

**STATE OF MINNESOTA
COUNTY OF CARVER**

**DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION**

| | |
|--|---|
| <p>In re: Estate of Prince Rogers Nelson, Decedent.</p> | <p>Court File No. 10-PR-16-46 Honorable Kevin W. Eide</p> <p>ALFRED JACKSON’S BRIEF IN SUPPORT OF HIS OBJECTION TO COMERICA BANK & TRUST, N.A.’S AMENDED PETITION TO APPROVE INTERIM ACCOUNTING.</p> |
|--|---|

TO THE HONORABLE COURT:

Alfred Jackson, as heir to the Estate of Prince Rogers Nelson (the “Estate”), by and through his counsel, hereby files this Objection to Comerica Bank & Trust, N.A.’s (“Comerica”) Amended Petition to Approve Interim Accounting. In support of this Objection, Mr. Jackson respectfully shows the Court as follows:

INTRODUCTION AND BACKGROUND

On September 7, 2018, the Personal Representative of the Estate, Comerica Bank & Trust, N.A. (“Comerica”) filed a “Petition to Approve Supplemental Inventory and Interim Accounting” and a draft order requesting that this Court issue an order finding that, “the Petitioner has complied with all orders and decrees of the Court and with the provisions of law applicable to this Estate and to Petitioner as Personal Representative of the Estate, and has fully discharged its duties as personal Representative through January 31, 2018...”, and that “Comerica Bank & Trust, N.A. and its agents are discharged from any and all liability associated with its administration of the Estate from February 1, 2017, through January 31, 2018.” (The “Petition”).

In addition to its Petition seeking to be discharged, Comerica also submitted an “Interim Accounting for its continuous administration of the Estate beginning February 1, 2017, through January 31, 2018 (the “Interim Period”)” (the “Interim Accounting”), allegedly setting forth the details of Comerica’s administration of the Estate by Comerica throughout the Interim Period, as well as a “Supplemental Inventory of the assets of the Estate held by Petitioner during the Interim Period” (the “Supplemental Inventory”). Both the Interim Accounting and the Supplemental Inventory were filed publicly in redacted form.

On September 21, 2018, heirs Sharon Nelson, Norrine Nelson, and John Nelson filed their Objections to Comerica Bank & Trust’s Petition for Discharge from Liability and to Approve Interim Accounting. In their objection Sharon Nelson, Norrine Nelson, and John Nelson raised serious and numerous questions concerning the specific management of the Estate and potential breach of fiduciary duty claims against Comerica and its predecessor.

On September 24, 2018, Alfred Jackson and Omarr Baker filed their Objection to Comerica’s Request for Discharge of Liability. In their objection Mr. Jackson and Mr. Baker asserted that multiple unresolved issues remain and that a discharge of liability prior to resolving such issues would be violative of Minn. Stat. § 524.3-608 (2002).

On October 17, 2018 Comerica filed its Amended Petition to Approve Interim Accounting. Notably, Comerica appears to have withdrawn its request for discharge and now seeks an order from the Court (1) [s]ettling, approving and allowing [Comerica’s] Interim Accounting for the Estate for the period from February 1, 2017, through January 31, 2017; (2) [a]pproving, ratifying and confirming all the acts and doings of [Comerica] set forth in the Interim Accounting from February 1, 2017, through January 31, 2018; and (3) [g]ranteeing such other and further relief as the Court may deem lawful, just and proper.

Mr. Jackson agrees with heirs Sharon Nelson, Norrine Nelson, John Nelson, and Omarr Baker that Comerica's Amended Petition to Approve Interim Accounting raises serious questions as to whether Comerica (and its predecessor) have exercised diligence, and reasonableness in fulfilling their fiduciary obligations to the Estate, creditor, and the heirs, particularly with regard to the payment of taxes, attorney's fees and other alleged professional/consultant fees in its administration of the Estate. It is critical, therefore, that any discharge with respect to Comerica's Petition and supporting information specifically exclude any release of claims that may be brought by the heirs. Indeed, the issue of the appropriateness of the discharge of special administrator of the Estate is currently pending appeal as Appellate Case No. A18-1871, based on this Court's apparent discharge of Comerica's predecessor. Accordingly, Mr. Jackson objects to Comerica's Amended Petition to Approve Interim Accounting.

ARGUMENT AND AUTHORITIES

The language of Minnesota's probate code is clear that "[t]ermination [of the appointment of a personal representative] does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the representative of the duty to preserve assets subject to the representative's control, to account therefor, and to deliver the assets." Minn. Stat. Ann. § 524.3-608 (2002); *see also In re Estate of Stewart*, No. A04-808, 2005 WL 44462, at *4 (Minn. Ct. App. Jan. 11, 2005) (articulating that "[u]nder Minnesota law, the discharge of a personal representative terminates the representative's authority to represent the estate in pending or future proceedings, but it does not discharge the personal representative from liability for transactions occurring before the termination.")¹

¹ Mr. Jackson acknowledges that unpublished opinions are not precedential, and pursuant to Minn. Stat. Ann. § 480A.08, attaches a copy of this case hereto, and suggests that the Court look to it for instructive purposes given the limited published case law available interpreting Minn. Stat. Ann. § 524.3-608.

Moreover, Minnesota law clearly provides that “[i]f a personal representative breaches his fiduciary duty of acting in the estate's best interests, the beneficiaries may hold the representative responsible.” Minn. Stat. Ann. §§ 524.3–703(a), 524.3–712 (1994); see also *Goldberger v. Kaplan, Strangis & Kaplan, P.A.*, 534 N.W.2d 734, 739 (Minn. Ct. App. 1995). And that “if the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of fiduciary duty to the same extent as a trustee of an express trust.” Minn. Stat. Ann. § 524.3-712. Thus, “a discharge only terminates the authority to represent the estate in any pending or future proceeding” and does not serve to terminate liability for conduct during the its representative term. *Id.* Minn. Stat. Ann. § 524.3-608 (2002).

Here, Comerica seeks an order “(1) [s]ettling, approving and allowing [Comerica’s] Interim Accounting for the Estate for the period from February 1, 2017, through January 31, 2017; (2) [a]pproving, ratifying and confirming all the acts and doings of [Comerica] set forth in the Interim Accounting from February 1, 2017, through January 31, 2018; and (3) [g]ranteeing such other and further relief as the Court may deem lawful, just and proper.” This is improper and contrary to Minn. Stat. Ann. § 524.3-608 because the language could be interpreted as a release of Comerica from claims belonging to the heirs, including Mr. Jackson. As described in detail above, the heirs of the Estate have expressed numerous concerns with, and objected to Comerica’s administration of the Estate and the Amended Petition to Approve Interim Accounting. Accordingly, Alfred Jackson objects to Comerica’s Amended Petition to Approve Interim Accounting.

CONCLUSION AND PRAYER

For the foregoing reasons, Alfred Jackson Objects to Comerica’s administration of the

Estate and the Amended Petition to Approve Interim Accounting and requests any such other and further relief, at law or in equity to which Mr. Jackson may be justly entitled.

DATE: November 21, 2018

Respectfully submitted,

WHITE WIGGINS & BARNES, LLP

By: /s/ Kennedy Barnes
Kennedy Barnes, *pro hac vice*
Ward White IV, *pro hac vice*
Nnamdi M. Anozie, *pro hac vice*
1700 Pacific Avenue
Dallas, Texas 75201
(214) 665-4150 Telephone
(214) 665-4160 Facsimile
Email: kbarnes@wwbllp.com
wwhite@wwbllp.com
nanozie@wwbllp.com

J. SELMER LAW, P.A.

DATE: November 21, 2018

/s/Marc M. Berg
James C. Selmer (Minn. #171086)
Marc M. Berg (Minn. #20979x)
Ruth A. Gebreab (#398365)
Suite 2010
500 Washington Avenue South
Minneapolis, Minnesota 55415
Telephone: (612) 338-6005
Email: jselmer@jselmerlaw.com
mberg@jselmerlaw.com
ruty@jselmerlaw.com

ATTORNEYS FOR ALFRED JACKSON

2005 WL 44462

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY
NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

In re ESTATE OF Janet Pauline STEWART, a/k/a Janet P. Stewart.

No. A04-808.

|

Jan. 11, 2005.

Washington County District Court, File No. P3-01-400306.

Attorneys and Law Firms

Rodney J. Mason, Jack D. Nelson, Chandler & Mason, Ltd., St. Paul, MN, for appellant Eleanor Stewart.

Timothy J. Pramas, Felhaber, Larson, Fenlon & Vogt, P.A., St. Paul, MN, for respondent Mia Stewart.

Considered and decided by KALITOWSKI, Presiding Judge; WRIGHT, Judge; and CRIPPEN, Judge. *

UNPUBLISHED OPINION

WRIGHT, Judge.

*1 Eleanor Stewart, former personal representative of the estate of Janet Stewart, challenges the district court's decision requiring her to repay the estate \$11,658.51 that she spent on attorney fees, on the ground that the expense had not been approved in the final account. Eleanor Stewart argues that a previous district court order reserving for further consideration only the distribution of "remaining funds" deprived the district court of "jurisdiction" to order the repayment of the \$11,658.51. Eleanor Stewart also argues that, even if the district court had jurisdiction, Mia Stewart waived her right to challenge the expenditure by failing to object. Alternatively, Eleanor Stewart argues that her discharge as personal representative extinguished any claim the estate might otherwise have had against her for the wrongful expenditure of estate funds. We affirm.

FACTS

Janet Stewart died in September 2001, leaving a will in which she nominated Eleanor Stewart as her personal representative and bequeathed her entire estate to her daughter Mia Stewart. The initial petition for formal probate was filed in November 2001, and the district court approved the final account in September 2003. The final account reserved \$12,000 for the payment of fees and listed the total amount on hand for distribution as \$102,970.23.

In December 2003, Mia Stewart moved to compel Eleanor Stewart to transfer all estate assets to her. On the morning of the hearing on the motion, Eleanor Stewart advised Mia Stewart that she had paid \$11,658.51 for attorney fees and that, as a result, only \$91,311.72 of the \$102,970.23 originally approved for distribution remained for distribution.

At the hearing, Mia Stewart's counsel stated on the record that, although the parties had been able to resolve most of their differences, there remained a dispute “regarding the remaining funds, [namely,] whether the personal representative [or] her attorney or accountants [were] entitled to additional expenses above and beyond those already authorized by the court.” Mia Stewart's counsel further advised that Eleanor Stewart had agreed to resign as personal representative and that Mia Stewart had agreed to replace her. The parties also agreed that Eleanor Stewart would transfer all remaining available funds into a trust account and that \$80,000 would be distributed to Mia Stewart from that account. Finally, the parties agreed that they would try to resolve their dispute over the expenditure of funds not approved in the final account. To that end, Eleanor Stewart agreed to provide Mia Stewart the documentation necessary to assess the propriety of the challenged expenditures. If the parties were unable to reach an agreement, however, they agreed to submit the issue to the district court for consideration without oral argument.

The district court directed Mia Stewart's counsel to put the parties' stipulation in writing. On January 26, 2004, the district court signed the stipulation and entered it as an order. In relevant part, the district court's order provided as follows:

*2 5. The parties shall attempt to resolve their differences concerning distribution of the *remaining funds*. If an agreement is reached, a signed Stipulation and proposed Order will be submitted to the court, closing the estate and providing for distribution of the *remaining funds*.

6. If no agreement is reached, the parties will serve and file briefs and affidavits, if desired, by February 10.... If briefs and affidavits are not served by February 10, the Court may issue an Order closing the Estate[,] and the *remaining funds* in the Trust Account may be distributed to Mia Stewart.

....

9. Eleanor A. Stewart and her counsel will provide to Mia Stewart's counsel any time records and expense records needed to assess the reasonableness and propriety of any expenditures by the Estate funds since August 1, 2003.

(Emphasis added.)

The parties were unable to resolve their differences regarding the \$11,658.51 expenditure. Accordingly, they submitted the issue to the district court for consideration. In March 2004, the district court issued an order finding that the \$11,658.51 expenditure had not been approved in the final account and requiring Eleanor Stewart to reimburse the estate for the expenditure. This appeal followed.

DECISION

I.

Eleanor Stewart argues that the district court “divested itself of jurisdiction”¹ to consider the propriety of the \$11,658.51 expenditure by issuing an order reserving for consideration only the distribution of “remaining funds.” Eleanor Stewart claims that the \$11,658.51 expenditure was not part of the “remaining funds” because it had been paid before the court issued its order. This argument is unavailing.

District courts have jurisdiction over “all subject matter relating to estates of decedents, including construction of wills and determination of heirs and successors of decedents.” Minn.Stat. § 524.1-302(a) (2002). Accordingly, a district court is authorized to “make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.” Minn.Stat. § 524.1-302(b) (2002). The district court's authority to administer an estate formally terminates when the district court issues a decree of distribution or an order for complete settlement and

the personal representative transfers all property to the persons entitled to the property and otherwise fully discharges the duties of a personal representative. Minn.Stat. § 524.3-1001 (2002) (governing formal proceedings terminating administration of an estate). District courts also have broad discretion in issuing appropriate relief during the pendency of the court-supervised administration of an estate. Minn.Stat. § 524.3-505 (2002) (“Interim orders approving or directing partial distributions, sale of property, or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.”).

*3 The district court's January 2004 order did not formally terminate the district court's authority to continue to administer the estate because the order was not a final decree of distribution and Eleanor Stewart had not transferred all property to Mia Stewart or otherwise discharged her duties as a personal representative. *See* Minn.Stat. § 524.3-1001. Accordingly, the supervised administration of the estate continued, and the district court retained authority to issue interim orders, including orders granting relief for the wrongful distribution of estate funds. *See* Minn.Stat. § 524.3-505.

Even assuming that the district court could divest itself of jurisdiction to administer an estate by issuing an order narrowing the issues remaining for consideration, the district court's January 2004 order had no such effect. In its order, the district court recognized that a dispute remained between the parties and made alternative provisions for the resolution of the dispute. The only dispute remaining after the stipulation was the dispute over the \$11,658.51 expenditure, an expenditure that was over and above the \$12,000 reserved for fees in the final account. The district court ordered Eleanor Stewart to provide Mia Stewart the documentation necessary for her “to assess the reasonableness and propriety of any expenditures by the Estate funds since August 1, 2003.” The \$11,658.51 expenditure was made after this date. The district court did not, therefore, “divest itself of jurisdiction” to consider the propriety of the expenditure. On the contrary, it expressly reserved authority to resolve the issue if the parties were unable to reach an agreement.

Eleanor Stewart's claim that the district court lacked the authority to consider the expenditure because the \$11,658.51 were not part of the “remaining funds” lacks merit. The “remaining funds” to which the parties and the court alluded at the hearing and in the stipulated order were clearly the \$102,970.23 on hand for distribution in the final account. A different interpretation of the term “remaining funds” would render meaningless the stipulated order's provisions reserving the \$11,658.51 expenditure for the district court's consideration should the parties be unable to resolve the dispute. The district court, therefore, properly considered the issue surrounding the expenditure pursuant to the stipulated order.

II.

Eleanor Stewart argues that even if the district court retained “jurisdiction” to consider the \$11,658.51 expenditure, Mia Stewart waived her right to challenge the expenditure by failing to object to it. But the transcript of the January hearing establishes that Mia Stewart's counsel expressly stated on the record that there still was a dispute over Eleanor Stewart's claim for expenses “above and beyond” those approved in the final account. And the January 2004 stipulated order made alternative provisions for the resolution of the disputed claim and required Eleanor Stewart to provide Mia Stewart “any time records and expense records needed to assess the reasonableness and propriety of any expenditures by the Estate funds since August 1, 2003.” By stipulating to alternative ways of resolving the dispute and by seeking records from Eleanor Stewart needed to assess the propriety of the expenditure, Mia Stewart properly preserved her objection to the expenditure. Accordingly, we conclude that Eleanor Stewart's claim to the contrary is inconsistent with both the stipulated order and the hearing transcript.

III.

*4 Eleanor Stewart also argues that her discharge as the personal representative extinguished any claim Mia Stewart might have had against her for the wrongful expenditure of estate funds. We disagree.

Under Minnesota law, the discharge of a personal representative terminates the representative's authority to represent the estate in pending or future proceedings, but it *does not* discharge the personal representative from liability for transactions occurring before the termination.

Termination [of the appointment of a personal representative] does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the representative of the duty to preserve assets subject to the representative's control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates the authority to represent the estate in any pending or future proceeding.

Minn.Stat. § 524.3-608 (2002). Relying on Minn.Stat. § 524.3-1001(a)(4), Eleanor Stewart argues that the discharge of a personal representative extinguishes claims that might have existed against the personal representative at the time of the discharge. The statute contains no language to that effect, however, and cannot be reasonably construed to extinguish such claims.

Section 524.3-1001 governs formal proceedings to terminate court administration of an estate. The statute authorizes a personal representative or any interested person to petition for an order of complete settlement of the estate and to apply for a decree or order of distribution. Minn.Stat. § 524.3-1001(a)(1), (2). The provision on which Eleanor Stewart relies provides: “When a decree or order for distribution is issued, the personal representative shall not be discharged until all property is paid or transferred to the persons entitled to the property, and the personal representative has otherwise fully discharged the duties of a personal representative.” *Id.* (a)(4). This provision does not extinguish claims against the personal representative for transactions occurring before the termination and cannot reasonably be read to extinguish such claims.

As Mia Stewart correctly points out, the statutory interpretation Eleanor Stewart proposes would place beneficiaries in the untenable position of having to allow a personal representative to continue in that position-and thereby risk further depletion of the estate's assets-in order to preserve a claim against the personal representative for the wrongful expenditure of funds before the termination. The legislature could not have intended such an absurd result. The statute simply requires that the district court, in the course of ending court-supervised administration of an estate, refrain from discharging the personal representative before his or her duties are fully discharged and all property has been distributed. Thus, Minn.Stat. § 524.3-1001(a)(4) did not extinguish Mia Stewart's claim against Eleanor Stewart for the wrongful expenditure of estate funds.

***5 Affirmed.**

All Citations

Not Reported in N.W.2d, 2005 WL 44462

Footnotes

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

1 We note at the outset that the United States Supreme Court has recently cautioned against the misuse of the word “jurisdictional.” *Kontrick v. Ryan*, 540 U.S. 443, ---, 124 S.Ct. 906, 915 (2004). The *Kontrick* court noted: “Courts, including this Court, ... have more than occasionally [mis]used the term ‘jurisdictional[.]’ ... Clarity would be facilitated if courts and litigants used the label ‘jurisdictional’ ... only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and

the persons (personal jurisdiction) falling within a court's adjudicatory authority.” *Id.*; see also *Bode v. Minn. Dep't of Natural Res.*, 594 N.W.2d 257, 259-60 (Minn.App.1999) (similarly cautioning against misuse of term jurisdictional), *aff'd*, 612 N.W.2d 862 (Minn.2000). Because when Eleanor Stewart uses the term “jurisdictional” she refers neither to the class of cases nor the persons falling within the district court's adjudicatory authority, this term is misused.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.