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Probating Prince's Estate: Who Will End Up With the Singer's Substantial Intellectual Property?

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**PROBATING PRINCE’S ESTATE: WHO WILL END UP WITH
THE SINGER’S SUBSTANTIAL INTELLECTUAL
PROPERTY?**

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I. INTRODUCTION

Within days after Prince’s April 21, 2016 death, newspaper and television stories concerning problems involving the legendary performer’s substantial estate began to appear. To begin with, it was widely reported that the value of the estate of the 57-year old resident of Chanhassen, Minnesota, could be worth as much as \$300 million. Moreover, the singer, born Prince Rogers Nelson, was not known to have a will.¹ The supposed problems with the estate presented by the

¹ See generally Jon Pareles, *Prince, an Artist Who Defied Genre, Is Dead at 57*, N.Y. TIMES (Apr. 22, 2016), http://www.nytimes.com/2016/04/22/arts/music/prince-dead.html?_r=0; Ben Sisario, *Prince Died Without a Will, According to Court Documents Filed by His Sister*, N.Y. TIMES (Apr. 27, 2016),

star's unexpected death fell into four categories: (1) how would the intellectual property in the estate be valued, (2) who would serve as the executor or administrator and thus control the distribution of the property, (3) who would be entitled to inherit Prince's property if there is no will, and (4) what would happen if a will surfaced?

II. THE VALUATION OF PRINCE'S ESTATE

Although Prince apparently died owning several million dollars' worth of real estate in the United States and the Caribbean, including his lavish Minnesota complex Paisley Park, most of wealth was in the form of intellectual property, especially in the realm of copyright.² This property included not only the copyrights in Prince's previously released material—not all of which was owned by the singer/songwriter—but also what was reported to be hundreds of hours of unreleased performances, many of which were of new

<http://www.nytimes.com/2016/04/27/arts/music/prince-died-without-a-will-according-to-court-documents.html>; Brent Staples, *What Happens to Prince's Estate Without a Will?*, N.Y. TIMES (May 4, 2016), <http://takingnote.blogs.nytimes.com/2016/05/04/what-happens-to-princes-estate-without-a-will/>.

² For his real estate holdings, see *Prince's land holdings include \$12M island getaway*, MINNEAPOLIS-ST. PAUL BUSINESS JOURNAL (May 13, 2016), http://www.bizjournals.com/twincities/morning_roundup/2016/05/princes-land-holdings-include-12m-island-getaway.html.

compositions.³ Apparently there is enough of this material to enable the holder of the rights to it to release an album a year into the 22nd century.⁴ Placing a present valuation on this yet to be released material will be challenging, although it seems likely that it worth more now that Prince is dead than if he were still alive and able to produce even more. As is not uncommon following the deaths of noted performers, Prince's popularity has surged dramatically since his death. Twenty-four of his previously released albums, most of which had dropped off the charts completely, have returned to the Billboard Top 100, with five of them reaching the Top 10. Having 19 of the top 100 albums also bested the previous record of 16, held by the Beatles.⁵ Determining the precise value of all of this material, which for probate and tax purposes is its value at the time of Prince's death, will be a challenge, and one likely to put the estate at odds with the Internal Revenue Service and

³ Darren M. Wallace and Laura A. Schuyler, Potential Intellectual Property Issues Emerge for Prince's *Estate*, TRUSTS & ESTATES (Apr.26, 2016), <http://wealthmanagement.com/estate-planning/potential-intellectual-property-issues-emerge-prince-s-estate>.

⁴ Mobeen Azhar, *I would hide 4 U: What's in Prince's secret vault?*, THE GUARDIAN (Mar. 19, 2015), <https://www.theguardian.com/music/2015/mar/19/i-would-hide-4-u-whats-in-princes-secret-vault>.

⁵ Tirdad Derakhshani, *Prince Sets Billboard Record for Top 10 Albums*, PHILLEY.COM (June 4, 2016) http://articles.philly.com/2016-06-04/entertainment/73543410_1_amber-heard-daughter-suri-johnny-depp.

the Minnesota tax authorities (since estate taxes will be 40% of the total value of the holdings).⁶

Also complicating the process of evaluating the intellectual property in Prince's estate is Section 203 of the 1976 Copyright Act. This provision gives the author of a creative work the right to terminate any previously transferred copyright assignments once 35 years have passed since the date of the transfer.⁷ Since Prince signed his first recording contract with Warner Bros. in 1977 and released his first album in 1978, at the time of his death he had just entered the cancellation period for many of his most valuable works.⁸ Had Prince been survived by a spouse or descendants (i.e., children or grandchildren), the termination rights would have under the terms of the statute passed to them at death. However, as discussed below, it appears that there are no such survivors, so under the statute the "termination interest" belongs to the "author's executor, administrator,

⁶ 26 U.S.C. § 2031(a) (2015); 26 C.F.R. § 20.2031-1(b) (2015). For the tax consequences, see Kelly Holland, *Prince's apparent lack of planning may cost his estate*, CNBC ONLINE (Apr. 26, 2016), <http://www.cnbc.com/2016/04/26/princes-apparent-lack-of-planning-may-cost-his-estate.html>.

⁷ 17 U.S.C. § 203(a) (2015). The statute applies to all copyright transfers after January 1, 1978, unless they are created as works for hire.

⁸ For a discussion of Prince's sometimes antagonistic relationship with Warner Brothers, see *Prince re-signs with 'slave' label Warner Bros Records*, BBC NEWS (Apr. 18, 2014), <http://www.bbc.com/news/entertainment-arts-27081344>.

personal representative, or trustee.”⁹ Presumably, the personal representative (the term use for executor/administrator in Minnesota¹⁰) of Prince’s estate will terminate all of Prince’s previous copyright assignments as they become eligible for termination, decisions that will further enhance the estate’s value.

In addition, Prince’s estate will include his post-mortem publicity rights, which vary in duration from state to state, and are extremely difficult to appraise.¹¹ The situation in Minnesota is further complicated by the failure of the state’s law to even recognize a post-mortem right of publicity. Unlike many jurisdictions, Minnesota does not have a right of publicity statute, and no court has ever ruled that the right survives the death of the holder in Minnesota.¹² So not only may Prince’s estate or successors not have an enforceable right of publicity in Minnesota, the right may be unenforceable in other jurisdictions, including those that recognize such a right for their own citizens. The

⁹ 17 U.S.C. § 203(a)(2)(D) (2015).

¹⁰ Minn. Stat. § 524.3-203 (2015).

¹¹ For the foundational Minnesota right of publicity cases, see *Uhlaender v. Hendricksen*, 316 F. Supp. 1277 (D. Minn. 1970); *Ventura v. Titan Sports, Inc.*, 65 F.3d 725 (8th Cir. 1995); and *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998).

¹² On the absence of a Minnesota right of publicity statute, see Jennifer E. Rothman, *Rothman’s Roadmap to the Right of Publicity: Minnesota*, <http://www.rightofpublicityroadmap.com/law/minnesota>.

general rule is that a post-mortem right of publicity exists in other states only if it existed in the state in which the deceased claimant was domiciled at the time of his or her death.¹³ However, the right is nevertheless important because there are some states, notably Washington and Indiana, which allow actions on behalf of deceased individuals from states like Minnesota, at least for infringing conduct that occurred in that particular state.¹⁴ However, a significant majority of jurisdictions follow the general rule (which is based on the notion that there was no right to be passed to one's successor in a state like Minnesota).¹⁵ Consequently, to calculate the value of this right, the administrator of Prince's estate will have to determine in which states it may be enforced and the amount of endorsement revenue that might be captured in those states.

A recent effort to change the Minnesota rule to one that recognized a post-mortem right of publicity led to the introduction of

¹³ The best known case articulating the majority rule is *Shaw Family Archives, Ltd. v. CMG Worldwide, Inc.*, 589 F. Supp. 2d 331 (S.D. N.Y. 2008).

¹⁴ For Washington, see Wash. Rev. Code §§ 63.60.010-63.60.080 (2016); *Experience Hendrix LLC v. Hendrixlicensing.com LTD*, 762 F.3d 829 (9th Cir. 2014). For Indiana, see Ind. Code § 32-36-1-6 (2016).

¹⁵ For a general discussion of this issue, see Beth Seals, *Speaking From the Grave: Post-mortem Rights of Publicity for the Deceased*, GLOBAL BUSINESS IP AND TECHNOLOGY BLOG (Oct. 15, 2014), <http://www.iptechblog.com/2014/10/speaking-from-the-grave-postmortem-rights-of-publicity-for-the-deceased/>.

the so-called “Prince Act” in May by Republican State Representative Joe Hoppe. Standing for Personal Rights in Names Can Endure (PRINCE), the proposed act would have extended the right of publicity in Minnesota into the post-mortem era, and would have applied retroactively to Prince himself. However, the broad nature of the act produced a firestorm of opposition, and the bill was ultimately withdrawn, leaving the law of Minnesota unchanged.¹⁶

III. WHO WILL ADMINISTER PRINCE’S ESTATE?

Initially, there was some question as to whom would be appointed the personal representative of the estate. Although most expected Prince’s 55-year old sister Tyka Nelson (his only full-blooded sibling) to fulfill that role, almost immediately questions surfaced as to whether or not she possessed the skills necessary to perform this function, especially given the need to address the intellectual property issues discussed above.¹⁷ However, Tyra recognized her own

¹⁶ Sean Fitzgerald, *PRINCE Act Pulled From Minnesota Legislature, Might Return Next Year With Changes*, VULTURE (May 19, 2016), <http://www.vulture.com/2016/05/prince-act-minnesota-change.html>.

¹⁷ Ben Sisario, *Prince Died Without a Will, According to Court Documents Filed by His Sister*, N.Y. TIMES (Apr. 27, 2016), <http://www.nytimes.com/2016/04/27/arts/music/prince-died-without-a-will-according-to-court-documents.html>.

limitations, petitioned Carver County (Minn.) Probate Judge Kevin Eide to name the trust department of a Twin Cities bank, Bremer Bank, as the special administrator of the estate.¹⁸ The bank was apparently somewhat familiar with Prince's assets, and on May 3, 2016, he made the appointment. On June 8, Judge Eide further authorized the special administrator to "begin monetizing Prince's intellectual property" even though the court has yet to rule as to who is legally entitled to inherit the estate. He also ruled that the special administrator's authority to enter into agreements on behalf of the estate would expire no later than November 2, 2016, after which any decision would require specific court approval.¹⁹ Given that the trustee fee is likely to be worth several million dollars, the appointment of a corporate special administrator has likely prevented a potentially contentious lawsuit over the appointment of a personal representative from among the ranks of Prince's relatives. However, it is likely that a personal representative

¹⁸ Sheila M Eldred, *Court Names Bank to Oversee Prince's Estate in Absence of a Will*, N.Y. TIMES (May 3, 2016), available at <http://www.nytimes.com/2016/05/03/arts/music/court-names-bank-to-oversee-princes-estate-in-absence-of-a-will.html>.

¹⁹ Dan Browning, *Judge weighs conflict over Prince Estate*, MINNEAPOLIS STAR TRIBUNE (June 8, 2016), pg. 1A; Keith Harris, *Prince's Estate is Open for Business, Following Judge's Ruling*, BILLBOARD (June 8, 2016), <http://www.billboard.com/articles/news/7400354/prince-estate-open-for-business-judge-ruling>.

will be appointed at some point, and Tyka remains the most likely candidate.

IV. WHO WILL INHERIT PRINCE'S ESTATE?

Assuming that no will surfaces, the property that makes up Prince's estate will be distributed in accordance with the Minnesota intestacy statute.²⁰ Under that statute the property of a person who dies without a valid will goes to a surviving spouse and the descendants, if there are any.²¹ Here there is no spouse, and no one has to date come forward claiming to be married to Prince at the time of his death. Moreover, neither of Prince's two living ex-wives, Mayte Garcia and Manuela Testolini, would have any inheritance or any other sort of claim to the estate under Minnesota law. Were it to turn out that Prince was secretly (and legally) married to someone at the time of his death and there was no will, then that spouse would take the entire estate.²² However, there appears to be no such person.

²⁰ Minn. Stat. § 524.2 (2015).

²¹ Minn. Stat. § 524.3-102 (2015) (spouse); Minn. Stat. § 524.3-103 (2015).

²² However, if there were no will, but both a secret spouse and an illegitimate child (or children), then under Minnesota law, the spouse would take the first \$150,000 of his estate, and the spouse and the children would divide the remainder with 50% going to the spouse. If, by chance, all of the illegitimate children are also the children of the secret spouse, then the spouse takes the entire estate. Minn. Stat. § 524.2-102(1)(ii) (2015).

There are, however, four individuals who have filed claims with the court claiming to be the children of Prince. Although court-order DNA test have been scheduled for three of the four claimants, by June 18, 2016, none of these claims have been validated and none appear to be taken seriously.²³ Prince's only known child, Boy Gregory, died of a rare genetic disorder shortly after his birth in 1996. If, by chance, a woman were pregnant with Prince's child at the time of his death that in utero child would qualify to inherit.²⁴

The four persons claiming to be the children of Prince include South Carolinian Norman Yates Carthen who claims to have been legally adopted by Prince, although no evidence of such an adoption has been found.²⁵ For an adopted child to claim as a descendant in Minnesota and elsewhere, the child must have been formally adopted in compliance with legal requirements. Foster children, in contrast, have no inheritance rights.²⁶ The other three claimants assert that they are the biological children of Prince. The first is 39-year old Colorado

²³ *Id.*

²⁴ Minn. Stat. § 524.2-108 (2015). Since Prince has at the time of the writing of this article been dead for less than six months, it is possible that such a claim could still be forthcoming.

²⁵ Gil Kaufman, *Man Claims He's Prince's Adopted Son and He's Owed \$7 million in Singer's Will*, BILLBOARD (June 7, 2016), <http://www.billboard.com/articles/news/7400193/man-claims-prince-adopted-son-will>.

²⁶ Minn. Stats. § 260C.601–260C.637 (2015).

prison inmate, Carlin Q. Williams whose claim is supported by his mother, Marsha Henson, who maintains that she had unprotected sex with Prince in a Kansas hotel in July 1976, the month after Prince graduated from high school in Minnesota.²⁷ The second is a 43-year old adopted woman from Connecticut, who uses the name Taz Laeni Walker and claims that Prince impregnated her biological mother when he was 14 years old and her mother was a St. Paul resident and a friend of the Nelson family.²⁸ However, Walker may have no claim to inherit, even if she is the biological daughter of Prince, because of the rule pertaining to the inheritance rights of adopted people in Minnesota. If Walker is in fact legally adopted—facts about her past are sketchy—she will be barred from inheriting, because, under Minnesota law, no parent-child relationship exists between a biological parent and an adopted child once the child is legally adopted.²⁹ Finally, a New York woman has requested that she be permitted to undergo DNA testing to

²⁷ *Man Claims to Be Prince's Heir, Requests Blood Test*, CBS MINNESOTA (May 9, 2016), <http://minnesota.cbslocal.com/2016/05/09/prince-son-claim-blood-test/>.

²⁸ Bill Hudson, *Dozen's Vie For a Piece of Prince's Estate*, CBS MINNESOTA (June 15, 2016), <http://minnesota.cbslocal.com/2016/06/15/prince-claimants/>; Maria Pente, *Would-be "heirs" to Prince's millions are multiplying*, CNBC ONLINE (June 15, 2016), <http://www.cnbc.com/2016/06/15/would-be-heirs-to-princes-millions-are-multiplying.html>.

²⁹ Minn. Stat. § 524.2-119 (2015). The statute does provide for a limited number of exceptions—adoption by a step-parent and a natural parent together, adoption by a relative of either biological parent, and adoptions after the death of both biological parents—none of which appear to be present here.

determine if she is Prince's biological daughter, even though she has offered no theory as to how she might be.³⁰ Under Minnesota law, the fact that Prince was not married to the mothers of any of these women would have no effect on the right to inherit.³¹ Given the highly publicized nature of Prince's death, and since the court-imposed deadline for filing claims against the estate was Friday, June 10, it seems unlikely that, barring a belated in utero claim, there will be any additional claims. In the seemingly unlikely event that any of the claimants are able to establish that they are the biological children of Prince (or if an in utero child appears), the successful challengers will divide the entire estate among themselves.

If there is no spouse and no children or other descendants, under the Minnesota intestacy statute, next to inherit are the parents. However, both of Prince's parents predeceased him by more than a decade, his father John L. Nelson in 2001 and his mother Matie Della Shaw in 2002. If there are no parents, next in line are the brothers and sisters are the deceased.³² Here there are several, as Prince was

³⁰ Hudson, *Dozen's Vie For a Piece of Price's Estate*, *supra*, note 28.

³¹ Minn. Stat. § 524.2-103(1) (2015) (requiring only that the child be a descendant of the deceased).

³² Minn. Stat. § 524.2-103 (2015).

survived by one full-blooded sister (the above mentioned Tyka Nelson), two half-sisters (Norrine and Sharon Nelson), and three half-brothers (John Nelson, Alfred Jackson, and Omarr Baker).³³ He was also pre-deceased by one half-brother (Duane Nelson) and one-half sister (Lorna Nelson). According to their Minneapolis Star Tribune obituaries, Duane was survived by a child and two grandchildren, but Lorna died childless.³⁴

Unlike the situation in some states, Minnesota follows the majority practice and treats siblings and half-siblings equally.³⁵ Therefore, half siblings Norrine, Sharon, John, Alfred, and Omarr would be entitled to the same size share as full-blooded sibling Tyra. Moreover, the state also allows the descendants of a deceased sibling to claim what would have been their parent's share.³⁶ Consequently, barely proof of the existence of children or the discovery of a will, Prince's estate will be divided into seven equal shares—how to do that

³³ For the status of Prince's various family members, see Zach Seemay, *Prince's Heirs: Meet the Late Singer's Family Members*, ET ONLINE (Apr. 27, 2016), http://www.etonline.com/news/187646_prince_heirs_meet_the_late_singer_family_members/.

³⁴ C.J., *Funeral for Prince's half-brother, Duane Nelson, is Saturday*, MINNEAPOLIS STAR-TRIBUNE (May 3, 2013), <http://www.startribune.com/funeral-for-prince-s-half-brother-duane-nelson-is-saturday/117755303/>; *Lorna Nelson Obituary* (October 26, 2006), <http://www.legacy.com/Obituaries.asp?Page=LifeStory&PersonId=19727814>.

³⁵ Minn. Stat. § 524.2-107 (2015).

³⁶ Minn. Stat. § 524.2-106(c) (2015).

is the responsibility of the administrator or personal representative— with shares going to the above-mentioned Tyka, Norrine, Sharon, John, Alfred, Omarr, and the descendants of Duane.

If any of the children of Duane are no longer alive, but are survived by descendants, then the descendants of the deceased child would take the parents share. In early June, the British newspaper, the Daily Mail, reported that the late Duane was survived by a living adult daughter in Wisconsin named Brianna and a grand-daughter, Victoria, whose father was Duane, Jr., who is also deceased.³⁷ If this information is correct, then Tyka, Norrine, Sharon, John, Alfred, and Omarr would each take 1/7th of the estate with the other 1/7th being divided equally between the two descendants of Duane, Jr.

This distribution plan could be upset if it were proven that Prince had additional half-siblings or that not all of the supposed half-siblings are the actual children of one or the other of Prince's parents.

³⁷ Alexandra Genova and Chris Pleasance, *Legal battle for Prince's fortune rages on as TWO more people come forward claiming to be the pop-star's heirs*, DAILY MAIL (June 7, 2016), <http://www.dailymail.co.uk/news/article-3628712/Legal-battle-Prince-s-fortune-rages-TWO-people-come-forward-claiming-pop-star-s-heirs.html>. If the other grandchild mentioned in Duane's obituary, supra, note 29, is the child of Brianna, that child would not be an heir. Victoria is an heir because she replaces her late father, Duane, Jr. in the chain of inheritance.

(This is not implausible, as both of Prince's parents acknowledged having children out of wedlock.) Prince's mother Mattie apparently gave birth to her son, Alfred Jackson, out of wedlock, before marrying Prince's father. While married to Mattie, John Nelson also fathered a child with his ex-wife Vivian Nelson. (That is how Prince's late half-brother Duane could be born one year after Prince and one year before Prince's full-blooded sister, Tyka.) Consequently, it is possible that Mattie or John (more likely) may have had additional children, who would be half-siblings of Prince. Three individuals asserted such claims prior to the June 10 deadline.³⁸ If one or more of the three prove that they are half-siblings of Prince, then they will be entitled to a share of the estate equal to that of the previously recognized brothers and sisters.

One of the claimant's cases appears to be particularly weak, given that supposed half-brother claims to be the son of Prince's father, "Haywood Nelson."³⁹ (Prince's father's name was John, and he was

³⁸ *Id.* An additional reported claim on the part of a 30-something year old Minneapolis resident was ultimately not filed. Ryan Parry, *Minnesota man is claiming to be Prince's 'love child' from a fling with mom in the '80s as the music legend's sister asks to be in charge of his \$300 million estate*, DAILY MAIL (Apr. 28, 2016), <http://www.dailymail.co.uk/news/article-3563602/Minnesota-man-claims-Prince-s-love-child-music-icon-s-sister-reveals-no-requests-charge-brother-s-300million-estate.html>.

³⁹ *Id.*

not known to have used the name Haywood.) Two other women, Darcell Gresham Johnston and Regina Sorenson have asserted similar claims. Neither has provided much in the way of specific details (including their ages) but Johnston, the first person to file a claim to be an heir, asserts that she is the daughter of Prince's mother, jazz singer Mattie Shaw.⁴⁰ Sorenson, in contrast, claims to be the daughter of Prince's father, John Nelson. DNA tests have been scheduled for these claimants as well as those claiming to be the children of Prince.

In addition to the possibility that Prince had additional half-siblings, it is also possible that he had fewer such relatives than is usually assumed. While it seems highly unlikely that any of his mother Mattie's four children—Alfred Jackson, Prince, Tyka Nelson, and Omarr Baker--were not her own, it is possible that one or more of John's supposed children with his first wife Vivian—Sharon, Norrine, Lorna, John, Jr., and Duane--might have been fathered by someone else. If that was the case, they would not be legal siblings of Prince and therefore could not share in his estate. In fact, it seems to be widely

⁴⁰ Anna Pratt and Nancy Dillon, *Woman claiming to be long-lost sister of Prince Steps Forward*, NEW YORK DAILY NEWS (May 2, 2016), <http://www.nydailynews.com/news/national/woman-claiming-long-lost-sister-prince-steps-article-1.2622147>.

believed among Prince's other siblings that the late Duane was in fact not the son of John Nelson, contrary to public representations.⁴¹ In Tyka's court filings on behalf of the family, neither Duane nor his descendants are listed as potential heirs, and the New York Daily News has reported that Duane himself "learned in his teen years that Prince's dad wasn't his biological father."⁴² If it can be established that Duane was not the son of John Nelson, and no one else established themselves as an heir, the number of sibling shares would be reduced by one. To date, it does not appear that the parentage of Sharon, Norrine, and John, Jr. Nelson has been challenged.

Future DNA testing may be in the cards, at least for Duane's descendants. Under Minnesota law, John L. is legally presumed to have been the father of all of his known children except for Duane, because he was married to their mother Vivian at the time of their birth.⁴³ (At the time of Duane's birth he was married to Mattie, Prince's mother.) Consequently, anyone challenging the paternity of any of the children other than Duane would have to do so by "clear and convincing"

⁴¹ Dan Browning, *Prince heirs could need proof – soon*, MINNEAPOLIS STAR TRIBUNE (June 3, 2016), pg. 1B.

⁴² *Id.*

⁴³ Minn. Stat. § 257.55 (2015).

evidence.⁴⁴ However, John L. Nelson would be presumed to be the father of Duane only if he and Vivian filed the required forms before their deaths with the Minnesota Registrar of Vital Records. (Whether or not this was done is unclear, although lawyers for Duane descendants have apparently filed “birth records” which they insist establish Duane as a half-brother.⁴⁵) Otherwise, if Duane’s connection to John L. was not established during the latter’s life, his daughter and grand-daughter will have to establish by “clear and convincing evidence” that John L. Nelson actually was Duane’s father.

Just before the June 10 deadline passed another challenge surfaced when a woman named Venita Jackson-Leverette, a registered nurse and community college adjunct professor in Kansas City, retained lawyers in Kansas City and Minneapolis to assert her right to a share of Prince’s estate on the grounds that her father, and not John L. Nelson, was actually Prince’s father.⁴⁶ While there is a legal presumption that John L. Nelson is Price’s father, since he was married

⁴⁴ Minn. Stat. § 257.55 Subd. 2 (2015).

⁴⁵ Dan Browning, *Prince heirs could need proof – soon, supra*, note 41.

⁴⁶ Char Little, *Prince Death: Did Singer Have A Secret Sister?*, ENSTARZ (June 13, 2016), <http://www.enstarz.com/articles/163406/20160613/prince-death-did-singer-have-a-secret-sister.htm>. A copy of Ms. Jackson-Leverette’s Certificate of Representation and Demand for Notice filed with the Carver County Probate Court can be found at <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Certificate-of-Representation-and-Demand-for-Notice-Venita-Jackson-Leverette.pdf>.

to his mother at the time of his birth, if Ms. Jackson-Leverette can establish the linkage between her father and Prince, then none of the Nelson half-siblings—Sharon, Norine, John, Jr., and Duane’s descendants--could inherit, leaving only Tyka and Alfred and Omarr, the two children that Prince’s Mother had with other men, to split the estate with Jackson-Leverette and any other siblings that she might have who were the offspring of her father. The DNA testing will likely resolve these issues.

Since it is clear that Prince was survived by at least one sibling, none of his cousins or other relatives will have a claim to his estate. This will include the seven claimants who filed an action with the probate court claiming to be descendants of a sister of Prince’s great-grandfather.⁴⁷ Assuming this is true, this would make the seven Prince’s third cousins, if they are of the same generation as Prince. As such, they would be technically eligible to inherit Prince’s estate, but *only* if he had no siblings at all, no nieces and nephews, no first cousins

⁴⁷ Maria Puente, *Would-be 'heirs' to Prince's millions are multiplying*, CNBC-USA TODAY U.S. NEWS (June 15, 2016), available at <http://www.cnbc.com/2016/06/15/would-be-heirs-to-princes-millions-are-multiplying.html>.

and no second cousins.⁴⁸ As third cousins, they would have no possibility of inheriting in this case.

V. WHAT WILL HAPPEN IF A WILL IS FOUND?

Had Prince had a validly executed will, that document would have controlled the distribution of the estate. Under Minnesota law (like that of most American states) a property owner is free to dispose of his or property as she sees fit, unless the person is lawfully married and in that case a portion of the estate has to be set aside for the spouse.⁴⁹ Children, grandchildren, and other relatives have no right to claim any part of the estate unless they are provided for in the will.⁵⁰ To date no will, or credible evidence of the existence of a will, has surfaced, although the above-mentioned Norman Yates Carthens (who claimed to have been adopted) also claimed that Prince had a will and that he, Carthens, was devised \$7 million in it.. Carthens has apparently

⁴⁸ Minn. Stat. § 524.2-103 (2015).

⁴⁹ Minn. Stat. § 524.2-202 (2015).

⁵⁰ Minn. Stat. § 524.2-302 (2015) (providing for disinherited children only if they were born or adopted after the will was executed).

provided no evidence as to the will's existence or to support his claim of adoption.⁵¹

Should a will subsequently surface, it would be controlling, assuming that it was an actual will and was validly executed, which in Minnesota means that it is in writing, signed by Prince or by someone at his direction, and witnessed by at least two individuals “each of whom signed within a reasonable time after witnessing either the signing of the will ... or the testator's acknowledgment of that signature or acknowledgment of the will.”⁵² However, a holographic will (i.e., a handwritten will signed by the testator, but otherwise unwitnessed) is not valid in Minnesota, although it would be in about half the states. Also, Minnesota will not accept a notarized will, unless it is also signed by two witnesses. Finally, Minnesota has not adopted the “dispensing power,” which allows judges to admit to probate wills that clearly evidence the intentions of the testator even though they are not validly executed. On the other hand, if Prince had a valid will that had not been intentionally revoked, but the will has been lost, in Minnesota (and most other states) the will could still be probated, if its existence and

⁵¹ See Kaufman, *Man Claims He's Prince's Adopted Son and He's Owed \$7 million in Singer's Will*, *supra*, note 25.

⁵² Minn. Stat. § 524.2-502 (2015).

contents could be proven by a preponderance of the evidence, which would ordinarily require a copy of the signed will.⁵³

So, if a will is presented that meets the requirements of the Minnesota wills act the will be the basis of probate. However, the legitimacy of the submitted will could be contested by any of the individuals entitled to inherit if there is no will, i.e., Prince's heirs. In the unlikely circumstances that Prince actually had a will, and is survived by a spouse married after the will was executed, or by children born after the will's execution, special rules dealing with so-called "pretermitted" spouse or descendants would apply. If there were a secret spouse and a will executed prior to the marriage, the spouse would be entitled to her pretermitted share, which would be an amount equal to her intestate share (described above), unless there was a valid prenuptial agreement; evidence that Prince had otherwise provided for the spouse; or language in the will that Prince did not want a subsequent spouse to take under the will.⁵⁴ If the spouse was not eligible to claim a pretermitted share (either because the marriage had predated the will or because the will specifically 3, then an elective

⁵³ Minn. Stat. § 524.3-402 (2015).

⁵⁴ Minn. Stat. § 524.2-301 (2015).

share claim could be asserted. Under the Minnesota elective share statute, the secret spouse would be entitled to a certain percentage of all of Prince's assets, ranging from \$50,000 to 50% of his total assets, depending on the length of the marriage and the assets of the surviving spouse.⁵⁵ However, this right also could have been waived by means of a prenuptial agreement.⁵⁶ Unlike the case with children, most states do not permit the complete disinheritance of a spouse.

Were there both a will and unacknowledged children, the will would control, unless the omitted children (if they were omitted) were born after the date the will was executed. If the latter was true, the "after-born" child or children would claim the entire estate under the Minnesota pretermitted child statute.⁵⁷ The only exception would be if the will devised all or substantially all of Prince's property to the mother of the child, in which case the child would take nothing.⁵⁸ However, if there were illegitimate children born both before and after the date of the will and the will devised nothing to the living illegitimate children, then the after-born illegitimate children would

⁵⁵ Minn. Stat. § 524.2-202 (2015).

⁵⁶ Minn. Stat. § 524.2-213 (2015).

⁵⁷ Minn. Stat. § 524.2-302(a)(1) (2015).

⁵⁸ Minn. Stat. § 524.2-302(a)(1) (2015).

take nothing.⁵⁹ In Minnesota, as in every American state except Louisiana, parents are under no obligation to leave anything to their children.

Once these questions of relationship and the existence or non-existence of a will are sorted out, the process of identifying Prince's heirs should be fairly straight-forward. Figuring out how to manage the assets, especially if they are divided up six or seven equal shares, is going to be a much greater challenge.

VI. UPDATE (JULY 26, 2016)

Only Friday, July 21, Bremer Trust, the administrator of Prince's estate issued documents stating that all of the claimants to the estate have been eliminated except for the living sister, the living five half siblings, and the two living descendants of the alleged half-brother Duane (who was Prince's head of security at one time). However, more genetic testing will be done to determine if the deceased Duane's father really was John Lewis Nelson, Prince's father.

⁵⁹ Minn. Stat. § 524.2-302(a)(2)(ii) (2015).

If he was not, then Duane's two descendants will be eliminated as well.⁶⁰

⁶⁰ Maria Puente, *Prince's heirs, Part 2: Who's in, who's out? Lots more are out.*, USA TODAY (July 22, 2016), <http://www.usatoday.com/story/life/music/2016/07/22/princes-heirs-whos-in-whos-out-part-2-lots-more-are-out/87444204/>.

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