporting documents.

Offer of *Prima Facie* Evidence

The Court’s October 26th Order directs us to submit *prima facie* evidence of Mr. Simmons’ genetic relationship to the Decedent, Prince Rogers Nelson.

We present to the Court *prima facie* evidence that could establish “the reasonable possibility” for a genetic relationship, as indicated in this Court’s May 18th Order. We present these in a genealogical order:

- (A) evidence of potential genetic relationship between Decedent, Prince Rogers Nelson, and John L. Nelson;
- (B) evidence of potential genetic relationship between John L. Nelson and Duane Nelson; and
- (C) evidence of potential genetic relationship between Duane Nelson and Corey D. Simmons.

A. As to the genetic of relationship between the Decedent and John L. Nelson:

Prima facie evidence as to the chain of relationship between the Decedent and John L. Nelson, includes the following:

1. In the Court's July 29th Order, the Court found that Prince Rogers Nelson's Certificate of Birth lists his parents as Mattie Della (Shaw) and John L. Nelson. See, July 29th Order, pp.1. Further the same Order finds "the Decedent was born during the marriage of John L. Nelson and Mattie Della (Shaw). John L. Nelson is the presumptive father of the Decedent." *Id.*, pp. 14-15.
2. On page 17 of the July 29th Order, the Court specifically finds that, "John L. Nelson is the presumed, genetic and adjudicated father of the Decedent." *Id.*
3. We submit Exhibit 1, Lehner Aff., which includes Simmons' Heirship Affidavit which carries its own exhibits, the affidavit of his mother, Carolyn Simmons, and a copy of the completed "REQUEST FOR PARENTAGE INFORMATION" form.
4. Lorna Nelson (now deceased) was the plaintiff in the Minneapolis Federal District Court case of *Nelson v. PRN Productions, Inc.* (Civ. Case No. 4-87-722)(reported in 873 F.2d 1141, 1141 (8th Cir. 1989)). In that case, she testified that John L. Nelson was her father in an Affidavit dated March 25, 1988. See Exhibit 2, par. 8, Lehner Aff.
5. Lorna Nelson listed John L. Nelson as her father, and the Decedent Prince Rogers Nelson as the son of John L. Nelson, in the litigation pleadings in that same case, *Nelson v. PRN Productions, Inc.* See Exhibit 3, page marked Bates No. SABT001119, and Exhibit 4, page marked Bates No. SABT001012, Lehner Aff.
6. Prince Rogers Nelson, appearing as a co-defendant in that same matter, *Nelson v. PRN Productions, Inc.*, submitted a responsive brief in which the father-son relationship of John L. Nelson and Prince Rogers Nelson is not denied but confirmed. See Exhibit 5, Lehner Aff., pages marked Bates No. SABT001098-001099.
7. After the death of John L. Nelson, in 2001, Lorna Nelson filed an affidavit, in this District Court for Carver County, dated October 18, 2001, where John L. Nelson's estate was probated (File No.P1-01-1660). The affidavit identifies John L. Nelson as her father and as the father of Prince Rogers Nelson. See Exhibit 6, Lehner Aff.

The Special Administrator has concluded that there is an irrebuttable presumption that John L. Nelson and Mattie Della Shaw were Decedent's genetic parents. See, p. 4, Exhibit 17, Lehner Aff.

B. As to the genetic of relationship between John L. Nelson and Duane Nelson:

In this Court's July 29th Order, the Court indicated satisfaction with the *prima facie* evidence presented by Brianna Nelson and the child V.N., determining that they were "potential heirs of the Decedent" and ordering genetic testing of Brianna Nelson, V.N., John Nelson, Norrine Nelson, Sharon Nelson and Tyka Nelson. Despite the fact that Brianna Nelson and V.N. declined to do so, Corey D. Simmons has never declined to do so and ardently seeks such testing.

The evidence presented by Brianna Nelson and V.N. served to present *prima facie* evidence of the potential genetic relationship between John L. Nelson and Duane Nelson. This Court accepted and recognized their evidence as *prima facie* evidence of

the potential relationship between John L. Nelson and Duane Nelson sufficiently enough to order genetic testing in the July 29th Order.

Our documentary and anecdotal *prima facie* evidence of the potential genetic relationship between John L. Nelson and Duane Nelson includes the same information, and much more:

1. Duane Nelson's Birth Certificate lists John L. Nelson as his father. The Court has already recognized that "If this is true, Duane Nelson would be a full sibling of John Nelson, Norrine Nelson and Sharon Nelson, and a half-sibling of Tyka Nelson and the Decedent." July 29th Order, p.14. See Exhibit 7, Lehner Aff.
2. Duane Nelson's Death Certificate also lists John L. Nelson as his father. See Exhibit 8, Lehner Aff.
3. Duane Nelson was identified as the son of John L. Nelson in his own obituary. See Exhibit 9, Lehner Aff.
4. In 1986, John L. Nelson executed a will which names Prince Rogers Nelson as his sole beneficiary and expressly disinherits all other heirs at law. See Exhibit 10, Lehner Aff.
5. Lorna Nelson testified that Duane Nelson was her brother in an affidavit, dated March 25, 1988, filed as the plaintiff in *Nelson v. PRN Productions, Inc.* referred to above. See Exhibit 2, par. 4, Lehner Aff.
6. Lorna Nelson listed Duane Nelson as her brother, and the Decedent Prince Rogers Nelson as the brother of Duane Nelson, in the litigation pleadings in that same case, *Nelson v. PRN Productions, Inc.* See Exhibit 3, page marked Bates No. SABT001119, and Exhibit 4, page marked Bates No. SABT001012, Lehner Aff.
7. Prince Rogers Nelson, appearing as a co-defendant in that same matter, *Nelson v. PRN Productions, Inc.*, submitted a responsive brief that John L. Nelson was his father and that Duane Nelson was his brother. See Exhibit 5, pages marked Bates No. SABT001098-001099, Lehner Aff.
8. In July, 1986, John L. Nelson executed a will which names Prince Rogers Nelson as his sole beneficiary and expressly disinherits all other heirs at law. Exhibit 10, Lehner Aff.
9. In June of 1989, attorney James Echtenkamp sent John L. Nelson a draft of a will, expressing John L. Nelson's directives to the attorney about his will. That document asserts an express disinheritance of his children, other than Prince Rogers Nelson. This is a consistent expression with the 1986 will. In the draft, Duane Nelson listed his disinherited children by name, including Duane Nelson as one of his children. Exhibit 11, Lehner Aff. Mr. Echtenkamp's notes in this regard are attached as Exhibit 12, Lehner Aff.

C. As to the genetic of relationship between Duane Nelson and Corey Simmons:

Prima facie evidence as to the chain of relationship between the Duane Nelson and Mr. Simmons, includes the following:

1. In addition to her affidavit found in Lehner Aff., Exhibit 1, Carolyn Simmons has also testified in this case in a discovery deposition, supporting the facts asserted in her affidavit. She has testified that she and Duane Nelson met in 1976 while

both were attending the University of Wisconsin, Milwaukee. The two dated exclusively during 1976 and 1977, during which time they were intimate and Ms. Simmons became pregnant. Corey D. Simmons was born in June 15, 1977. Ms. Simmons as not intimate with any other man during this time. See Lehner Aff., Exhibits 1 (Simmons Heirship Affidavit) and 13 (Carolyn Simmons Deposition, pp. 12, line 22 through pp. 21, line 17)

2. During her pregnancy, Carolyn Simmons informed Duane of their baby and of her intent to keep the baby. At one point, Duane introduced his sister, Norrine Nelson, to Ms. Simmons while Ms. Simmons was visibly pregnant. See Lehner Aff., Exhibit 13 Carolyn Simmons Deposition, pp. 23, line 9 through pp. 24, line 2; and pp. 26, line 21 through pp. 28, line 15; and pp. 35, line 16 through pp. 40, line 10)
3. One of Carolyn Simmons' close friends from college supports Carolyn's recollection. Notarized Statement of Valerie J. Brown, Lehner Aff., Exhibit 14.
4. One of Duane Nelson's close friends from college supports Carolyn Simmons' recollection, and recalls Duane Nelson knowing that he was the father of Corey Simmons. Notarized Statement of Harrison D. Kern, Lehner Aff., Exhibit 19.
5. Although Carolyn Simmons and Duane Nelson were no longer dating after Corey's birth, Duane periodically visited Corey during the early years of Corey's life. Duane would spend time with Corey, Carolyn and Carolyn's mother. See Lehner Aff., Exhibit 13 (Carolyn Simmons Deposition, pp. 31, line 24 through pp. 32, line 18; and pp. 40, line 22 through pp. 41, line 4; and pp. 45, line 1 through pp. 63, line 17) See attached, Exhibit 15 (Corey Simmons Deposition, pp. 15, line 3 through pp. 16, line 1; and pp. 27, line 22 through pp. 28, line 16)
6. Duane Nelson carried photos of Corey in the briefcase that he carried daily. See Lehner Aff., Exhibit 15 (Corey Simmons Deposition, pp. 32, line 1 through pp. 33, line 10)
7. Corey D. Simmons, knowing Duane Nelson to be his father, and knowing that his father and his uncle, Prince Rogers Nelson, worked closely together, made an effort to reconnect with his father in approximately 2008 or 2009. See Lehner Aff., Exhibit 15 (Corey Simmons Deposition, pp. 16, line 6 through pp. 17, line 17)
8. Corey attended the memorial service for Duane Nelson in March of 2011. During that time, Corey was received by multiple family members, including Brianna Nelson, Norrine Nelson, and Sharon Nelson, as Duane Nelson's son. See Lehner Aff., Exhibit 15 (Corey Simmons Deposition, pp. 29, line 11 through pp. 31, line 25)
9. Brianna Nelson has treated Corey as a brother since they first met in 2011. See, Exhibit 1, Exhibits F of Corey Simmons' Heirship Affidavit.
10. Brianna Nelson's mother, Carmen Weatherall, has acknowledged Duane as Corey's father, regretting having previously trying to hide that fact. See, Lehner Aff., Exhibit 16, Affidavit of Shalonda McKinney.
11. Norrine Nelson, half-sibling of Prince Rogers Nelson, has treated Corey as a nephew and has told Corey D. Simmons that Duane Nelson was his father. In fact, Norrine advised Corey to obtain counsel to pursue his interests in this matter since the lawyers representing Norrine indicated there would be a conflict of interest in their representing him. See Lehner Aff., Exhibit 15 (Corey Simmons Deposition, pp. 34, line 1 through pp. 36, line 1; and pp. 40, lines 5-24; and pp.

43, line 1 though pp. 46, line 18) and Exhibit 18 (Birthday Card from Norrine to Corey).

The Special Administrator, in response to Mr. Simmons' Protocol submissions, has determined that in order to determine the genetic relationship between Corey Simmons and Prince Rogers Nelson, the alleged parent-child relationship between John L. Nelson and Duane Nelson will also need to be established through genetic testing, in a manner determined by the Court. Exhibit 17, Lehner Aff.

Conclusion

This Court's May 18th Order has already determined and ordered that any party claiming a genetic relationship to the decedent that may give rise to heirship must file an Affidavit with the Court setting forth the facts that establish "the reasonable possibility of the existence of such a relationship." Mr. Simmons did so October 4, 2016 and repeats and augments such evidence with this filing.

This Court determined that the *prima facie* evidence submitted by Brianna Nelson and V.N. was sufficient to require genetic testing and ordered such testing to take place. The *prima facie* evidence presented by Mr. Simmons with regard to the possibility of genetic relationship between Corey Simmons and Duane Nelson is more substantial than what was presented by Brianna Nelson and V.N. He has added to the documentary evidence even more than was previously referenced by the Court in the July 29th Order.

The *prima facie* evidence presented by Mr. Simmons with regard to the possibility of genetic relationship between Duane Nelson and Mr. Simmons is sufficient, on its face, to support a determination that he should be allowed to participate in genetic testing. This is a very basic remedy which does not limit nor curtail the rights of other parties to the estate proceedings. Corey Simmons seeks merely to discover the truth as to genetic relationships, regardless of the outcome of the tests.

Genetic Testing

The Special Administrator's Protocol Prior to Potential Genetic Testing (Protocol) has been procedurally satisfied by Mr. Simmons and the Special Administrator. See, Lehner Aff., par. 12.

Exhibit B of the Special Administrator's Protocol indicates that a Family Reconstruction case can be made:

For cases that involve in-direct relationship testing including avuncular, single grandparentage and Siblingship (full-siblingship & half-siblingship) tests will provide a statistical likelihood that gives evidence to support the tested relationship.... If a sufficient number of in-direct relatives (aunt/uncle, sibling, grandparent) are tested (3 or more), the alleged common relative's profile can be reconstructed and the test can be just as informative as a direct paternity test.

Second degree relationship tests, Avuncular Tests (Uncle/Aunt), Single Grandparentage and Half-siblingship, are tests that can be utilized to show a relationship to the Child if there is only this one living (or available) relative of the child (the alleged father and one paternal grandparent is deceased). A true Biological Uncle (Aunt), grandparent, or half-sib, will share ¼ of their DNA with the child. Our test evaluates how frequently these two parties share alleles as compared to a random person in the population (random sharing). The results of this test tell you the strength of the evidence that would support the relationship that is evaluated.

Testing of the Mother is always recommended when evaluating a paternal relationship. The mother helps to define the obligatory allele (the allele that must come from the Biological Father).

Mr. Simmons' mother, Carolyn Simmons, is available and willing to participate in genetic testing. See, Lehner Aff., par. VI.

Mr. Simmons respectfully requests that this Court vacate the October 26th Order insofar as it excluded Mr. Simmons as an heir of the estate. Further, Mr. Simmons respectfully requests that this order and direct genetic testing of Corey Simmons, Carolyn Simmons, John Nelson, Norrine Nelson, Sharon Nelson and Tyka Nelson.

Dated: November 17, 2016

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