10/26/2016 4:50 PM Scanned by Carver County Court Administration

FILED
OCT 26 2016
CARVER COUNTY COURTS

**STATE OF MINNESOTA**

**COUNTY OF CARVER**

**DISTRICT COURT**
**FIRST JUDICIAL DISTRICT**
**PROBATE DIVISION**

---

In Re: Estate of:

Court File No. 10-PR-16-46

Prince Rogers Nelson,

Deceased.

**ORDER & JUDGMENT DENYING HEIRSHIP CLAIMS OF BRIANNA NELSON, V.N. AND COREY SIMMONS**

---

The above entitled matter came on before the Honorable Kevin W. Eide on October 21, 2016, at the Carver County Courthouse, Chaska, Minnesota, on the issue of whether Brianna Nelson, V.N. and Corey Simmons may be considered heirs of this Estate as a matter of law. Appearances were noted on the record.

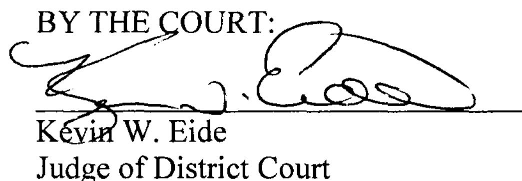
Based upon the record and the arguments of counsel, the Court makes the following:

## ORDER

1. Brianna Nelson and V.N.'s requests for ongoing discovery and an evidentiary hearing to present evidence of a parent-child relationship between John L. Nelson and Duane Nelson, Sr. are respectfully DENIED.
2. Brianna Nelson, and V.N. are excluded as heirs of Decedent's Estate as a matter of law.
3. The evidentiary hearing scheduled for November 30, 2016 and continuing through December 2, 2016 is hereby stricken from the calendar.
4. By no later than November 25, 2016, Corey Simmons shall provide the Court *prima facie* evidence supporting his claim via a theory of equitable adoption that John L. Nelson intended to adopt Duane Nelson, Sr. If such is not provided by November 25, 2016, Corey Simmons shall also be excluded as an heir of Decedent's Estate.
5. The attached Memorandum is incorporated herein by reference.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

BY THE COURT:



Date: October 26, 2016

Kevin W. Eide
Judge of District Court

10/26/2016 4:50 PM Scanned by Carver County Court Administration

I do hereby certify that the forgoing order constitutes the judgment of this Court.

Kristin Trebil-Halbersma
Court Administrator, Carver County, MN

Date October 26, 16 Deputy [signature]

**MEMORANDUM**

Brianna Nelson, V.N. and Corey Simmons claim to be heirs to the Estate of Prince Rogers Nelson based upon claims that Duane Nelson, Sr. (father of Brianna, grandfather of V.N., and presumed father of Corey) was the son of John L. Nelson, and therefore Decedent's half-brother. In the Court's "Amended Order Regarding Genetic Testing Protocol and Heirship Claims Following the June 27, 2016 Hearing and Judgment" filed August 11, 2016, the Court determined Brianna Nelson and V.N. had made a *prima facie* showing that they were potential heirs of the Decedent, and ordered that they, along with John Nelson's other children, undergo genetic testing pursuant to the terms of the previously established "Genetic Testing Protocol." The Court assumed that a claim was being made that Duane Nelson, Sr. was genetically related to John L. Nelson and his descendants. At that time, Corey Simmons had yet to file an "Affidavit of Heirship" or "Demand for Notice" in this proceeding.

On August 26, 2016, through the "Motion of Brianna Nelson and V.N. to Clarify or Reconsider the July 29, 2016 Genetic Testing Order," the Court learned that Brianna Nelson and V.N. base their claims not on a genetic relationship to Decedent, but on the father/son relationship between John L. Nelson and Duane Nelson, Sr. and the sibling relationship between Duane Nelson, Sr. and Decedent. As a result of Brianna Nelson and V.N.'s alternative claims, the Court issued a "Scheduling Order Regarding the Claims of Brianna Nelson and V.N. to be Heirs of the Estate" filed September 1, 2016. That Scheduling Order set a hearing on whether Brianna Nelson and V.N. could be considered heirs of the Estate as a matter of law for October 21, 2016. On September 26, 2016, Corey Simmons filed his "Affidavit of Heirship" and "Affidavit of Corey D. Simmons Supporting Motion for Relief from Order and Judgment of Court," also seeking to be deemed an heir to the estate based upon his alleged father, Duane Nelson, Sr., being Decedent's half-brother. On October 3, 2016, the Court filed an "Amended Scheduling Order Regarding the Claims of

10/26/2016 4:50 PM Scanned by Carver County Court Administration

Brianna Nelson and V.N. to be Heirs of the Estate," adding Corey Simmons' motions to also be heard on October 21, 2016.

In connection with the oral arguments on October 21, 2016, the Court received and has reviewed the "Memorandum of Law of Brianna Nelson and V.N. Re Legal Basis for Heirship" filed September 30, 2016; Corey Simmon's "Motion for Relief from Order and Judgment of Court" filed October 4, 2016; the "Special Administrator's Supplemental Submission Pertaining to Claims of Brianna Nelson and V.N." filed October 14, 2016; and the "Non-Excluded Heirs' Memorandum of Law in Response to Brianna Nelson's and V.N.'s Legal Basis for Heirship" filed October 17, 2016.

Brianna Nelson and V.N., now joined by Corey Simmons, argue Minnesota law provides for and recognizes parent-child relationships that are not genetic or established as a matter of law. The parties make this argument based upon a 2003 Minnesota Supreme Court decision, the *Estate of Palmer*, 658 N.W. 2d 197 (Minn. 2003), and argue nothing in subsequent case law or the Minnesota Probate Code nullifies that holding. They seek a determination from the Court affirming their legal position, along with leave to continue discovery and conduct an evidentiary hearing to present evidence of a parent-child relationship between John L. Nelson and Duane Nelson, Sr.

Minnesota statutory guidelines for the establishment of parent-child relationships for purposes of intestate succession have undergone changes in recent years with the legislature's adoption of the intestacy provisions of the 2008 Uniform Probate Code in 2010. Prior to 2010, Minn. Stat. §524.2-114 provided that if, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person in cases not involving an adoption, a person is the child of the person's parents regardless of the marital status of the parents and the parent and child relationship <u>may</u> be established under the Parentage Act, sections 257.51 to 257.74. Minn. Stat. §524.2-114 (2009) (*emphasis added*). With the 2010 revisions to Minnesota's Probate Code, if a parent-child relationship <u>exists or is established under [the Probate Code]</u>, the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession. Minn. Stat. §524.2-116 (2016) (*emphasis added*). With the adoption of the revised Probate Code in 2010, the statutory language directly providing a parent-child relationship <u>may</u> be established under the Parentage Act has been repealed.

10/26/2016 4:50 PM Scanned by Carver County Court Administration

The current Probate Code does not define a "parent-child" relationship, but provides that a parent-child relationship may be established either through genetics, adoption, or assisted reproduction. *See* Minn. Stat. §§ 524.2-117, 524.2-118, and 524.2-120 (2016). Alternatively, a "parent and child relationship" is defined in the Parentage Act for purposes of that section as "the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations." Minn. Stat. §257.52 (2016). Both the Probate Code and Parentage Act refer to parentage as established through genetics or adoption, with the Probate Code adding assisted reproduction, which is otherwise provided for within the Parentage Act. In addition, the Probate Code includes parent-child relationships which may be established through the doctrine of equitable adoption. Minn. Stat. §524.2-122 (2016).

Also instructive and relevant to the issues presently before the Court is the Probate Code's definition of a "child." Under the code, a "child" includes any individual entitled to take as a child under law by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant. Minn. Stat. §524.1-201(6) (2016) (*emphasis added*).

As noted above, Brianna Nelson, V.N. and Corey Simmons base their argument on the case *Estate of Palmer*, 658 N.W. 2d 197 (Minn. 2003). James Palmer (hereafter "Palmer") died in 1999, survived by his wife of 51 years, Marie Palmer. *Id.* at 198. He and his wife did not have any children, however in 1959 Palmer was charged with and pleaded guilty to the crime of "illegitimacy" relating to the birth 17 months prior of Beverly Smith's son, Michael Smith (hereafter "Smith"). *Id.* As a result, Smith's birth certificate was revised to show Palmer as his father. *Id.* Palmer never informed his wife of the charge or invited Smith to his home, but apparently he and Smith had an ongoing relationship throughout Palmer's life. *Id.* Palmer would visit Smith two to three times per week during his childhood, taught Smith auto-mechanics, and the two would regularly golf, hunt and travel to a lake cabin together. *Id.* Palmer referred to Smith as his son, and Smith called him dad. *Id.* When Palmer died without a will, Smith stepped forward as Palmer's son. *Id.* As discussed above, the Probate Code at that time provided that the parent and child relationship may be established under the Parentage Act. The trial court in *Palmer* concluded the use of the word "may" created an inference that the Parentage Act is not the exclusive means of establishing paternity for intestate succession, therefore parentage may also be

10/26/2016 4:50 PM Scanned by Carver County Court Administration

established by clear and convincing evidence. *Id.* The Court of Appeals affirmed the trial Court, as did the Supreme Court, holding the legislature's use of the word "may" explicitly provides that the Parentage Act is not the exclusive means of determining parentage for purposes of intestate succession. *Id.* at 199.

Counsel for Brianna Nelson and V.N. argue that the decision in *Palmer* was not based upon a genetic the relationship between Mr. Palmer and Mr. Smith and point to Footnote 1 in the decision. *See Id.* at 200. Counsel argued that the decision was based on a finding of clear and convincing evidence that there was a parent-child relationship and <u>not</u> on a genetic relationship. The above referenced footnote refers to the argument of Mr. Smith that the guilty plea to the illegitimacy charge and the subsequent revision of his birth certificate should be dispositive in determining that he was entitled to inherit from Mr. Palmer. The Supreme Court, in the footnote, notes that the district court made its determination on a finding that there was a parent-child relationship and, as Mr. Smith was successful in that argument, there was no need to address directly whether the plea and revision of the birth certificate was dispositive as a matter of law. The *Palmer* case was decided based upon stipulated facts, including the fact that Mr. Palmer pled guilty to the charge of illegitimacy. The fact that the Supreme Court never addressed the issue of whether this plea of guilty was determinative, does not mean that the genetic relationship between Mr. Palmer and Mr. Smith was not essential in the district court finding that there was proof of a parent-child relationship by clear and convincing evidence.

The Court finds it compelling that the crime of illegitimacy addressed in *Palmer* is described as a quasi-criminal matter under Minnesota Statutes Chapter 257, then entitled *Children; Custody of, Illegitimacy*. It was the proceeding by which paternity was adjudicated and support was awarded. Upon Mr. Palmer's plea under this Chapter, Mr. Smith's birth certificate was amended. The same chapter continues today entitled *Children; Custody, Legitimacy* and includes the Minnesota Parentage Act, §257.51 through §257.75.

As it relates directly to the matter presently before the Court, there is no case law in Minnesota or, to the Court's knowledge, anywhere in the United States that establishes a parent-child relationship for intestacy purposes where there was a no genetic relationship but the parties to the relationship held themselves out to be parent and child.

While *Palmer* was relevant to intestate succession under the Probate Code prior to its revision in 2010, its continued relevance is questionable. The Probate Code now provides that a

10/26/2016 4:50 PM Scanned by Carver County Court Administration

parent-child relationship must either exist or be established under the Probate Code. A parent-child relationship can only be "established" under the code by genetics, adoption, assisted reproduction, or through the Parentage Act. The "existence" of a parent-child relationship must have been already determined at the time of the decedent's death either via an adjudication or presumption of paternity under the Parentage Act.

Counsel for Brianna Nelson, V.N. and Corey Simmons also ask the Court to expand the meaning of the term "exists" under Minn. Stat. §524.2-116. The Court previously referenced the statutory definition of "child" under the Minnesota Probate Code. Under the code, a "child" includes any individual entitled to take as a child under law by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant. Minn. Stat. §524.1-201(6) (2016) (*emphasis added*). During the hearing before the Court on October 21, 2016, the Court raised a hypothetical situation to counsel for Brianna Nelson, V.N. and Corey Simmons. In that hypothetical, the Court suggested a circumstance where a step-father enters the life of a child early on, does everything expected of a loving and devoted father during the child's minority and beyond. However, based upon §524.1-201(6), the child cannot inherit from the step-father. The Court questioned counsel about the apparent legislative intent that a close *non-adjudicated* parent-child relationship is not enough to establish paternity for intestacy purposes. Counsel for Brianna Nelson and V.N. could only agree that this would be an unequitable result and that the Probate Code is not perfect. The Court concludes that the legislature has either indicated its intent that a close *non-adjudicated* parent-child relationship is *not* enough to establish paternity for intestacy purposes or, at least, it has never indicated its intent that a close *non-adjudicated* parent-child relationship *is* enough.

This Court is not willing to expand the term "exists" under Minn. Stat. §524.1-201(6) beyond those where paternity was presumed or adjudicated under the Minnesota Parentage Act at the time of the decedent's death. The Court is concerned that to do so violates the legislative intent of the Probate Code and the Minnesota Parentage Act, violates case law precedent in this State and other states, and would open district courts to claims of a parent-child relationship with no guidance as to what constitutes clear and convincing evidence of a parent-child relationship.

Counsel for the heirs have also argued Duane Nelson, Sr. cannot be deemed a child of John L. Nelson based upon the probate proceedings after John L. Nelson's death. John L. Nelson died intestate in 2001. After his death, Price Rogers Nelson was appointed as Personal Representative

10/26/2016 4:50 PM Scanned by Carver County Court Administration

of the Estate of John L. Nelson. The Carver County District Court subsequently determined and adjudicated Lorna Nelson, Sharon Blakely (Nelson), Norrine Nolen (Nelson), John R. Nelson, Prince Rogers Nelson and Tyka Nelson to be the sole descendants of John L. Nelson. Duane Nelson, Sr., was never referenced as a possible child or heir of John L. Nelson and he never sought to intervene into that proceeding. Counsel for Brianna Nelson and V.N. argue that, based upon the record in the probate proceeding and based upon the events going on in Duane Nelson Sr.'s life in 2001, it is likely that he was not made aware of the proceeding. This Court must agree that the adjudication of the heirs of John L. Nelson to not include Duane Nelson, Sr. is not determinative in this proceeding. See Minn. Stat. §524.3-1001(b).

Counsel for Corey Simmons has also raised the issue of "equitable adoption." An equitable adoption generally involves an agreement to adopt which was not performed by effectual adoption proceedings during the life of the adoptive parent. *See Olson v. Olson*, 70 N.W.2d 107 (Minn. 1955). Where formal adoption proceedings have not been concluded, a district court, exercising its equity power, may treat the parties as though an adoption had been made. *Id.* at 110. While the Probate Code specifically states that it does not effect this doctrine, a review of case law establishes how rarely the doctrine is applied. *Olson* involved a claim by a nephew seeking to establish equitable adoption in order to inherit from an alleged adoptive uncle's estate. The nephew had been taken into the home of the adoptive parents in his infancy, and was raised by them and lived with them until his marriage almost 23 years later. *Id.* at 108. In spite of this apparent familial relationship, the court declined to recognize an equitable adoption, stating no equities had been shown in favor of the nephew and against the uncle's other heirs, therefore he had no rights to the uncle's estate. *Id.* at 110. This Court could find no more recent use of the doctrine in connection with Minnesota intestacy proceedings. The Court is not aware of any facts that would support a claim of equitable adoption in this proceeding.

The Minnesota Probate Code provides for the establishment of a parent-child relationship through genetics, adoption, assisted reproduction, or the Parentage Act. It cannot be established, at least for intestacy purposes, solely by clear and convincing evidence. As a result, Brianna Nelson, V.N. and Corey Simmons' requests for ongoing discovery and an evidentiary hearing must be DENIED, and it is appropriate that they be deemed excluded as heirs of this Estate.

K.W.E.