

**STATE OF MINNESOTA**  
**COUNTY OF CARVER**

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

In re:

Estate of Prince Rogers Nelson,  
Decedent

Case Type: Special Administration  
Court File No. 10-PR-16-46  
Honorable Kevin W. Eide

**REPLY MEMORANDUM IN SUPPORT OF  
MOTION TO APPROVE PAYMENT OF  
ATTORNEYS' FEES AND COSTS TO  
WHITE WIGGINS & BARNES, LLP AND  
J. SELMER LAW, P.A.**

White Wiggins & Barnes, LLP (“WWB”) and J. Selmer Law, P.A. (“JSL”) (collectively “Movants”), submit this Reply Memorandum in Support of their Motion to Approve Payment of Attorneys’ fees and costs from the Estate of Prince Rogers Nelson (the “Estate”) for services that benefitted the Estate.

On March 8, 2019, at the request of the Personal Representative Comerica Bank & Trust, NA, this Court Ordered that any attorney of record for the Heirs submit a request for payment of fees or expenses incurred from February 1, 2017 through December 31, 2018 and directed that such motion be filed by March 31, 2019. On March 28, 2019, WWB and JSL submitted a motion that set forth their attorneys’ fees and costs. Comerica filed a response opposing Movant’s fees on April 15, 2019.

Comerica’s response confirms that the Court must make specific findings regarding the Movants’ claim for fees and expense, and that the requested fees must be “just and reasonable” and “commensurate with the benefit derived by the Estate from such services.” However, it appears that Comerica’s sole objection to Movants’ fee application relates only to the issue of

whether the work performed for which reimbursement is sought benefitted the Estate as a whole, rather than Alfred Jackson individually for which we submit the Reply Memorandum.

As a preliminary matter, on pages 1 and 9 and in footnote 6 of Comerica's Response, Comerica concedes that certain actions and documents filed by the Movants in February 2019 conferred a benefit for which reimbursement by the Estate is warranted. Comerica clearly does not view any of the work identified in Movants' fee application as relevant, benefitting the entire Estate, or connected to the reimbursable 2019 filings –and has essentially requested the Movants to seek fees related to that work later. However, some of the work reflected in the billing statements is indeed related to or directly relevant to the issues that were brought to light in recent filings. Majority of the time submitted for payment relates to issues concerning the extent to which Comerica and the prior special administrator, Bremer Trust, NA, could be absolved in advance for any liability associated with its administration of the Estate.

Since appearing as counsel of record on behalf of Alfred Jackson, until the time of their replacement in February 2019, WWB spent considerable time researching and analyzing statutes and case law, submitted briefings, and orders of the Court as it relates to the Estate. These efforts provided the framework from which Movants were able to identify and provide evidence of substantial breaches of confidential information on the part of third-parties which could potentially expose the Estate, clearly adding value to—the Estate as a whole. Minnesota's Statute provides that where the services of attorney for any interested person contribute to the benefit of the estate, as distinguished from the personal benefit of such person, the "attorney shall be paid such commission from the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services." Minn. Stat. § 524.3-720. Moreover, Minnesota courts have rejected the argument that in order to contribute to the

benefit of the estate, interested persons must not themselves benefit from the proceedings. *In re Estate of Kane*, No. A15-1033, 2016 WL 1619248, at \*7 (Minn. Ct. App. Apr. 25, 2016).<sup>1</sup>

While the court has the full discretion on the determination of attorney fees that are awarded, the court must consider the following factors:

- (1) The time and labor required;
- (2) The experience and knowledge of the attorney;
- (3) The complexity and novelty of problems involved;
- (4) The extent of the responsibilities assumed and the result obtained; and
- (5) The sufficiency of assets available to pay for the services.

Minn. Stat. § 525.515 (b) (2016).

Movants met their burden of establishing entitlement to the requested fees, and Comerica challenged neither the necessity nor the reasonableness of the fees submitted. The only the question before the Court is whether the work performed benefitted the estate. While the court has not specifically outlined what is meant by a “benefit” to an estate, the court has held that an estate is benefitted when efforts are expended *to keep the estate intact*. *In re Estate of Van Den Boom*, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999) (emphasis added).

Comerica implied that Movants’ fee statements reflecting “services—such as routine correspondence, court appearances, and review of court filings and proposed transactions—were for the benefit of the Heirs individually rather than the Estate as a whole.” Each of the following time entries were necessary and related to either (1) the Special Representative and the Personal Representative’s efforts to be fully and permanently discharged of liability as to the Estate and the Heirs; or (2) the review of the client files received from Messers. Michael Lythcott and Greg

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<sup>1</sup>Pursuant to Minn. Stat. § 480A.08, a copy of this case is attached hereto.

Walker, who brought to light potential breaches of the confidentiality of the Estate's documents and information:

- October 31, 2018 Confer with potential local counsel regarding matter and qualifications; Strategy conference.
- November 1, 2018 Review public documents and applicable authorities presently at issue in Probate, including documents relating to Bremer's discharge of liability.
- November 3, 2018 Review authority and caselaw regarding the obligations of personal representative as it pertains to discharge of liability as to heirs; pursue strategy regarding same.
- November 4, 2018 Review applicable authorities and conference with Messers, Barnes, Anozie and White regarding the scope and appropriateness of the discharge of Bremer Trust.
- Continue case research analysis regarding duties and release of liability of Personal Representative; Confer with prior counsel re: the issues.
- November 6, 2018 Conference with Messers, Barnes, Anozie and White re: appeal. Review Applicable authorities re: availability of appeal of discharge and fees and procedure.
- Draft notice of appeal.
- Review letter filed by Comerica re: attorneys liens.
- Review letter filed by Maslon and attached proposed order re: scope of discharge.
- Draft motion for relief from judgement; confer with local counsel and file the same.
- Communication with J. Cassioppi regarding payments to Bremer in light of objections to discharge; Confer with team regarding strategy; review client and court files regarding same.
- Conference with Messer, Barnes, White and Anozie re: appeal.
- November 7, 2018 Review order denying motion to rescue Hon. Eide.
- Review Lommen Abdo's motion for approval of fees.

- Review applicable authorities re: appellate Pro Hac Vice and draft documents relating to the same.
- Review and revise motion for clarification; continue review of file for status and strategy; review of client files from prior counsel and M. Lythcott; Conference with White regarding the same.
- November 8, 2018 Draft Motion for Clarification.
- Review correspondence from Ms. Shirk (Minn Probate Clerk).  
Review of Alfred Jackson's objection to and motion for clarification of courts Oct. 17, 2018 order; review file history regarding same.
- November 10, 2018 Final revisions to objections; continue review of client files; confer with local counsel re: appeal of prior order from the Court regarding discharge of personal representative.
- November 13, 2018 Review Comerica's amended petition to approve interim accounting, and other pleadings related to issue discharge, including O. Baker and client's objection. Conference with Anozie regarding next steps; review case law on discharge issue; review file with full access.
- November 15, 2018 Review case filings.  
  
Begin drafting Appellate documents.
- November 16, 2018 Draft Appellate Pro Hac Vice motion, affidavit and statement of case.  
  
Confer with local counsel re: appellate filings.
- November 19, 2018 Confer with local counsel re: Nov 29, 2018 hearing.  
  
Correspond with local counsel re: accepted appellate case filings.  
Review issues related to Comerica's request for approval of final accounting, which includes a discharge as to heirs of matters covered or contained therein; conference with Barnes, White, and Anozie regarding case authority and strategy to oppose such discharge.
- November 20, 2018 Review order granting Pro Hac Admissions in appellate court.  
  
Pursue strategy and research regarding tax issues; confer with former colleague regarding general issues and IRS considerations

- with regard to estate tax resolutions; review material in Comerica database related to the estate tax issues.
- November 21, 2018 Review Barnes Thornburg application for attorney's lien against Tyka Nelson.
- November 22, 2018 Prepare for hearing on motion to approve accounting with discharge; continue review of client files.
- November 26, 2018 Confer with local counsel and re-submit objection to Comerica's petition to approve accounting.
- Review of Alfred Jackson's brief in support of his objection to Comerica Bank & Trust, N.A.'s Amended Petition to Approve Interim Accounting.
- November 27, 2018 Confer with Ms. Collins re: upcoming hearing and corresponding documents and information.
- Review transcript ordered by opposing counsel in appellate court.
- Continue preparation for hearing; review legal authority and details of activities sought to be approved by the court.
- Confer the Barnes and hearing preparations; confer with Barnes re: hearing preparations and issues anticipated.
- November 28, 2018 Travel to Minneapolis for hearing; final preparation for hearing.
- Review of 11.29.18 hearing pleadings.
- November 29, 2018 Appearance and argument at hearing on motion to approve accounting; confer with Comerica counsel; confer with O. Baker regarding issues of administration of the estate.
- Attend hearing-Comerica Interim Accounting.
- December 3, 2018 Review filing of proposed order.
- December 4, 2018 Review Hon. Eide's letter to Gleekel and response to Motion for clarification.
- Review letter from J. Eide regarding ruling related to discharge of former special representative; confer with local counsel regarding same; confer with client.

- December 5, 2018 Travel to Kansas City to meet with client to provide update and discuss strategy regarding estate issues.
- December 6, 2018 Confer local counsel re: withdraw of appeal in accordance with Hon. Eide's letter.
- December 7, 2018 Review letter from Malson re: Rule 54.02 certification and confer with local counsel regarding the same.
- Review affidavit and stipulation and order for dismissal.
- Confer with local counsel regarding service issues; continue review of client files; pursue strategy related to client expenses; review the court filings for the week.

The fees reflected and the outcomes achieved by Movants' service conferred a benefit not only for the individual heirs, such as Mr. Jackson, but for the Estate as a whole because Movants revealed/ objected to the Personal Representative's and Special Administrator's attempt to be fully and permanently discharged of all liability as to the Estate and the Heirs (which would be detrimental to the Estate). By successfully defeating the prior and current administrators' motions for pre-emptive relief from liability arising out of mismanagement, oversight and safeguarding the assets of the Estate, Movants have protected the Estate, and ensured that all decisions by the current administrator will seek to preserve the Estate for its beneficiaries and creditors. The fees and expenses in this regard for which Movants seek reasonable reimbursement and payment are evidenced by the favorable rulings Movants received from this Court, as well as actions taken by the Minnesota Appellate Court.

Additionally, the filing fees and travel expenses were incurred in connection with the motions, appeals, and the November 2018 hearing in which Movants prevailed and preserved the Estate's assets, and/or the depletion of Estate assets, that would have resulted from full and permanent discharge of the Special Representative and Personal Representative.

Alfred Jackson did not uniquely or individually benefit from the services provided by WWB and JSL for their review of file materials, including the Court filings, prior transactions, litigation related to the entertainment deals entered by the Estate, and the Michael Lythcott documents because it was through the above-stated due diligence that the potential Estate asset depletion was discovered. As noted by the Court, the Prince Estate is complex, and consequently demanded considerable effort from Movants to review documents and provide detailed analysis and determine not only the best course of action for the benefit of Mr. Jackson and his interests in the estate, but also to understand the interplay between the various service providers, disparate personal interests of the Heirs, and those hangers-on who seek to gain benefits via affiliation or business dealings with the Estate and/or the Heirs, which inevitably benefitted the Estate as a whole. Only by understanding the “big picture” could any attorney provide reasonable counsel in this matter. The work reflected in the Movants’ fee statements related to such review and due diligence was reasonable and necessary, and it benefitted the Estate as a whole.

For all the foregoing reasons, White Wiggins & Barnes, LLP and J. Selmer Law, P.A. respectfully request the Court authorize and direct the attorneys’ fees and costs be paid from the Estate, and for a finding that the work performed significantly benefitted the Estate as a whole.

Date: April 22, 2019

Respectfully submitted,

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In re Estate of Kane, Not Reported in N.W.2d (2016)

2016 WL 1619248

2016 WL 1619248

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 the ESTATE OF Edward D. KANE  
a/k/a Edward Donald Kane, Decedent.

No. A15-1033.

|

April 25, 2016.

**Synopsis**

**Background:** Probate proceedings were initiated, in which decedent's daughter filed petition for descent, alleging will was valid, to which sons objected and filed cross-petition, alleging portion of will devising real property to daughter failed. Following a bench trial, the District Court, Rice County, entered judgment in favor of sons and awarded them attorney fees and costs from estate. Daughter appealed.

**Holdings:** The Court of Appeals, [Hooten](#), J., held that:

evidence was sufficient to demonstrate decedent's intent to devise entirety of real property to daughter, so as to remove ambiguity from will, and

trial court acted within its discretion in awarding sons attorney fees and costs.

Affirmed in part, reversed in part, and remanded.

**Procedural Posture(s):** On Appeal.

Rice County District Court, File No. 66-PR-13-2646.

**Attorneys and Law Firms**

[John R. Neve](#), Evan H. Weiner, Neve Webb, PLLC, Edina, MN, for appellant.

[Mary L. Hahn](#), [Barbara K. Lundergan](#), Hvistendahl, Moersch, Dorsey & Hahn, P.A., Northfield, MN, for respondents.

Considered and decided by [RODENBERG](#), Presiding Judge; [HOOTEN](#), Judge; and [KLAPHAKE](#), Judge. \*

**UNPUBLISHED OPINION**

[HOOTEN](#), Judge.

\*1 In this probate appeal, appellant argues that the district court abused its discretion by determining that the extrinsic evidence offered at trial was insufficient to cure an ambiguity in decedent's will and by awarding respondents attorney fees and costs from decedent's estate. We conclude that the district court properly awarded attorney fees and costs to respondents. But, we also conclude that the district erred by determining that the credible and undisputed extrinsic evidence offered at trial was insufficient to determine decedent's intent and to cure the ambiguity in his will. Accordingly, we affirm in part, reverse in part, and remand.

**FACTS**

Edward D. Kane (decedent) died on May 24, 2010. He lived in Minnesota at the time he executed his will on June 22, 1989, and up until the time of his death. Decedent's wife, Gene Kane, died on October 22, 2011. The couple had three surviving children: appellant Jeane Kane, who is decedent's successor personal representative, and respondents Raymond Kane and James Kane. Throughout her parents' lives and up until the present, appellant has resided in Minnesota. Raymond left Minnesota in 1967, James left Minnesota in 1971, and they both presently live in Tennessee.

## Dukes, Jourdan 4/22/2019

## In re Estate of Kane, Not Reported in N.W.2d (2016)

2016 WL 1619248

On October 22, 2013, appellant filed a petition for determination of descent, seeking a declaration that decedent died testate and that his June 22, 1989 will was valid and unrevoked. On November 15, 2013, respondents filed an objection and cross-petition for determination of descent. On April 8, 2014, respondents filed an objection and amended cross-petition.

Attached to her petition, appellant submitted a document that purported to be decedent's original will, which was dated June 22, 1989. Paragraph 2.2 of decedent's will stated: "I give and devise to my wife, Gene C. Kane a life estate in *my real property which is described in the attached [e]xhibit 'A'*, with the remainder over to my daughter, [appellant], or her survivors per stirpes." (Emphasis added.) However, exhibit A was not attached to the will that was filed for probate. Decedent's will also provided that the residue of his estate would pass to Gene Kane. Gene Kane's will, which was prepared at the same time and by the same attorney who prepared decedent's will, provided that any property she owned at the time of her death would be divided equally among her three children.

In 1977, decedent inherited from his parents a 120-acre farm in Rice County. Decedent's family had owned the farm since 1892. At the time decedent's will was drafted in 1989, this was the only real property that he owned, and he owned it as one parcel. In 1998, he sold a 4.1-acre parcel of the farm on which the house, barn, and outbuildings were situated. The remaining 115.9 acres of farmland were rented out. At the time of his death on May 24, 2010, decedent owned 115.9 acres of farmland. The farmland was titled in decedent's name alone. This was the only real property that decedent owned at the time of his death, and he owned it as one parcel.

\*2 In her petition, appellant argued that, pursuant to paragraph 2.2 of decedent's will, she "now possesses the remainder interest in the [farmland]." In their objection and amended cross-petition, respondents countered that paragraph 2.2 of the will failed because the will lacked exhibit A,

the farmland passed to Gene Kane through the residuary clause of decedent's will, and the farmland now passes to all three children equally under Gene Kane's will. Based on these grounds, respondents moved for summary judgment. Appellant filed a memorandum in opposition, arguing that because there was no exhibit A, paragraph 2.2 of the will was ambiguous and extrinsic evidence should be allowed to determine decedent's intent. Appellant also argued that decedent intended through paragraph 2.2 to devise all of his real property to her, while respondents argued that decedent intended to devise less than all of his real property to her.

On June 17, 2014, the district court denied respondents' motion for summary judgment, concluding that the phrase, "my real property," in paragraph 2.2 of the will was ambiguous as to whether decedent intended to devise all of his real property, or only a portion of it, to Gene Kane in a life estate and subsequently to appellant in fee. The district court determined that there was a genuine issue of material fact as to "whether [e]xhibit A was ever prepared and what it might have stated if it was."

A two-day bench trial was held in October 2014. The main issue at trial was the interpretation of paragraph 2.2 of the will based on extrinsic evidence. The district court heard testimony from appellant, respondents, the parties' first cousin,<sup>1</sup> and James Keating, the attorney who prepared the wills for decedent and Gene Kane. The only witness who had firsthand knowledge of the circumstances surrounding the drafting of decedent's will was Keating. Keating had originally retained a copy of decedent's will, but destroyed all of his files when he retired.

Keating testified that he believed he had two meetings with decedent and Gene Kane regarding their wills. He testified that, at the first meeting, decedent stated that his plan for distribution was a life estate in "all of his real property" to Gene Kane, with the remainder to be left to appellant, "to









