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The Prince Estate: How Intestacy Works, How It Could Work, and How It Fails as an Estate Plan

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THE PRINCE ESTATE: HOW INTESTACY WORKS, HOW IT COULD WORK, AND HOW IT FAILS AS AN ESTATE PLAN

Dennis M. Patrick[†] and Beth T. Morrison^{††}

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I. INTRODUCTION

Prince Rogers Nelson (the musician known as “Prince”) died on April 21, 2016, in Minnesota. It is estimated that the beloved pop star left an estate worth \$100–\$300 million. He apparently left no will or trust to direct the disposition of his estate, i.e., he died intestate.¹ As hopeful beneficiaries, family members, and would-be family members attempt to position themselves to receive a slice of the Prince pie, the court must now rely on Minnesota’s intestate succession statutes to determine how to administer and divide up Prince’s complex estate. The probate process will involve identifying and valuing Prince’s assets and debts and determining his closest living heirs or next of kin, as defined by Minnesota law. Determining Prince’s closest living heirs or next of kin is certain to be especially complicated because of the non-traditional structure of his family. Prince’s status as a famous musician, the magnitude and makeup of his estate, and the public nature of the probate process create the perfect storm for a long line of would-be heirs claiming to have a seat at the table, slowing down the process, and sharply driving up the administration costs for the estate.

It was surprising to many, considering Prince’s superstar status and the size of his estate, that Prince died intestate. However, a majority of Americans die intestate. According to a Gallup poll conducted in May of 2016, two weeks after Prince’s death, some 56% of Americans admitted that they did not have a will.² Intestacy

1. Ethan Wolff-Mann, *Prince Died Without a Will. Here’s What Happens Now*, TIME (Apr. 27, 2016), <http://time.com/money/4308204/prince-dies-without-will/>. Soon after the writing of this article, the court confirmed six of Prince’s siblings as his heirs. MPR News Staff, *Minnesota Court Confirms 6 Prince Heirs, No Will*, MPR NEWS (May 19, 2017), <https://www.mprnews.org/story/2017/05/19/prince-estate-minnesota-court-confirms-6-heirs-no-will>.

2. See Jeffrey M. Jones, *Majority in U.S. Do Not Have a Will*, GALLUP (May 18, 2016), <http://www.gallup.com/poll/191651/majority-not.aspx>. Jones’s research for Gallup found that in 2016 forty-four percent of Americans had wills, and the percentages by age, income, education, and race are as follows:

Age	Percentage Having a Will
65+	68%
50–64	56%
30–49	35%
18–29	14%

statutes are avoided relatively easily by executing a will or transferring property through various non-probate means, but people still fail to do so for various reasons.

People may procrastinate when it comes to making their wills for many reasons. Perhaps they do not want to face their own mortality or are superstitious about making a will. People may believe that drafting a will is too expensive, or they may just dislike the idea of going to a lawyer. Sometimes the estate planning process requires people to make decisions that are perceived as just too difficult to deal with. Questions of who should be nominated as the guardian of minor children or to what extent a potential beneficiary should be included or disinherited may cause a person to freeze and stop the process until the problem goes away due to the passage of time.

Complicated family dynamics may also make individuals reluctant to address estate planning issues.³ Issues such as trying to protect both a current spouse and the children of previous marriages or deciding what to do with estranged family members can seem overwhelming and cause some to simply avoid the planning process altogether. People may assume or hope that intestacy laws will distribute their assets according to their wishes, but in reality, many people do not understand their state's intestacy statutes.⁴ Some put

Annual Household Income	Percentage Having a Will
\$75,000 or more	55%
\$30,000–\$74,999	38%
Less than \$30,000	31%

Education	Percentage Having a Will
Postgraduate	61%
College Graduate	50%
Some college	47%
High school or less	32%

Race	Percentage Having a Will
White	51%
Non-White	28%

Id.

3. See, e.g., Marjorie Engel, *Pockets of Poverty: The Second Wives Club—Examining the Financial [In]Security of Women in Remarriages*, 5 WM. & MARY J. WOMEN & L. 309, 343–44 (1999) (describing the failure to plan in stepfamilies).

4. See Frances H. Foster, *The Family Paradigm of Inheritance Law*, 80 N.C. L. REV. 199, 263–64, 263 n.319 (2001) (citing Monica K. Johnson & Jennifer K. Robbenolt,

their heads in the sand, rationalizing that death will not happen to them, at least not for a long time. People can come up with many excuses to put off estate planning, even though they know that death is inevitable and that they do not know when they will die.

“Testamentary freedom is a ‘sacred privilege’ and an important incident of property ownership; scholars argue the freedom is necessary to preserve the social institution of private property and to provide economic leverage to the elderly who might otherwise be deprived of care toward the end of life.”⁵ The non-exercise of testamentary freedom is rarely the result of an individual intentionally relying on the default rules of intestacy. Few Americans know or understand their state’s intestate succession laws, or people do not think they have enough of an estate to worry about planning. Many individuals intend to make a will, but unfortunately, that intention is all too often not realized.

In light of all of the issues—legal and personal—surrounding intestacy, the Prince estate presents an especially compelling case study for how intestacy currently works and how it could work, specifically in Minnesota. To explore this case study, this article will first provide background on intestacy, including its consequences, its history, and current issues in adapting it to modern American families.⁶ Then, after describing Prince’s family, this article will examine how the disposition of Prince’s estate would change under different circumstances or legal rules, including if a will were located, if there had been an estate plan, and if Minnesota used a functional approach to intestacy law.⁷ This article concludes by summarizing the progress of the administration of Prince’s estate and offering observations on how proper planning could have prevented the difficulties with his estate—difficulties that can arise for many people, not just famous artists like Prince.⁸

Using Social Science to Inform the Law of Intestacy: The Case of Unmarried Committed Partners, 22 L. & HUM. BEHAV. 479, 489 (1998)) (describing a study reporting that “many [respondents] mistakenly assumed that their nonmarital partners would inherit as intestate heirs (33.3% of respondents with opposite-sex partners; 46.8% of female respondents with same-sex partners; 43.2% of male respondents with same-sex partners”).

5. Reid Kress Weisbord, *Wills for Everyone: Helping Individuals Opt Out of Intestacy*, 53 B.C. L. REV. 877, 882–83 (2012).

6. See *infra* Part II.

7. See *infra* Part III.

8. See *infra* Part IV.

II. INTESTACY: AN OVERVIEW

A. *Consequences of Intestacy*

Intestacy is entirely statutory. Each state's intestacy statutes provide for the disposition of a decedent's probate property when the decedent dies without a valid will. Probate property includes all assets the individual owned in his or her own name and did not, in one way or another, name a beneficiary or provide direction for upon the individual's death. Intestate succession statutes in effect create a "will" for everyone who fails to establish one.

Under intestacy law, it is the state government, rather than the individual, that determines the dispositive terms of the decedent's estate assets and who will be the beneficiaries that will inherit the assets.⁹ The intestate decedent cannot choose guardians of surviving minor children. Thus a single parent is deprived of the ability to guide the court toward a choice for a guardian that the parent decedent would prefer or accept. Without a will, the decedent cannot designate a trustworthy and competent person or corporate fiduciary to act as personal representative to administer a complicated estate.

Intestacy can often lead to undesired consequences for the decedent, the decedent's family, and society. In Minnesota, if the decedent owned any real estate or if the probate estate is valued at more than \$75,000, a formal or informal probate proceeding is necessary.¹⁰ A probate proceeding results in court costs, attorney's fees, and delays for families. If any of the devisees or beneficiaries of an estate are legal minors (i.e., under the age of eighteen years), a conservatorship or protective order is necessary to protect the funds until the child is an adult. A conservatorship is a somewhat cumbersome process requiring formal accountings and court hearings. This leads to ongoing costs to the child beneficiary's estate. A court hearing is necessary to get the conservator appointed, a

9. See MINN. STAT. § 524.2-101(a) (2016) ("The intestate estate passes by intestate succession to the decedent's heirs as prescribed in this chapter, except as modified by the decedent's will."); cf. Gerry W. Beyer, *Statutory Fill-in Will Forms—The First Decade: Theoretical Constructs and Empirical Findings*, 72 OR. L. REV. 769, 774 (1993) (stating that one benefit of statutory fill-in will forms is the avoidance of intestate succession laws).

10. MINN. STAT. § 524.3-1201(a)(1); *Probates, Wills, & Estates*, MINN. JUD. BRANCH, <http://www.mncourts.gov/Help-Topics/Probate-Wills-and-Estates.aspx> (last visited Mar. 26, 2017).

procedure usually requiring the help of an attorney. Afterwards, annual accounts need to be prepared and filed with the court. Every five years, the accounts need to be approved by the court, requiring another court hearing and the assistance of an attorney.¹¹ This continues until the child beneficiary turns eighteen. While the beneficiary is a minor, the conservator, under the watchful eye of the court, manages the beneficiary's funds. When the beneficiary turns eighteen, that management ends. At that time, the funds are turned over to the beneficiary, and management of the funds is then left to the beneficiary, whether or not the beneficiary is financially mature and savvy enough to handle it. If the decedent uses a will or trust, the testator is able to nominate a fiduciary that is capable of providing tax, investment, and planning advice to the estate. The appropriate fiduciary can also provide for professional management of the assets passing to the beneficiary. The fiduciary can be given discretion to control the timing of distributions to the beneficiary. This affords a beneficiary who is not financially competent or who is a spendthrift some protection from the beneficiary's creditors as well as protection from the beneficiary himself.

In addition to potentially causing extra administrative costs, dying without a will can lead to an inequitable or undesirable allocation of the estate among heirs. Under intestate succession, assets could end up in the hands of an estranged spouse or child, and a long-term partner, family member, or other close friend could be left out. Seeing estate assets pass to persons perceived by close family as undeserving can create emotional turmoil in families, tearing them apart. Heirship determinations can easily escalate into costly legal fights. Proof of heirship may require evidence to be provided by professional genealogists or require genetic testing. In cases where heirs are unknown or distant relatives cannot be located, genealogical research companies may find heirs before executors of estates do. Such genealogical research companies require heirs to sign a contract costing the heir up to half of his or her share of the estate to find out one's status as a beneficiary of the estate.

The costs of dying intestate can be especially high for large estates and nontraditional families. Minnesota intestacy law does not recognize some nontraditional family members. The intestate estate

11. MINN. STAT. § 524.5-420(a) (annual report requirement); MINN. R. 416(f) (2015) (five-year hearing requirement).

can only be inherited by those heirs listed in the statute.¹² Basically, those who are most closely related to the decedent will inherit the estate, to the exclusion of other persons who perhaps the decedent would have preferred to share in the estate. Unmarried long-term partners, in-laws, step-children, close friends, and charitable organizations are excluded from inheriting under the statute.¹³ An individual living in the decedent's home, perhaps caring for the decedent, but who is not the next person in line to inherit under intestacy statutes, could be left homeless. An intestate estate can also result in fractional interests in real estate passing to multiple heirs as tenants-in-common, which can mean a cumbersome co-ownership and a costly future sale process due to the number of persons and generations involved.

Individuals with philanthropic intentions who die intestate also miss out on fulfilling their goals to benefit the charities of their choice. This is an obvious loss for the community. Rather than having the estate pass to a favorite charitable cause, the estate could pass to shirt-tail relatives whom the decedent did not even know. Perhaps worse yet, if a philanthropist who dies intestate has no family, then the intestate estate escheats to the state.¹⁴ The intestate death of a wealthy or would-be philanthropist is also a loss for beneficiaries who may be advantaged by a state or federal tax charitable deduction.¹⁵

Without a written estate plan, wealthy individuals can miss out on the opportunity to plan their estate tax efficiently. As an example, if a married couple with a combined estate large enough to be taxable under the federal and state tax laws should die under circumstances where there is not sufficient evidence to determine the order of death, the simultaneous death act provides that each spouse is deemed to have survived the other.¹⁶ This prevents either spouse from inheriting any property from the estate of the other. That could unnecessarily cause an estate tax by allowing one spouse to have an estate for tax purposes but disallowing the other spouse from making full use of his or her tax exemption equivalents. Proper planning and strategies involving lifetime gifts, family foundations, charitable gifts, irrevocable trusts, and qualifying for the estate tax

12. See MINN. STAT. § 524.2-101(a).

13. See *id.* § 524.2-103.

14. *Id.* § 524.2-105.

15. 26 U.S.C. § 2055(a)(2) (2012).

16. MINN. STAT. § 524.2-702.

marital deduction allow individuals to minimize, or at least defer, state and federal estate taxes. Federal estate taxes can be as high as 40%, and the Minnesota estate tax rate can be as high as 16%.¹⁷

Although intestacy statutes can lead to undesired consequences, the objective is to focus on the interests and intent of the decedent as well as societal interests. The four specific goals of intestacy are to carry out the probable intents of the average intestate decedent,¹⁸ to ensure the fair distribution of property among family members,¹⁹ to

17. I.R.C. § 2001 (2012); MINN. STAT. § 291.03 (outlining Minnesota estate tax rates). See generally *Internal Revenue Service, What's New—Estate and Gift Tax*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax> (last visited Mar. 26, 2017). The following table provides the Minnesota tax rates for estates of decedents dying in 2017, as they appear in the 2016 statutes:

Amount of Minnesota Taxable Estate	Rate of Tax
Not over \$1,800,000	None
Over \$1,800,000 but not over \$2,100,000	ten percent of the excess over \$1,800,000
Over \$2,100,000 but not over \$5,100,000	\$30,000 plus 12 percent of the excess over \$2,100,000
Over \$5,100,000 but not over \$7,100,000	\$390,000 plus 12.8 percent of the excess over \$5,100,000
Over \$7,100,000 but not over \$8,100,000	\$646,000 plus 13.6 percent of the excess over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$782,000 plus 14.4 percent of the excess over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$926,000 plus 15.2 percent of the excess over \$9,100,000
Over \$10,100,000	\$1,078,000 plus 16 percent of the excess over \$10,100,000

MINN. STAT. § 291.03(a).

18. Michelle Harris, *Why a Limited Family Maintenance System Could Help American "Grandfamilies": A Response to Kristine Knaphlund's Article on Intestacy Laws and Their Implications for Grandparents Raising Grandchildren*, 3 NAELA J. 239, 248 (2007).

19. Marissa J. Holob, Note, *Respecting Commitment: A Proposal to Prevent Legal Barriers from Obstructing the Effectuation of Intestate Goals*, 85 CORNELL L. REV. 1492, 1500 (2000).

protect the financially dependent family,²⁰ and to promote and encourage the nuclear family.²¹

B. History of Intestacy

Over the years, American intestacy statutes have slowly evolved to reflect society's dispositive preferences. Early statutes placed heavy focus on the importance of bloodline. Most American jurisdictions initially adopted statutes similar to England's Statute of Distribution of 1670.²² If the surviving spouse had descendants, these statutes provided a one-third share to the surviving spouse and the remainder to the descendants. If the surviving spouse had no descendants, these statutes provided a one-half share to the surviving spouse.²³ If there were no descendants, the part of the estate not distributed to the spouse went to collateral relatives.²⁴ Collateral relatives only included those related by blood, not adoption. Most jurisdictions did not recognize illegitimate children.

In 1969, the Uniform Law Commission (ULC) promulgated the first Uniform Probate Code (UPC). The UPC was revised several times, and then in 1990, the ULC approved a significant revision to Article II, the article that covers intestacy, wills, and donative transfers. This revision gave a larger share to the surviving spouse.²⁵ Concurrently, there was a trend in most jurisdictions' intestacy statutes during the twentieth century to treat spouses more favorably than children and other relatives.²⁶

Community-property states derived aspects of their inheritance laws from civil law. Wives in community property states inherited one-half of community property, which is the property acquired during a marriage and which was not received by the deceased

20. *Id.*

21. *Id.* at 1501.

22. See Martin L. Fried, *The Uniform Probate Code: Intestate Succession and Related Matters*, 55 ALB. L. REV. 927, 936–39 (1992) (discussing Statute of Distribution of 1670, 22 & 23 Car. 2, ch. 10, § 5 (Eng.)).

23. See *id.* at 927.

24. *Id.*

25. Mary Louise Fellows et al., *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 AM. B. FOUND. RES. J. 319, 356 n.127.

26. CAROLE SHAMMAS ET AL., *INHERITANCE IN AMERICA FROM COLONIAL TIMES TO THE PRESENT* 166–67 (1987) (a comprehensive treatment of the history of the law of inheritance throughout the United States).

spouse through inheritance or gift. In some community property states, if the wife died first, all community property went to her husband. However, if the husband died first, the wife could only claim half of the community property, and he could bequeath his half to whomever he pleased.²⁷

Currently, inheritance statutes focus on proximity of ties of blood, marriage, or adoption.²⁸ However, these laws do not consider whether the decedent had an ongoing relationship with the individual or even knew the heir.

C. *Intestacy Today: Adapting Intestacy Statutes to the Modern American Family*

Today's intestacy statutes work for many decedents. Where the decedent's family consists of a spouse and the decedent's children (the more "traditional nuclear family"), intestacy statutes distribute the estate to the people to whom, it is deemed, the decedent most

27. *Id.* at 84.

28. Susan N. Gary, *Adapting Intestacy Laws to Changing Families*, 18 L. & INEQ. 1, 2 (2000). Proximity varies under state statutes. For example, in most states, siblings of whole-blood share equally with siblings of half-blood. *See, e.g.*, OR. REV. STAT. § 112.095 (West, Westlaw through 2017 Legis. Sess.). In a few states, relatives of the half-blood take only a half share. *See, e.g.*, VA. CODE ANN. § 64.2-202 (West, Westlaw through 2017 Legis. Sess.). In a few states, a half-blood relative receives a share only if there are no whole-blood relatives of the same degree. *See, e.g.*, MISS. CODE ANN. § 91-1-5 (West, Westlaw through 2017 Legis. Sess.). Remote relatives may receive a share of the estate based on the degree of relationship to the decedent as determined by reference to a table of consanguinity. Under such statutes, a first-cousin twice-removed is of the same degree and will receive the same share as a second cousin. *See, e.g.*, ARK. CODE ANN. § 28-9-204 (West, Westlaw through 2017 Legis. Sess.); CAL. PROB. CODE § 240 (West, Westlaw through 2017 Legis. Sess.); CONN. GEN. STAT. § 45a-439 (West, Westlaw through 2017 Legis. Sess.). In other states, statutes determine the intestate shares of remote relatives by reference to the decedent's ancestors, one generation at a time. That is, the intestate estate of a decedent with no spouse or descendants goes first to the decedent's parents, then to their descendants, then to grandparents, then to the grandparents' descendants, then to great-grandparents, then to their descendants, and so on until an heir is found. A first-cousin twice-removed (a descendant of the decedent's grandparents) would take before a second-cousin (a descendant of the decedent's great-grandparents). *See, e.g.*, 755 ILL. COMP. STAT. § 5/2-1 (West, Westlaw through 2017 Legis. Sess.); MO. REV. STAT. § 474.010 (West, Westlaw through 2017 Legis. Sess.). In all of these statutes, the degree of relationship based on blood or adoption determines the share without regard to whether the decedent actually had a personal relationship with the relative.

likely intended. However, this pattern does not fit all American families because the typical family structure has changed dramatically. Many families are now blended families, unmarried heterosexual couples, unmarried homosexual couples, or individuals raising grandchildren or nieces and nephews. The traditional nuclear family raising children is down from “40% of all households in 1970, to less than a quarter by 2000.”²⁹

Legislatures have been reluctant to expand the definition of “family” for intestacy purposes. States continue to use a more formal approach for defining legal heirs. These laws formally define families based on either a blood relationship or a legally recognized procedure that creates a link between the decedent and the family members who are parties to the procedure.³⁰ This formal, legal link only recognizes as heirs persons related by blood, marriage, or adoption. As a result, biological parents who have no relationship with their children can still profit from their biological children’s death. In most states, intestacy statutes have only recently recognized same-sex partners as legal heirs following the legalization of same-sex marriage in America.³¹

Other areas of law have begun to address these new families by taking a functional approach to defining family. Functional definitions of family try to “determine what a family does, what functions family members perform for each other and what

29. David D. Meyer, *Parenthood in a Time of Transition: Tensions Between Legal, Biological, and Social Conceptions of Parenthood*, 54 AM. J. COMP. L. 125, 132 (2006).

30. Marriage creates rights and obligations as between the two spouses but not with respect to their children. Children of one spouse do not automatically become children of the other spouse through the marriage. See Susan F. Koffman, *Stepparent Adoption: A Comparative Analysis of Laws and Policies in England and the United States*, 7 B.C. INT’L & COMP. L. REV. 469, 470 (1984) (“Marrying someone with children—becoming a stepparent—confers neither parental rights nor duties. To many stepparents, adoption of the stepchild seems the only way to establish parental standing.” (footnote omitted)).

31. For example, in Michigan, courts refused to recognize same-sex partners as legal heirs prior to *Obergefell v. Hodges*, 135 S. Ct. 2584, 2584 (2015), which held that state bans on same-sex marriage are unconstitutional. See *Bassett v. Snyder*, 951 F. Supp. 2d 939, 963 (E.D. Mich. 2013) (“Michigan’s intestacy statutes . . . prevent gay and lesbian persons from inheriting from their partners . . . by intestacy.”). But in other states, same-sex partners were recognized as legal heirs before *Obergefell*. See *In re Estate of Proehl*, No. 27-PA-PR-12-260, 2012 Minn. Dist. LEXIS 174, *1, *30–31 (Minn. Dist. Ct. Aug. 1, 2012) (“[N]o provision of the Minnesota Uniform Probate Code prohibits a surviving spouse of a same-sex marriage from . . . inheriting the estate of his deceased spouse under Minnesota intestacy laws.”).

relationships family members have with each other.”³² California put together a task force to create an understanding of families in order to plan policies and laws that strengthen families. The Task Force on Family Diversity determined that the “central characteristic underlying family is mutual interdependency.”³³ “Thus family may refer to a group of unmarried persons not related by blood, but who are living together and who have some obligation, either legal or more, for the care and welfare of one another.”³⁴

In family law, courts have begun considering granting visitation rights to people who are not the biological parent of but who have a significant relationship with the child.³⁵ This is seen in same-sex relationships in which only one partner is a biological parent and

32. Gary, *supra* note 28, at 5 n.21 (citing Martha Minow, *Redefining Families: Who's In and Who's Out*, 62 COLO. L. REV. 269, 270 (1991) (“stating that a group of people function as a family when they ‘share affection and resources, think of one another as family members and present themselves as such to neighbors and others’”)); *see also* Mary Patricia Treuthart, *Adopting a More Realistic Definition of “Family,”* 26 GONZ. L. REV. 91, 99 (1990) (defining family as “a community, which: (1) provides financial and emotional support to the members, (2) involves interdependence and commitment, and (3) allows transcendence of self-interest to an unlimited degree”).

33. Gary, *supra* note 28, at 44 (quoting L.A. CITY TASK FORCE ON FAMILY DIVERSITY, FINAL REPORT: “STRENGTHENING FAMILIES: A MODEL FOR COMMUNITY ACTION” 18–19(1988)).

34. *Id.* (quoting L.A. CITY TASK FORCE ON FAMILY DIVERSITY, *supra* note 33, at 18–19).

35. *Id.* at 51–52 (discussing Brief for the Amicus Curiae, *Alison D. v. Virginia M.*, 572 N.E.2d 27 (N.Y. App. Div. 1991) (No. 692-88)). In *Alison D.*, Alison’s attorneys proposed to the court that for purposes of section 70(a) of the New York Domestic Relations Law, the term “parent” should mean either “a child’s biologic or adoptive parent, unless parental rights have been terminated or otherwise unrecognized by applicable law,” or

a person who meets the following three criteria:

- a) the person has lived with the child for a substantial portion of the child’s life; and
- b) the person has been regularly involved in the day-to-day care, nurturance, and guidance of the child appropriate to the child’s stage of development; and
- c) if the child has also been living with a biologic parent, the biologic parent has consented to the assumption of a parental role by the person, and the child has in fact looked to this person as a parent.

Id.

the other parent has not legally adopted the child.³⁶ There are also examples of grandparents being granted visitation rights when the family court judge determines it is in the best interest of the child.³⁷

In August 2016, Minnesota enacted a new subdivision to Minnesota Statutes section 518.552 that permits the modification, reservation, suspension, or termination of spousal maintenance obligations owing to a recipient living in cohabitation with a romantic partner.³⁸ This is a modification to a law that once only allowed such modification or termination if the recipient remarried. This is yet another example that the law is beginning to adapt to the modern American family.

Housing law has also taken steps to embrace evolving family structures. A New York statute, for example, states that a landlord cannot evict any member of the tenant's family and goes on to define family as "any other person . . . who can prove emotional and financial commitment and interdependence between such person and the tenant."³⁹ The New York Court of Appeals refused to narrow the definition of family in that statute, stating that protection for tenants "should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life."⁴⁰

Wrongful death statutes in many states are also now taking a more functional approach to defining who merits the protection of the statute. As a result, stepchildren are often included as potential claimants.⁴¹ Worker's compensation statutes provide benefits to

36. *See, e.g.*, *V.C. v. M.J.B.*, 748 A.2d 539, 555 (N.J. 2000) (affirming lower court's grant of visitation rights to non-biological, same-sex parent).

37. *Ferguson v. Lewis*, 31 So. 3d 5, 13 (Miss. Ct. App. 2009) (affirming lower court's grant of visitation rights to grandparent).

38. MINN. STAT. § 518.552(6) (2016). Although this new statute largely mirrors current case law, its enactment has encouraged maintenance obligors to take another look at their ongoing obligations.

39. N.Y. COMP. CODES R. & REGS. tit. 9, § 2204.6(d)(3) (Westlaw through 2017 Legis. Sess.).

40. *Braschi v. Stahl Assocs. Co.*, 543 N.E.2d 49, 53 (N.Y. 1989) (holding in part that the term "family" as used in the non-eviction provision of the rent-control laws includes unmarried lifetime partners of tenants, not just persons related by blood or law).

41. *See Engel*, *supra* note 3, at 362 (arguing that a stepchild's rights under wrongful death statutes should depend on the best interests of the child, and not on "some outdated conception of family relations which fails to account for step-relationships").

dependents of an injured worker, and in Oregon, the statute includes “a child toward whom the worker stands in loco parentis . . . and a stepchild, if such stepchild was, at the time of the injury, a member of the worker’s family and substantially dependent upon the worker for support.”⁴²

Although other areas of law have taken strides in recognizing the reality of American families, there have only been a handful of changes in intestacy laws. Intestacy statutes continue to follow bright-line rules defining heirs rather than giving judges any discretion in considering the family’s circumstances.⁴³ As a result, intestate cases involving blended families, like Prince’s family, often have unintended dispositions for the decedent.

California intestacy statutes have been updated to include step-children as legal heirs.⁴⁴ Step-children are not included automatically: only if the court concludes that a parent-child relationship existed—where the relationship began during the child’s minority and continued throughout the lifetime of both the parent and child, and the parent wanted to formalize the relationship through adoption—are step-children included as heirs.⁴⁵

In Hawaii, people can now register as reciprocal beneficiaries to each other’s probate estates, superseding intestacy laws, without the need for a formal will.⁴⁶ A reciprocal beneficiary is a legal relationship created when two consenting adults who are prohibited from marriage declare their intent to enter a reciprocal beneficiary relationship.⁴⁷ Neither of the parties may be married or a party to another reciprocal beneficiary relationship.⁴⁸ Those persons desiring to enter into a reciprocal beneficiary relationship must

42. OR. REV. STAT. ANN. § 656.005(5) (West, Westlaw through 2017 Legis. Sess.).

43. For an in depth evaluation of the formalistic approach that courts rely on, see Susan N. Gary, *The Parent-Child Relationship Under Intestacy Statutes*, 32 U. MEM. L. REV. 643, 654 (2002). “These statutes, then, do not do a good job of serving the purposes of carrying out the decedent’s intent, of providing for the decedent’s family, and of addressing reciprocity concerns. The bright-line rules of family definition aid in the ease of administration, but do so at financial and emotional cost to many families.” *Id.*

44. CAL. PROB. CODE § 6454 (West, Westlaw through 2017 Legis. Sess.).

45. *Id.*

46. HAW. REV. STAT. ANN. § 572C-4 (West, Westlaw through 2017 Legis. Sess.).

47. *Id.*

48. *Id.*

register their relationship as reciprocal beneficiaries with the Department of Health.⁴⁹

New Zealand has developed a family maintenance system that protects individuals who may not inherit under intestacy laws but are financially dependent on the decedent.⁵⁰ Its system allows the financially dependent individual to establish his or her dependency in a court proceeding following the decedent's death.⁵¹ The family maintenance system allows a court to "rearrange the decedent's estate plan, either an intestate distribution or a will, pursuant to a petition by any person provided for under the statute."⁵² This amount of judicial discretion in the probate context seems unlikely anytime soon in American courts, especially in situations where the decedent dies with a will.⁵³ The objective approach used in American statutes carries the "security of fixed rules and the benefit of efficiency for the probate court."⁵⁴ Unfortunately, the "blood, marriage, or adoption" approach to intestacy alienates many non-traditional American families.

III. PRINCE: A CASE STUDY OF INTESTACY SCENARIOS

A. *Prince's Family Structure*

Prince died at the age of fifty-seven.⁵⁵ As of yet, no written estate plan has been found, leaving the court to determine who his living heirs are.⁵⁶ Under Minnesota intestacy statutes, there were many

49. *Id.* §§ 572C-4–572C-5.

50. Gary, *supra* note 28, at 67–68.

51. *Id.* at 67.

52. *Id.* (citing Joseph Laufer, *Flexible Restraints on Testamentary Freedom—A Report on Decedents' Family Maintenance Legislation*, 69 HARV. L. REV. 277, 288–94 (1955)).

53. *Id.* at 69.

54. *Id.* at 71 (discussing the manner in which intestacy statutes exclude non-traditional families with the current objective approach and the difficulty of allowing more discretion in defining family members, which will lead to increased litigation).

55. MPR News Staff, *Fans, Famous Mourn Prince's Death*, MPR NEWS (Apr. 21, 2016), <https://www.mprnews.org/story/2016/04/21/officials-death-investigation-at-prince-paisley-park>.

56. Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 1–2 (Minn. Dist. Ct. Apr. 27, 2016), <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Order-for-Formal-Appointment-of-Special-Administra.pdf> (Order for Formal Appointment of Special Administrator); Tim Nelson, *Here's What We Know About the Status of Prince's Estate*, MPR NEWS (Apr. 21, 2017),

scenarios that could have played out, depending on the court's findings. This opened up the door to a lengthy list of claimants trying to cash in on Prince's large estate.⁵⁷ In an effort to reign in the chaos and move the estate administration forward, Judge Kevin Eide imposed a deadline of June 27, 2016, for claims from all individuals asserting a genetic relationship with the decedent.⁵⁸

The court's first step, upon examining Minnesota intestacy statutes, was to determine if Prince was married and whether he had any biological or adopted children. If Prince was secretly but legally married with no children, his estate would all go to the surviving spouse.⁵⁹ If he had children but no spouse, his estate would go to his children.⁶⁰ If he was married and had children from a woman other than his spouse, the first \$225,000 plus one-half of any balance of the intestate estate would go to his surviving spouse with the remainder going to his children.⁶¹ If a woman was pregnant with his child at the time of his death, the in utero child would qualify to inherit.⁶²

Although Prince was previously married two times, he was not married at the time of his death.⁶³ Multiple women have claimed to have been secretly married to Prince, but none of them provided legal proof, so their claims were dismissed.⁶⁴ Prince was known to

<https://www.mprnews.org/story/2017/04/21/prince-estate-status>.

57. Associated Press, *Deals Ensure Cash Keeps Flowing to Unsettled Prince Estate*, MPR NEWS (Apr. 15, 2017), <https://www.mprnews.org/story/2017/04/15/deals-ensure-cash-keeps-flowing-to-unsettled-prince-estate> (reporting that more than forty-five people filed claims); Nelson, *supra* note 56.

58. Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 2 (Minn. Dist. Ct. May 18, 2016), <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Order-Regarding-Claims-Pursuant-to-the-Parentage-Act-and-Probate-Code.pdf> (Order Regarding Claims Pursuant to the Parentage Act and Probate Code).

59. See MINN. STAT. § 524.2-102 (2016).

60. See *id.*

61. See *id.*

62. See *id.* § 524.2-108.

63. Associated Press, *No 'Tell-All,' but Prince's Ex Details Their Life in Memoir*, MPR NEWS (Apr. 10, 2017), <https://www.mprnews.org/story/2017/04/10/prince-ex-details-their-life-in-memoir>.

64. See, e.g., Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 10, 19 (Minn. Dist. Ct. Aug. 11, 2016) <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Amended-Order-Re-Genetic-Testing-Protocol-and-Heirship-Claims-Following-the-June-27,-2016-hearing-and-Judgment.pdf> [hereinafter *Amended Order Re: Genetic Testing Protocol*] (Amended Order Regarding Genetic Testing Protocol and Heirship Claims Following the June 27, 2016, Hearing

have one son, but he died one week after his birth.⁶⁵ Eighteen other individuals have been ruled out as Prince's children.⁶⁶ A Connecticut woman, Taz Laeni Walker, claimed that Prince was her biological father; however, she was legally adopted and would have no claim to inherit under Minnesota law, even if Prince was her biological father.⁶⁷ Norman Yates of South Carolina claimed to have been legally adopted by Prince, but no evidence of such adoption was found.⁶⁸ For an adopted child to file a claim as a descendant in Minnesota, he must have been formally adopted in compliance with legal requirements.⁶⁹ In addition, a New Zealand man claimed Prince was his father, as the result of a sexual relationship that Prince supposedly had in New Zealand with the man's mother. The attorney for the Special Administrator of the Estate responded as follows:

We must admit that we are somewhat skeptical of your claim, given our understanding that Prince Rogers Nelson [] was completing high school in Minnesota in 1976, as opposed to living in New Zealand for several months. In addition, while the photographs you provide show a person with a mild physical resemblance to the Decedent, it does not appear to us that the person in the photographs is the Decedent.⁷⁰

DNA testing revealed that the New Zealand man was not Prince's son.⁷¹

Since Prince had no spouse or children, as the court initially suspected, Prince's parents would be the next to inherit under Minnesota intestacy law.⁷² Prince's birth certificate lists his parents

& Judgment).

65. See Associated Press, *supra* note 63.

66. See *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 4, 19.

67. See MINN. STAT. § 524.2-119; Affidavit of Taz Laeni Walker, Estate of Prince Rogers Nelson, No. 10-PR-16-46 (Minn. Dist. Ct. Jun. 14, 2016), http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Affidavit-of-Heirship-1_6-14-16.pdf.

68. *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 11.

69. MINN. STAT. § 524.2-118.

70. Special Administrator's Determination Regarding Genetic Testing, Estate of Prince Rogers Nelson, No. 10-PR-16-46, (Minn. Dist. Ct. Dec. 2, 2016), http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Special-Administrator-s-Determination-Regarding-Genetic-Testing_1.pdf.

71. Noisey, *DNA Tests Reveal that Prince Was Not the Father of a New Zealand Man*, VICE (Feb. 13, 2017, 9:26PM), https://www.vice.com/en_nz/article/qkxppb/dna-tests-reveal-that-prince-was-not-the-father-of-a-new-zealand-man-2.

72. See MINN. STAT. § 524.2-103.

as Mattie Della Shaw and John Lewis Nelson.⁷³ John Nelson died in 2001, and Mattie Shaw died in 2002.⁷⁴ Multiple claimants stepped forward to say they were actually Prince's father, each alleging an affair with Mattie while she was married to John.⁷⁵ However, under Minnesota law, Prince's father is presumed to be the father to all children to which Prince's mother gave birth while they were married.⁷⁶ Anyone challenging that presumption would need to prove the case by clear and convincing evidence.⁷⁷ The district court, relying on *Estate of Leonard Jotham*, held that the presumption of paternity may be rebutted only by a person who met the standing and timeliness standards of the Minnesota Paternity Act in Minnesota Statutes section 257.57.⁷⁸ Pursuant to the Minnesota Paternity Act, only the child, the child's biological mother, or the man presumed to be the father can bring an action to declare the nonexistence of the father-child relationship.⁷⁹ In addition, the action to declare the nonexistence of the parent-child relationship must be initiated no later than three years after the child's birth.⁸⁰ As a result, the claimants never met the standing or timeliness requirements to rebut the presumption of paternity.⁸¹

Next in line to be considered heirs were Prince's brothers and sisters.⁸² Pursuant to Minnesota statute, half-siblings are treated equal to full siblings.⁸³ Several men claimed to be Prince's half-brother, based on the claim that their father actually fathered Prince, from an affair with Mattie Shaw.⁸⁴ The court, however, determined that the presumption that John Nelson is Prince's

73. *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 3.

74. *Id.* at 3.

75. *See id.* at 14–17.

76. *See* MINN. STAT. § 257.55; *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 15.

77. MINN. STAT. § 257.55 subdiv. 2.

78. *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 15 (citing *Estate of Leonard Jotham*, 722 N.W.2d 447, 449 (Minn. 2006)).

79. MINN. STAT. § 257.57.

80. *Id.*

81. *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 17.

82. *See* MINN. STAT. § 524.2-103.

83. *Id.* § 524.2-107.

84. *See Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 14.

genetic father is conclusive.⁸⁵ Therefore, the court narrowed the pool of potential siblings to seven people.⁸⁶

Tyka Nelson is Prince's only full sibling, born to Mattie Shaw and John Nelson.⁸⁷ This fact was adjudicated in the marriage dissolution proceeding between Mattie and John.⁸⁸ In addition, Tyka and Prince were born while Mattie and John were married; therefore, under Minnesota law, they are presumed to be Mattie and John's genetic children.⁸⁹

Sharon Nelson, Norrine Nelson, and John Rodger Nelson are John's children, born during his earlier marriage to their mother, Vivian Nelson.⁹⁰ Alfred Alonzo Jackson is Mattie's son, born during her earlier marriage to Alfred B. Jackson Sr.⁹¹ Omarr Julius Baker is also Mattie's son but was fathered by Hayward Julius Baker.⁹² As a result, Sharon Nelson, Norrine Nelson, John Rodger Nelson, Alfred Alonzo Jackson and Omarr Julius Baker are all Prince's half siblings, as a matter of law.⁹³ Relying on Minnesota statute for authority, the court ordered each of them to undergo genetic testing to overcome any future doubts of their genetic relationship to Prince.⁹⁴

The two remaining potential siblings, Lorna Nelson and Duane Nelson, predeceased Prince.⁹⁵ Lorna Nelson had no surviving

85. *Id.* at 17.

86. *Id.* at 3–4, 17.

87. *Id.* at 3.

88. *Id.*

89. See MINN. STAT. § 257.55 (2016).

90. See *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 3; Tim Nelson, *Endgame Near for Those Claiming Family Ties to Prince*, MPR NEWS (Oct. 21, 2016), <https://www.mprnews.org/story/2016/10/21/prince-estate-court-hearing-judge-establishing-heirs>.

91. See *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 3–4; Keith Harris, *Prince's Heirs Apparent: A Look at the Siblings Who Stand to Inherit His Fortune*, BILLBOARD (May 11, 2016), <https://www.billboard.com/articles/news/7364606/prince-heirs-apparent-siblings-who-stand-inherit-fortune>.

92. See *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 3–4; Harris, *supra* note 91.

93. *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 3–4.

94. Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 1–2 (Minn. Dist. Ct. May 18, 2016), <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Order-Regarding-Claims-Pursuant-to-the-Parentage-Act-and-Probate-Code.pdf> (Order Regarding Claims Pursuant to the Parentage Act and Probate Code) (citing MINN. STAT. §§ 524.1-201 (22)–(24), 524.2-116, 524.2-117, 257.62).

95. *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 3, 14.

descendants; therefore there was no one to claim her share.⁹⁶ Duane Nelson left a surviving daughter who filed a claim stating that her late father was Prince's half-brother.⁹⁷ Once the court ordered genetic testing, Duane Nelson's heir clarified that her claims were not based on Duane Nelson's genetic relationship to Prince but on the father-son relationship between John Nelson and Duane Nelson.⁹⁸ Duane Nelson's birth certificate indicates that John is his birth father.⁹⁹ Duane and Prince were raised as brothers, and John's obituary listed Duane Nelson as a son.¹⁰⁰

Until its amendment in 2010, Minnesota Statutes section 524.2-114 stated that, for the purposes of intestate succession, a relationship of a parent and child could be established under the Parentage Act.¹⁰¹ This would have given Duane's heir an opportunity to establish the necessary parent-child relationship by proving that while Duane Nelson was under the age of majority, John Nelson received Duane into his home and openly held him out as his biological child.¹⁰² In 2010, this language was deleted from the statute.¹⁰³ The current Probate Code does not define a "parent-child" relationship but provides that a parent-child relationship may be established through genetics, adoption, or assisted reproduction.¹⁰⁴ Duane Nelson's heirs also tried to raise the issue of "equitable adoption."¹⁰⁵ An equitable adoption typically involves an

96. *Id.* at 3.

97. Affidavit of Heirship of Brianna Nelson at 1, Estate of Prince Rogers Nelson, No. 10-PR-16-46 (Minn. Dist. Ct. May 18, 2016), <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Affidavit-of-Heirship-Brianna-Nelson.pdf>.

98. Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 2 (Minn. Dist. Ct. Oct. 26, 2016), <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Order-Judgment-Denying-Heirship-Claims-of-Brianna-Nelson,-V-N-and-Corey-Simmons.pdf> (Order & Judgment Denying Heirship Claims of Brianna Nelson, V.N. and Corey Simmons).

99. *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 14.

100. *Id.*

101. *See id.* at 5, 8.

102. *See* MINN. STAT. § 257.55(d) (2016).

103. 2010 Minn. Laws ch. 334 § 6.

104. *See* MINN. STAT. §§ 524.2-117, 524.2-118, 524.2-120.

105. *See* Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 2 (Minn. Dist. Ct. filed Oct. 3, 2016), <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Amended-Scheduling-Order-Regarding-The-Claims-Of-Brianna-Nelson-and-VN-and-Corey-Simmons-To-Be-Heirs-Of-The-Estate.pdf> (Amended Scheduling Order Regarding the Claims of Brianna Nelson and

agreement to adopt that was not performed by legal adoption proceedings.¹⁰⁶ The district court held that the probate court does allow for recognition of equitable adoptions but that it is rarely used.¹⁰⁷ In *Olson v. Olson*, even a nephew who lived with his aunt and uncle from birth to adulthood was denied an equitable adoption claim as the court held that “no equities had been shown in favor of [the nephew] and against the [uncle’s other heirs].”¹⁰⁸ Therefore, under Minnesota intestacy statutes, which use a formal framework to define family, Duane’s daughter will receive nothing from Prince’s estate.¹⁰⁹ The court determined that no case law in Minnesota or anywhere in the United States recognized, for intestacy purposes, a relationship in which parties have no genetic relationship but hold themselves out to be father and son.¹¹⁰

Another seven individuals claimed to be potential heirs because they descended from the sister of Prince’s great-grandfather.¹¹¹ Their genetic relationship to Prince was irrelevant because their relation to Prince—his third cousins—was too distant for them to be considered heirs in this case; they would only inherit if Prince had

V.N. and Corey Simmons to be Heirs of the Estate).

106. *See, e.g.*, *Olson v. Olson*, 70 N.W.2d 107, 109–10 (Minn. 1955) (“When the words ‘equitable adoption’ are used, it is our opinion that the court, under its general equity powers, merely is treating the situation as though the relationship had been created between the one promising to adopt and the beneficiary of that promise.”).

107. Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 7 (Minn. Dist. Ct. Oct. 26, 2016), <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Order-Judgment-Denying-Heirship-Claims-of-Brianna-Nelson,-V-N-and-Corey-Simmons.pdf> (Order & Judgment Denying Heirship Claims of Brianna Nelson, V.N. and Corey Simmons).

108. *Olson*, 70 N.W.2d at 110.

109. *See Estate of Prince Rogers Nelson*, No. 10-PR-16-46, at 1, 7 (Order & Judgment Denying Heirship Claims of Brianna Nelson, V.N. and Corey Simmons).

110. *Id.* at 5.

111. Jonette M. Carter, Dana Samuels Nettles, Lorraine M. Huddleston, April Lashaun Seward, Michael W. Seward, Martha Len Samuels, and Priscilla Samuels Williams all filed Affidavits of Heirship with the court on June 21, 2016, claiming to be descendants of Virginia Nelson Thompson, the sister of Clarence Nelson, the great grandfather of Prince. *See, e.g.*, Affidavit of Jonette M. Carter, Estate of Prince Rogers Nelson, No. 10-PR-16-46 (Minn. Dist. Ct. Jan. 6, 2017), http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Affidavit-of-Heirship_2.pdf.

no wife, children, siblings, nieces or nephews, first cousins, or second cousins.¹¹²

B. What if a Will Were Located?

If a will, validly executed by Prince, were located within three years of his death, the will would control the distribution of his estate.¹¹³ In order to be valid in Minnesota, the will would need to be in writing, signed by Prince or someone at his direction, and witnessed by at least two individuals; a holographic (handwritten) will is not valid in Minnesota.¹¹⁴ Minnesota has also not adopted the “dispensing power,” which allows judges to admit to probate wills that evidence the intentions of the testator even though they are not validly executed.¹¹⁵ If Prince had a valid will that had not been intentionally revoked but had been lost, it could still be probated if its existence and contents could be proved by a preponderance of the evidence, which would typically be done with a copy of the original will.¹¹⁶

If a will is located and it turns out that Prince was married, then his spouse would have the right to file a claim against the estate if the will devised to her less than the elective share under Minnesota law.¹¹⁷ The spouse’s elective share would be determined in part based on the length of the marriage and in part based on the assets of the surviving spouse.¹¹⁸

If a will is located and it turns out that Prince had a biological or adopted child, then that child may also have a claim against the estate.¹¹⁹ This claim would occur under Minnesota’s omitted children statute only if the child was born after the will was drafted.¹²⁰

112. See MINN. STAT. § 524.2-103 (2016).

113. See *id.* § 524.3-301(2) (iv).

114. See *id.* § 524.2-502.

115. See *id.*

116. See *In re Estate of Langlie*, 355 N.W.2d 732, 735–37 (Minn. Ct. App. 1984) (stating framework under which Minnesota courts enforce “lost wills”).

117. MINN. STAT. § 524.2-301.

118. *Id.* § 524.2-202.

119. *Id.* § 524.2-302.

120. *Id.*

C. *How an Estate Plan Could Have Changed the Outcome of Prince's Estate*

If Prince would have created even a very simple will or inter vivos trust, he would have had the opportunity to determine the beneficiaries of his estate, determine the identity of his personal representative, and potentially avoid some or all federal and state estate taxes. If he chose to use a properly funded trust, which is a private instrument not available to the public or the media, he also could have had the opportunity to avoid probate, thus avoiding at least some of the publicity surrounding his estate.

With a valid will or trust, Prince could also have nominated a fiduciary to handle the administration of his estate. Instead, Prince's siblings continue to argue over who should be the special administrator or personal representative of the estate.¹²¹ These issues, along with many others that must be decided as a result of the complex intestate estate, have resulted in millions of dollars in attorney's fees in less than a year.¹²²

Certainly, if Prince had left a valid will or trust, he could have listed the family members he wanted to benefit and expressly disinherited those he did not want to benefit. With a will or trust, he could have prevented the need for genetic testing of anyone and controlled the definition of "descendants" and "issue" to purposely include or exclude adopted children, those born outside of marriage, and those related by half-blood. The governing instrument could have also included persons who were treated as family but were not related by blood or adoption. Prince would have had the opportunity to decide whether he considered Duane Nelson a brother, rather than relying on the state's intestacy laws to make that determination. A will or trust could also contain an "in terrorem" provision, which would attempt to limit legal disputes by penalizing devisees for engaging in a legal contest over the estate

121. Nelson, *supra* note 90.

122. See, e.g., Estate of Prince Rogers Nelson, No. 10-PR-16-46 (Minn. Dist. Ct. Oct. 28, 2016), http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/10-PR-16-46_Order_10-28-16.pdf (Order Approving Fees and Costs and Expenses and Establishing Procedure for Review and Approval of Future Fees and Costs and Expenses); The Special Administrator's Response to Three Law Firms' Motions for Payment of Attorneys' Fees, Estate of Prince Rogers Nelson, No. 10-PR-16-46 (Minn. Dist. Ct. Jan. 6, 2017), <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/The-Special-Administrator-s-Response-to-Three-Law-Firms-Motions-for-Payment-of-Attorneys-Fees.pdf>.

and prohibiting the personal representative from paying or reimbursing a contestant's attorney's fees.¹²³

Prince was notoriously private about his charitable giving during life. As a Jehovah's Witness, Prince may have felt compelled to keep his giving private, as Jehovah's Witnesses are discouraged from engaging in advocacy and activism.¹²⁴ His income taxes confirm that he was charitably inclined and that he often focused his support on youth and disadvantaged communities, contributing to #YesWeCode and Green for All.¹²⁵ Prince's own foundation, Love 4 One Another Charities, gave away \$3.2 million to various charities from 2001 to 2007, according to federal tax returns, and in that same time period, Prince gave \$10.9 million to his foundation.¹²⁶ With a written estate plan, Prince would have had the opportunity for more philanthropic gifting. If Prince designated part of his estate to charity, the estate could have received a charitable deduction,¹²⁷ potentially greatly reducing or even eliminating his state and federal estate tax liability.

In comparison, Muhammad Ali also died in 2016, leaving behind his fourth wife and nine children from previous spouses.¹²⁸ Due to complicated family dynamics, Ali's estate had the potential to become embroiled in years of expensive court battles.¹²⁹ However,

123. See MINN. STAT. § 524.2-517. Although Minnesota allows for a challenge to a will in spite of a penalty provision in the will, if the contestant has probable cause to institute the proceedings, a provision prohibiting the fiduciary from reimbursing attorney's fees to even a successful contestant may dissuade the contestant from proceeding due to the risk of the cost.

124. Melissa Moy, *Prince: The Artist Now Known as the Philanthropist*, GLASS POCKETS (May 12, 2016), <http://blog.glasspockets.org/2016/05/moy-prince-philanthropy-11052016.html#sthash.SiHuKz0r.dpuf>. See generally *The Watchtower, Maintain Your Neutrality in a Divided World*, JEHOVAH'S WITNESSES (Apr. 2016), <https://www.jw.org/en/publications/magazines/watchtower-study-april-2016/maintain-neutrality-in-a-divided-world/>.

125. Moy, *supra* note 124; see also #YESWECODE, <http://www.yeswecode.org> (last visited Mar. 26, 2017); GREENFORALL, <http://www.greenforall.org/> (last visited Mar. 26, 2017).

126. Moy, *supra* note 124.

127. See I.R.C. § 2055 (1986). There are numerous techniques to reduce estate taxes through charitable gifting that can be used to benefit both charitable and non-charitable beneficiaries, such as using split interest trusts like charitable remainder trusts and charitable lead trusts.

128. Jon Schuppe, *Muhammad Ali, 'The Greatest of All Time,' Dead at 74*, NBC NEWS (June 4, 2016 10:57 AM), <http://www.nbcnews.com/news/sports/muhammad-ali-greatest-all-time-dead-74-n584776>.

129. Danielle & Andy Mayoras, *Battles Coming for Muhammad Ali Estate, but It*

unlike Prince, the three-time world heavy weight champion did extensive planning years prior to his death and left clear instructions for how his estate should be divided.¹³⁰ It follows that proper planning could have had the same result for Prince.

D. How a Functional Approach to Minnesota Intestacy Law Could Have Changed the Outcome of Prince's Estate

If Minnesota intestacy laws had taken steps toward embracing the modern American family prior to Prince's death, the disposition of his estate could be very different. For example, a functional approach defines family differently. A court could consider the parent-child bond that formed between Prince's father and Duane and Duane's age at the time the relationship began. In contrast, the court could also scrutinize gaps in Duane and Prince's relationship, which are well documented. Although a functional approach would give the court more discretion to examine Prince's family relationships, it could also lead to extended litigation as each claimant could then argue how he or she had a family-like relationship with Prince.

If Minnesota had established a testator's family maintenance statute similar to the one in New Zealand,¹³¹ anyone that was financially dependent on Prince at the time of his death could have filed a claim. This would have opened up the estate to non-family members and superseded the intestacy statute.

IV. CONCLUSION

The administration of Prince's estate began in April of 2016 and was proceeding as a special administration, though the parties and the court later worked on transitioning the estate to one or more personal representatives.¹³² The court appointed a second Special

Should Emerge Victorious, FORBES (June 16, 2016), <http://www.forbes.com/sites/trialandheirs/2016/06/16/battles-coming-for-muhammad-ali-estate-but-it-should-emerge-victorious/>.

130. *Id.*

131. *See supra* notes 50–52 and accompanying text.

132. Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 1–3 (Minn. Dist. Ct. Jan. 20, 2017), <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Order-For-Transition-From-Special-Administrator-To-Personal-Representative.pdf> (Order for Transition from Special Administrator to Personal Representative).

Administrator with limited authority to deal with an exclusive distribution and license agreement between the estate and a couple of recording companies.¹³³ The court appears to have sorted out the heirship or at least limited the possibility of any new claims of heirship.¹³⁴ Numerous unfounded claims of would-be heirs have been tested and rejected. Some audacious creditor claims have been made and disallowed.¹³⁵ Still, the parties are arguing over the allowance of attorney's fees already in the millions of dollars.¹³⁶ A personal representative of the estate has not yet been appointed.¹³⁷ As if direct from the screenplay of a Hollywood movie, there were allegations of foul play involving heirs and Prince's death: a Petition for Enforcement of the Slayer Rule was filed, asking the court to rule out certain heirs from benefitting from the estate.¹³⁸ The administration of the Prince estate promises to keep the court,

133. Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 1–2 (Minn. Dist. Ct. Aug. 21, 2017), http://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/10-PR-16-46/10PR1646_OrderAppointing_8-21-17.pdf (Order Appointing Second Special Administrator).

134. *Amended Order Re: Genetic Testing Protocol*, *supra* note 64, at 16.

135. Terrance Davis submitted a claim for \$100 million asserting that he created the first half of the song “Purple Rain” while in Germany for the U.S. Army. Written Statement of Claim, Estate of Prince Rogers Nelson No. 10-PR-16-46 (Minn. Dist. Ct. Jan. 24, 2017), http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Written-Statement-of-Claim_12.pdf. Davis stated that he used to sing it in the shower and that a friend gave him beer and talked him into recording it on tape. *Id.* However, the claim was disallowed on the grounds that it had “no basis in law or fact and was filed after the expiration of the creditors’ claim period.” Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 1 (Minn. Dist. Ct. Jan. 25, 2017), <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/Notice-of-Disallowance-of-Claim-of-Terrance-Davis.pdf> (Notice of Disallowance of Claim).

136. Emma Nelson, *Nearly a Year After Prince’s Death, Heirs Are Still Grappling with His Estate*, STAR TRIB. (Mar. 14, 2017, 11:20PM), <http://www.startribune.com/nearly-a-year-after-prince-s-death-heirs-are-still-grappling-with-his-estate/416164784/>.

137. Estate of Prince Rogers Nelson, No. 10-PR-16-46, at 1–3 (Order for Transition from Special Administrator to Personal Representative); Nelson, *supra* note 136.

138. Petition for Enforcement of Slayer Rule on Tyka Nelson, Estate of Prince Rogers Nelson, No. 10-PR-16-46, (Minn. Dist. Ct. Jan 24, 2017). The Slayer Rule is a common-law doctrine that precludes inheritance by a person who murders, or helps in the killing of, someone from whom he or she stands to inherit. *See* RESTATEMENT (THIRD) OF PROPERTY § 8.4 cmt. a (AM. LAW INST. 2003).

lawyers, accountants, and tax authorities busy for some years to come and certainly at great cost to the estate.

How is all this to be prevented? It does not seem that a legislative solution would be very effective. Changing the law to provide for a more functional approach to heirship and giving the courts discretion to look subjectively at how potential heirs related to the decedent emotionally and financially, as well as genetically, seem only to change the legal arguments rather than eliminate or even lessen the number of spurious claims. Sometimes the government and the judicial system are not the best places to look for preventative action. Sometimes people have to take matters into their own hands. Prince must have dealt with lawyers frequently regarding his business matters. Had Prince sought the advice of good estate planning and tax counsel and put his wishes on paper, much of the chaotic court maneuvering, and the consequent cost, could have been avoided, thereby benefitting his family and intended beneficiaries and lessening the burden on the courts. As any experienced trust and estates lawyer can tell you, issues like those in the Prince estate are not unique to the vast and complicated estate of a famous rock star. Many small estates run into similar problems, which can be avoided with proper planning. Winning basketball coach John Wooden said, "Failure to prepare is preparing to fail."¹³⁹ That certainly seems to be true for Prince's estate.

139. See Office of Media Relations, *Coach John Wooden Quotes*, UCLA NEWSROOM (June 4, 2010), <http://newsroom.ucla.edu/releases/wooden-quotes-84178>.

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