

CASE NO. A07-1587

State of Minnesota
Court of Appeals

Mary Hoeft, et al.

Appellants,

vs.

Hennepin County, et. al., City of St. Louis Park, et al.

Respondents.

APPELLANT'S BRIEF

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ISSUES PRESENTED

1. Did Plaintiffs present a justiciable controversy to the District Court sufficient to allow the District Court to enter declaratory judgment in Plaintiff's favor?

District Court Ruling: No. The District Court ruled Plaintiffs did not present a justiciable controversy to the District Court.

Case Law and Statutes Apposite Trial Court's Ruling:

Cincinatti Ins. Co. v. Franck, 621 N.W.2d 270, 273 (Minn.App. 2001)

Unbank Co., LLP v. Merwin Drug Co., Inc., 677 N.W.2d 105, 107 (Minn.App. 2004)

Alliance for Metropolitan Stability v. Metropolitan Council, 671 N.W.2d 905, 915-16 (Minn.App. 2003)

2. May the parents of Ryan Hoeft challenge the accuracy of the information contained in Ryan Hoeft's death certificate as a vital record pursuant to MINN. STAT. § 144.225 and the Minnesota Constitution, thus creating a cognizable legal right?

District Court Ruling: No. The District Court ruled that the Plaintiffs, as Ryan Hoeft's parents, have a tangible interest only in obtaining a copy of Ryan Hoeft's vital records; however, the Plaintiffs do not have a tangible interest in the accuracy of information contained within the vital record.

Case Law and Statutes Apposite Trial Court's Ruling:

Matter of Exhumation and Autopsy of McKinstry, 372 N.W.2d 828, 830 (Minn.App. 1985)

MINN. STAT. § 390.23 (2007).

MINN. STAT. § 390.32 (2007).

MINN. STAT. § 390.11(5) (2007).

3. Do the Plaintiffs and Defendants have adverse interests in this declaratory judgment action to correctly apply Minnesota's common law presumption against suicide as the cause of death, determine the accurate cause of Ryan Hoeft's death, and require that the information contained in Ryan Hoeft's death certificate be accurate pursuant to MINN. STAT. § 144.225 and the Minnesota Constitution?

District Court Ruling: No. The District Court ruled that the presumption against suicide applies only in actions regarding life insurance policies and workers' compensation proceedings. The District Court also ruled that the Hennepin County Defendants and

Defendant City of St. Louis Park are disinterested in the manner of death of Ryan Hoeft as determined by the Examiner's Office and do not have interests adverse to the Plaintiff.

Case Law and Statutes Apposite Trial Court's Ruling:

Arens v. Village of Rogers, 61 N.W.2d 508, 513 (Minn. 1953).

Beach v. American Steel & Wire Div. of U.S. Steel Corp., 78 N.W.2d 371 (Minn. 1956)

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4. Would a Judgment by the District Court settle the dispute between Plaintiffs and Defendants regarding the accuracy of Ryan Hoeft's death certificate pursuant to MINN. STAT. § 144.225?

District Court Ruling: No.

Case Law and Statutes Apposite Trial Court's Ruling:

Seiz v. Citizens Pure Ice Co., 290 N.W. 802, 804 (Minn. 1940).

5. Should Plaintiffs be allowed to amend their Complaint regarding the conduct of the City of St. Louis Park, the Hennepin County Sheriff and the Hennepin County Medical Examiner and that conduct's relevance to the legal determinations regarding Plaintiffs' eligibility for the life insurance proceeds of Ryan Hoeft?

District Court Ruling: No. The District Court ruled that Plaintiff's proposed Amended Complaint could not withstand a motion for summary judgment and denied Plaintiff's Motion to Amend Complaint.

Case Law and Statutes Apposite Trial Court's Ruling:

Ag Services of America, Inc. v. Schroeder, 693 N.W.2d 227, 235 (Minn.App. 2005).

6. Are Defendants prevented from relying on statutes of limitations to bar Plaintiffs from bringing this action due to their repeated affirmative representations that their investigation was continuing and not concluded pursuant to the doctrines of waiver and estoppel?

District Court Ruling: No. The District Court ruled that Plaintiffs' claims are barred by the statute of limitations requiring that Plaintiffs' suit must be brought within three years.

Case Law and Statutes Apposite Trial Court's Ruling:

MINN. STAT. § 541.06 (2007).

STATEMENT OF THE CASE

On February 14, 2007, Plaintiffs filed a Summons and Complaint with the Court seeking a Declaratory Judgment pursuant to MINN. STAT. § 555.01, *et seq.*, in order to correct and make accurate the manner of death on Ryan Hoefft's death certificate filed by the Hennepin County Medical Examiner. Appellant's Appendix ("AA") at 224–30. This Complaint also alleged that the misconduct of the Hennepin County Sheriff and the City of St. Louis Park Police Department contributed to the inaccurate ruling of Ryan Hoefft's death as a suicide by the Hennepin County Medical Examiner. AA at 227.

On February 22, 2007, Defendants Hennepin County, the Sheriff's Office, and the Medical Examiner's Office (collectively, the "Hennepin County Defendants") filed a Motion to Dismiss pursuant to Minnesota Rule of Civil Procedure Rule 12.02(a)(b) and (e) on the grounds that the Complaint failed to state a claim upon which relief can be granted and failed to present the Court with a justiciable case or controversy. AA at 243.

On March 16, 2007, the Hennepin County Defendants filed an Amended Motion to Dismiss pursuant to Minnesota Rule of Civil Procedure Rule 12.02(a) and (e) on the additional grounds that Plaintiff's action is prohibited by the Separation of Powers Doctrine in Article III of the Minnesota Constitution and is barred by the applicable statute of limitations. AA at 243.

On March 29, 2007, Defendant City of St. Louis Park also filed a Motion to Dismiss pursuant to Minnesota Rule of Civil Procedure Rule 12.02(a)(b) and (e), on the grounds that the Complaint failed to state a claim upon which relief can be granted and failed to present the Court with a justiciable case or controversy. AA at 243.

On May 1, 2007, Plaintiffs filed a Memorandum in Opposition to the Hennepin County Defendants Motions to Dismiss and Defendant City of St. Louis Park's Motion to Dismiss

together with a Motion to Amend the Complaint to add Kelly Hoeft as a Plaintiff and beneficiary of Ryan Hoeft's life insurance policy. *See, e.g.* AA at 231–39.

On May 7, 2007 Defendant City of St. Louis Park filed a reply memorandum in support of Defendant's motion to dismiss. AA at 243. On May 8, 2007 the Hennepin County Defendants filed a reply memorandum in support of the Hennepin County Defendants' motion to dismiss. *Id.*

On May 9, 2007, Plaintiffs filed an Amended Motion to Amend the Complaint that sought to add The Prudential Insurance Company of America as an additional Defendant along with the Hennepin County Defendants and Defendant City of St. Louis Park. *See, e.g.* AA at 231–39.

On May 10, 2007, Defendants' Motions to Dismiss came before the Court for hearing. AA at 240. On June 19, 2007, without hearing regarding Plaintiff's Motion to Amend the Complaint, the Court entered an Order granting Defendants' Motions to Dismiss and entering judgment accordingly. AA at 249–51

STATEMENT OF THE FACTS

Ryan Hoeft was found dead in his car on November 6, 2001. AA at 102 and 107¹. The Hennepin County Medical Examiner initially ruled the manner of death to be suicide. AA at 013. The Hennepin County Medical Center did not consider various evidence regarding Ryan Hoeft's state of mind prior to his death, such as e-mails, cards, and conversations with friends and family. *See, e.g.*, AA at 134–36, 143–45 and 158–60.

¹ Exhibit D to the Affidavit of Mary Hoeft dated May 1, 2007 was originally filed and served as a compact disc. The powerpoint presentation attached as exhibit D to this affidavit has been printed in document form for citation in Appellant's Appendix.

At the time of his death, Ryan had been employed just five months as a patrol officer. AA at 127–28. Ryan had worked with his field training officer for approximately 12 to 16 weeks and had been on his own for only three weeks. *Id.*

Ryan was dating a Detention Deputy at the Hennepin County Sheriff's Office jail named Sarah Hopkins. AA at 134. Ryan and Sarah had recently moved into an apartment together and just returned from a vacation together in Las Vegas the day prior to his death. AA at 135. Ryan telephoned his mother the day prior to his death asking her for information on engagement rings for Sarah because he planned to marry her. *Id.*

Ryan was enthusiastic about his life, his girlfriend, his family, his friends, and his job. *See, e.g.* AA at 134–36. All indications point to Ryan being happy and healthy in all aspects of his life at the time of his death on November 6, 2001. *Id.*

On the night of his death, Ryan assisted another officer in booking a prisoner at the St. Louis Park Police Department. AA at 148–49. While booking a prisoner, officers are instructed to remove their service weapon and place it in a “Sally Port” so that the prisoners they are booking are unable to grab their service weapon. AA at 150–54. It is not unusual that officers may forget that they placed their gun in the “Sally Port” and go back out on patrol without their service weapon. AA at 155. To avoid these circumstances, many officers choose to place their service weapon under the seat, on the dashboard, on the floor, or on the passenger seat rather than placing the service weapon in the “Sally Port.” *Id.* After helping to book the prisoner, Ryan Hoeft left the St. Louis Park Police Department while talking to his girlfriend Sarah on his cell phone. AA at 156–60.

From this point on, there is no factual certainty regarding the events that led to the death of Ryan Hoeft. *See, e.g.* AA at 160–61. The Hennepin County Medical Examiner apparently

believes that Ryan Hoeft took his own life by intentionally firing a bullet into his head while driving his patrol car on duty. AA at 013. The Medical Examiner issued a certificate of death, determining Hoeft's death to be a suicide, on February 8, 2002. AA at 242.

Dr. Janis Amatuzio ("Dr. Amatuzio") has been a county coroner in Minnesota for over fourteen (14) years. AA at 182. Currently, she is the County Coroner for Anoka County, Wright County, Meeker County, Mille Lacs County, Crow Wing County and is a consultant to the County Coroners in Todd County, Polk County, Burnett County (WI), McLeod County, Sibley County, Douglas County (Medical Examiner) and Isanti County. *Id.* She is currently an instructor in Forensic Pathology in the University of Minnesota Medical School's Mortuary Science Program, has published numerous articles and has received many honors in her thirty (30) year career as a Doctor of Medicine. AA at 182-83. During Dr. Janis Amatuzio's two-year investigation of Ryan Hoeft's death, she discovered facts that had not been cited in the initial investigation report of Ryan's death. *See, e.g.* AA at 051-165 Those facts led Dr. Amatuzio to become convinced that Ryan Hoeft's death was an accident. AA at 118, 161-62 and 167.

Staff Sergeant Donald J. Schmalzbauer ("Sgt. Schmalzbauer") is a twenty-nine year veteran law enforcement officer, State Patrol Trooper from 1981-2006 and certified accident reconstruction specialist since 1984. AA at 173. At the time of his retirement in May, 2006, he was the premier accident reconstruction specialist in the State of Minnesota and trained Minnesota law enforcement officers as a Crash Reconstruction Program Coordinator and Academy Instructor. *Id.* His education and training in crash investigation and other topics in forensics is voluminous and updated annually through 2006. AA at 174-77. Moreover, he regularly provided training sessions to other law enforcement groups throughout Minnesota and the United States. AA at 177-80. He has reconstructed, or assisted in the reconstruction of, over

one-thousand (1000) crash investigations since 1984 and testified as an expert witness in over forty (40) court trials and arbitration hearings. AA at 181.

Utilizing his experience and training—and with the benefit of Dr. Amatuzio’s and Plaintiffs’ continued investigation—Sgt. Schmalzbauer reconstructed the events leading up to the death of Ryan Hoefft. AA at 065–118. This reconstruction bore out the conviction of Dr. Amatuzio and provided overwhelming evidence that Ryan Hoefft’s death was an accident and not a suicide. *See, e.g.*, AA at 080–84, 088, 118 and 167.

Mr. John E. Stanley (“Mr. Stanley”) is the Coroner in Dane County, Wisconsin. AA at 185. To provide Dr. Amatuzio with a second opinion, Mr. Stanley carefully and fully reviewed the reconstructed and reenacted accident, and all the evidence relating to the manner of death of Ryan Hoefft. AA at 228.

Dr. Amatuzio, Sgt. Schmalzbauer and Mr. Stanley all independently concluded that Ryan Hoefft’s death was accidental. AA at 228. Dr. Amatuzio and Sgt. Schmalzbauer gathered all of the evidence discovered by their supplemental investigation, including information regarding crash scene reconstructed by Sgt. Schmalzbauer, and Dr. Amatuzio presented her expert opinions based on these established facts to the Hennepin County Medical Examiner:

- Ryan Hoefft was a 27-year-old, St. Louis Park Police Officer who was found dead in his running squad car at 0050 hours on November 6, 2001. The report of a vehicle with its lights on in a park by Cedar Manor School was given to Officer Hoefft’s supervisor, Officer Schultz, at approximately 2355 hours on November 5, 2001. This squad car drove off the road at 9400 Cedar Lake Road, drifted downhill into a park following the curve of a hill in the park next to a school, and came to rest in a marsh with cattails. When found, **the vehicle was “in drive” with its engine running.** Its headlights and taillights were on. All doors were shut and locked except for the driver’s door, and there was no broken window glass.

- Officer Ryan Hoeft was found seated in the driver's seat with his **seat belt unbuckled but still over his left shoulder**. Blood soaked his clothing, particularly on the left side, the seat belt and his left hand. Blood was noted on the steering wheel, the driver's door and glass. A spent .45 caliber casing was found on the passenger's seat next to an open black police bag. An expended projectile was found on the floor beneath the decedent's feet on the driver's side. The **unholstered gun was found on the floor** between the decedent's legs.
- The postmortem examination documented a contact-type gunshot wound to the right temporal area and an exit wound to the left posterior parietal area. **The path of the bullet was from right to left, slightly upward and backwards**. All toxicology was negative.
- A defect, found on the lateral aspect of the driver's visor, was assessed by the Hennepin County Sheriffs Department, and determined to be from the projectile which passed through the decedent's head. This means that the gunshot wound occurred when **Officer Hoeft was looking down, to the right, and slightly bent over**.
- Additional autopsy observations include the following: A) a **rectangular bruise on the deltoid surface of the right upper arm**; B) an abrasion and **bruise to the right lateral abdominal area**; C) a linear bruise to the right upper chest. Review of the photos of the body in the squad car show an **impression in the fabric of the officer's right upper shirt sleeve, rectangular in shape**, which matches both the bruise on the right upper arm and the magazine of the MP5, a rifle mounted at a 450 angle between the front seats of Officer Hoeft's squad car. The fabric impression is still apparent in autopsy photos of the officer clothed, in the morgue.
- The injuries represent **patterns consistent with forceful contact of the right side of the officer's body** with objects in the squad car and on his body.
- Additional death scene observations and photographs were made on November 9, 2001 and included photographs of tire impressions on the curbing on the north side of Cedar Lake Road, including a 450 impact where a tire climbed the curb, and a 450 reverse impact mark where a tire left the curb at a point 30 - 40 feet prior to the intersection where the vehicle left the roadway and drifted down hill in a park. **These were not**

observed by sheriff's investigators. The significance of these marks is that they offer another explanation for the events of November 6, 2001.

- The tire marks on the curbing north of Cedar Lake were 11 feet 6 inches apart. In a format nationally taught to accident reconstructionists, such as Minnesota State Trooper Staff Sergeant Schmalzbauer teaches, a scene reconstruction was done in an attempt to determine whether or not these tire marks may have indicated what had really happened. The reconstruction consisted of using a similar vehicle at the same street with a mounted digital video camera in the squad and an accelerometer mounted on the dash. The tire impact marks were marked with orange paint and Staff Sergeant Schmalzbauer "hit the curb" at varying speeds, including 5, 20, 30, 32, and 35 miles per hour. **This reconstruction resulted in a sharp lateral movement of the occupant's head to the right, towards the impacted curb.**

- Scene photos show blood stains on the decedent's steering wheel, which indicate they had been deposited when the wheel was in a 12 o'clock position. When the squad car was found, the wheel was turned to the right at approximately 45°; this indicates that the **blood was deposited on the wheel when it was in a different position from when it was found at rest.** There was no evidence that the tires or steering wheel had been repositioned at the marsh. It appears the **injuries that St. Louis Park Police Officer Ryan Hoeft suffered on the evening of November 6, 2001, occurred when the steering wheel was in a 12 o'clock position, when the vehicle was on the roadway.**

- Other circumstances may also shed light into what truly occurred that evening. Officers carry their weapons fully armed, with the safety off, while on duty; this means there is a bullet in the chamber and the weapon is ready to fire. Officer Hoeft had been employed just 5 months as a patrol officer with the city of St. Louis Park since July 2001. In other words, **he was inexperienced.** He had previously worked as a Hennepin County Jail Deputy. During his period of duty with the St. Louis Park Police Department, he had worked with his field training officer for approximately 12 - 16 weeks and had been **on his own for only three weeks.**

- He was currently dating Sarah Hopkins, a Detention Deputy at the Hennepin County Sheriff's Office Jail, and had

moved into an apartment with her in October 2001. He had just returned from a vacation with her in Las Vegas on the day prior to his death, November 5, 2001; he had telephoned his mother that same day asking her to help him pick out a ring since he and Sarah were planning to marry. **Hoefft left a card for Sarah on November 6, 2001, which indicated a happy relationship.**

- E-mails from the date of his death were reviewed. Hoefft sent an email to Sarah, his fiancé, at 1600 hours, 'Hey baby, how ya feeling right now? **I miss you and I'll see you at 6:30.** It sucked not being able to see you today. I love you, Ryan.' Moments prior to this, there had been other e-mails to friends, which were also upbeat. An e-mail sent by Sarah to Ryan at 0049 hours, when she was not yet aware of his death, indicates a loving relationship, "It's me, hey baby, I love getting e-mails from you. I missed you today. I've made some plans for the next couple of weeks. I'll have to tell you about them tomorrow. Love you, Sarah."

- The events which occurred during work (on duty) on the day of his death also shed valuable information into the manner of his death. He started at 1700 hours and responded to several calls, including a fire call, narcotics call and a property damage accident. At approximately 2135 hours, he took a lunch break at his station. During his break, other officers in his department responded to a domestic disturbance where one individual was taken into custody. Three other squads were present. Ryan left his meal, partially eaten, and responded to assist at that call at approximately 2153 hours. (Only one person was taken into custody at the St. Louis Park Police Department on the night of November 5-6, 2001.) At approximately 2201 hours, Hoefft cleared the domestic scene and drove his vehicle to the police department and assisted another officer, P222, in booking that prisoner. The St. Louis Park Police Department has a "sally port." This is an area similar to a garage where prisoners are removed from the squad. It is a secure place.

- The official sally port procedure is as follows. Prisoners are transported in the back seat of a locked squad car, usually handcuffed. The officer enters the sally port by opening the garage door, drives in, and then closes the door behind the vehicle. The officer exits the parked squad car, leaving his prisoner secured in the back seat, **and removes his gun from his holster and places it in a locked gun box within the sally**

port. The purpose of this is to prevent the prisoner from grabbing the gun from the officer while being transferred out of the vehicle. The officer then removes the prisoner from the locked back seat and accompanies him to the booking and holding area.

- **Real-life practices deviate from official procedure because officers often forget to retrieve their gun from the gun locker and have driven away without their weapon** — this necessitates an immediate return to the sally port to retrieve their weapon. Consequently, many officers do not follow the official protocol and do not use the locked gun box. **Instead, they will place their gun on the dashboard, floor, passenger seat, or in the trunk of their own squad car.** It is known that **Officer Hoefft assisted another officer with transporting the prisoner** to the St. Louis Park Police Department, the only prisoner booked that evening. He was seen leaving the Police Department by his field training officer, Officer Schultz, sometime after 2200 hours. Officer Hoefft used his key to open the driver's door of the squad, got into the squad, buckled his seat belt but perhaps forgot to re-holster his weapon, and started driving.

- **Logs of his Verizon cell phone reveal the following.** At 2208 hours, he received an in-coming phone call from the Hennepin County Jail in the Women's Quad where Sarah was working that evening. The phone called ended at 2215 hours, 7 minutes later. The distance from the St. Louis Park Police Department to the place on Cedar Lake Road where the decedent's vehicle was found, is approximately 3 - 4 miles. Traveling at normal, posted speeds, the travel time would vary from 9 - 13 minutes.

- Officer Ryan Hoefft was not heard from on his shift following his contact with Officer Schultz at the St. Louis Park Police Department at approximately 2200 hours. Attempts were made to reach him on the MDI at 2245 hours and 2337 hours. At 2353 hours, a passer-by and his wife see taillights again, drive to the Tom Thumb to call the police, and flag down Officer Schultz, who happens to be in the parking lot. At 2355 hours, the passer-by drove the officer to the Cedar Manor School where Hoefft's body was discovered.

- There are several other factors which have come to light including Ryan Hoefft's employment history. He had communicated to his father that he preferred working the jail to

patrol, in part because his fiancé worked at the Hennepin County Jail in the Women's Quad. On the day of his death, November 6, 2001, he sent a letter to Lieutenant Chester Cooper, regarding reinstatement. The tone of the letter was upbeat and positive: "Lieutenant Cooper, I just wanted to send you a quick note to let you know **I am still very much hoping to come back to work for the Hennepin County Sheriff's Office.** I also want to thank you for your help in this matter. If re-instatement is not possible, I would still like to apply for the next license class. Thanks again, Ryan Hoefft."

- Many facts do not support the contention that Officer Hoefft drove his vehicle to a "remote area," intentionally put his service weapon to his temple and pulled the trigger:

1) **The position of the decedent's head** at the time he suffered the gunshot wound was looking down, and bent to the right, a highly unusual position for an individual to carry out a contemplated act. The vehicle was in drive, lights were on, the radios and pagers were on, and the **seatbelt was unbuckled but over the left shoulder. (An officer's gun cannot be re holstered when the seatbelt is buckled.)**

2) **Bruises on the right side of the officer's body** also recapitulated in officer's shirt sleeve at death scene, were **not observed or explained by this scenario.**

3) **Tire marks on curbing prior to the intersection were overlooked by sheriff's investigators.** Perhaps accident reconstruction experts from the State Patrol should have been consulted as part of the original investigation.

4) **Blood was deposited on steering wheel when it was in a 12 o'clock position;** when vehicle found, the wheel was turned at a 45 degree angle to the right with **no signs of repositioning.**

5) **Work activities prior to death were not reviewed.** Email from girlfriend sent after Ryan's death was not reviewed by Hennepin County Medical Examiner.

- Moreover, **suicide by self-inflicted gunshot wound while driving is unusual.** A search of the literature shows only 2 reported cases, neither of these by an on-duty police officer.

This would not correlate with blood spatter on vehicle's steering wheel.

AA at 12–172 (emphasis added).

Based on the facts above, Dr. Amatuzio, Sgt. Schmalzbauer and Mr. Stanley concluded unanimously that Ryan Hoefft's manner of death was accidental rather than suicide. AA at 228. These independent experts believe that the circumstances described below resulted in the accidental death of Ryan Hoefft.

After finishing the cell phone conversation with his girlfriend, Ryan realized that his service weapon was not in his holster. AA at 158–60. He unbuckled his seat belt to reach for his weapon. AA at 160. While doing so he drifted on to the curb, causing a sharp jolt from the impact. AA at 113–18 and 161. The impact of Ryan's squad car hitting the curb at speeds similar to that of November 6, 2001 caused a sharp lateral movement of the driver's head to the right, towards the impacted curb. *Id.* The impact caused his body to tense to the left, pulling away from the contact point, which would have forced his body to the right, and reflexively pulled the trigger, causing Ryan Hoefft's self-inflicted gun shot wound. *Id.* Upon Ryan Hoefft's accidental death, the squad car went into free fall, curving only with the curve of the hill without driver intervention. AA at 019–35 and 167.

The reconstruction of the crash scene indicates that the **only way** Ryan could have shot himself with an entrance wound to the right temple, an exit wound to the left posterior parietal area, and the projectile impacting the lateral aspect of the sun visor was if Ryan was looking down and to the right, a highly unusual position for an individual to carry out a contemplated act according to forensic expert Dr. Amatuzio and lead accident reconstructionist Sgt.

Schmalzbauer. AA at 048, 060–63 and 068–76.

On April 15, 2004, the Hennepin County Medical Examiner reopened the investigation into the manner of death for Ryan Hoeft due to the substantial evidence discovered by the independent experts indicating that Ryan Hoeft's manner of death was accidental:

I am writing in response to your letter of April 4, 2004 regarding our **reinvestigation of the death of your son Ryan.**

I want to assure that the case has **not fallen between the cracks.** **We have been waiting** for the reports of the outside physicians we had initially consulted in the case. We supplied them with Dr. Amatuzio's materials several months ago. Since I received your letter I have spoken to both of them and they have assured me that they will send me their conclusions very shortly. **When those reports have been received, our staff will once again consider the conclusions regarding Ryan's death. I will notify you of our decision as soon as that is completed.**

Sincerely,
Garry F. Peterson, M.D.
Chief Medical Examiner

AA at 002 and 009 (emphasis added).

The individual serving as the Hennepin County Medical Examiner who had determined suicide as the manner of death for Ryan Hoeft retired before the manner of death was finally determined. AA at 002 and 010-11. Subsequently, the new individual serving as the Hennepin County Medical Examiner expressly represented to the family that the reinvestigation into the manner of death for Ryan Hoeft would continue:

Thank you for your letter of June 11, 2004, and your phone call the preceding day. Please accept my sincerest condolences on the loss of your son, Ryan. You need not apologize for crying on the phone—as **Ryan's mother, your grief and your questions are entirely understandable.**

As Dr. Peterson explained to you, your recent phone calls coincided almost perfectly with his retirement after 20 years as the Hennepin County Medical Examiner. . . .

If it would be preferable to you, **when I have finished my review** of all information and opinions regarding Ryan's death, I would be happy to meet with you in person. While I realize that a trip to Minneapolis is something of an inconvenience, it might benefit both of us greatly to meet face to face.

Regardless of **whatever opinion that my office ultimately reaches after this review**, it is my sincere hope that you feel you and your family have been treated with dignity. Please know that you have my deepest sympathy and the condolences of my entire office staff.

Id.

The deceased Ryan Hoeft was the named insured of a life insurance policy provided by the City of St. Louis Park through Prudential Insurance Company of America. AA at 001–02 and 005–08. The beneficiaries of this life insurance policy are Mary Hoeft, Terry Hoeft and Kelly Hoeft, Ryan Hoeft's mother, father and sister, respectively. *Id.* The existence of this life insurance policy was not described to or known by Plaintiffs until after this lawsuit was commenced. AA at 002. Immediately following Ryan Hoeft's death—before any investigation into his death could have been concluded—the Human Resources Department for the City of St. Louis Park completed the life insurance policy forms inquiring: “Are Accidental Death benefits being claimed?” AA at 006–07. The answer was pre-checked by the City of St. Louis Park: “No”. AA at 007. This form was completed before an initial determination of death had been made by the Medical Examiner and nearly three years prior to the completion of the reinvestigation. AA at 006.

INTRODUCTION

The gravamen of this appeal is Plaintiffs' continuing effort to correct and make accurate their son Ryan Hoeft's death certificate as a vital record of the state of Minnesota. Defendants have sought to deny this relief before any discovery could be conducted by arguing that

Plaintiffs' action for declaratory relief fails to establish a justiciable controversy for determination by the District Court.

However, Plaintiffs have asserted rights under Minnesota Statute and the Minnesota Constitution, and Defendants continue to maintain legal and factual positions adverse to Plaintiffs. Only a reversal and remand to the District Court would settle this dispute between Plaintiffs and Defendants by adjudicating—once and for all—Ryan Hoefft's true and accurate cause of death pursuant to the laws of the State of Minnesota and its established presumption against suicide.

ARGUMENT

I. PLAINTIFFS' ACTION FOR DECLARATORY RELIEF PRESENTED A JUSTICIABLE CONTROVERSY BEFORE THE DISTRICT COURT

A declaratory action is a justiciable controversy if it is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.

Cincinnati Ins. Co. v. Franck, 621 N.W.2d 270, 273 (Minn. App. 2001). In declaratory relief actions, questions of fact may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

MINN. STAT. § 555.09. There are three elements required to have a justiciable controversy between the parties in an action for declaratory relief:

[A] declaratory action presents a justiciable controversy if it: 1) involves definite and concrete assertions of a right that emanate from a legal source; 2) involves a genuine conflict in tangible interests between parties with adverse interests; and 3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.

Unbank Co., LLP v. Merwin Drug Co., Inc., 677 N.W.2d 105, 107 (Minn.App. 2004).

Plaintiffs' seek to correct the cause of death on Ryan Hoeft's death certificate to make it an accurate vital record. There is no dispute that Plaintiffs have a tangible interest in the information contained in Ryan Hoeft's death certificate. *See* MINN. STAT. 144.225(7). Defendants insist that their investigation of Ryan Hoeft's death was proper and led to an accurate designation of Ryan Hoeft's cause of death while Plaintiffs seek to set forth evidence that an accidental death is the only result supported by the facts upon careful examination—creating a genuine conflict of interest between the parties. The conflict may be resolved by the District Court's—or a jury's— independent examination of the facts and final conclusion regarding the correct and accurate cause of Ryan Hoeft's death. As indicated more thoroughly below, Plaintiffs have asserted a cognizable right pursuant to Minnesota Statute and the Minnesota Constitution, have interests materially adverse to Defendants, and judgment by the Court would finally resolve the accuracy of Ryan Hoeft's death certificate.

Practically, if the Hoefts are not entitled to petition the Court for a declaratory judgment correcting Ryan Hoeft's death certificate and adjudicating the present rights of Plaintiffs based on present facts, the Hennepin County Medical Examiner's office would be given absolute power without any judicial review. There is no statutory authority or case law to support the proposition that a determination by a Medical Examiner is immune from judicial review.

II. PLAINTIFFS, AS RYAN HOEFT'S PARENTS, HAVE A TANGIBLE INTEREST IN OBTAINING A COPY OF RYAN HOEFT'S DEATH CERTIFICATE THAT IS ACCURATE IN ALL RESPECTS AND HAVE ASSERTED A COGNIZABLE RIGHT IN THEIR ACTION FOR DECLARATORY RELIEF.

A. PLAINTIFFS HAVE A RIGHT TO RYAN HOEFT'S ACCURATE DEATH CERTIFICATE PURSUANT TO MINN. STAT. § 144.225.

Plaintiffs assert that Minnesota law gives parents a statutory right to ensure the **accurate recording and maintaining of vital records** of their children by the state:

The state or local registrar shall **issue a certified . . . death record** or a statement of no vital record found to an individual upon the individual's proper completion of an attestation provided by the commissioner:

(1) to a **person who has a tangible interest in the requested vital record**. A person who has a tangible interest is: . . .

(iv) **a parent of the subject**; . . .

(vi) if the requested record is a death record, **a sibling of the subject**.

MINN. STAT. § 144.225(a) (emphasis added). The District Court correctly noted that whether or not the Hoefts have a tangible right in the **accuracy** of Ryan Hoeft's death certificate "is a matter of first impression in Minnesota." AA at 246; *see also Wenigar v. Johnson*, 712 N.W.2d 190, 205 (Minn.App. 2006) (noting that matters of first impression regarding statutory interpretation are reviewed **de novo**).

They key issue for determination was recognized by the District Court: "Plaintiffs argue a gap exists in the statute in that it fails to address how an interested party may 'correct' a death certificate when it believes the Examiner's Office wrongly declared the manner of death." AA at 246. Plaintiffs are not requesting that Minnesota Courts "usurp" the County Attorney's or the Medical Examiner's statutory grant of authority regarding the issuance of, or inquest into, Hoeft's death record. Rather, Plaintiffs believe that they have a tangible, legally protectable interest in not only obtaining a copy of the Ryan Hoeft's vital records, but ensuring that the record be accurate.

Because this is a question of first impression, it is particularly appropriate to look to sister states for guidance regarding whether parents have a tangible interest in making corrections to the vital records of their children. In Wisconsin, the precedent is clear:

A person who files a **petition under WIS. STAT. § 69.12(1)** alleges only that the information in a vital record does not represent the actual facts existing at the time the vital record was filed. The **relief sought by a petitioner is to have the circuit court enter**

the actual facts and order the state registrar to change the vital record. When considering a petition filed under this section, the circuit court's only role is to review the evidence presented by a petitioner and to determine whether the petitioner "has established the actual facts of the event in effect when the record was filed."...The manner and cause of a person's death listed in a certificate of death are not administrative determinations. The information contained in a certificate of death, including the manner and cause of death, can be certified by a physician, a coroner, a medical examiner, or a circuit court, see WIS. STAT. §§ 69.18 (2) and 69.19, depending on the circumstances of a particular case....As with other information contained in a certificate of death, the manner and cause of a person's death, do not become administrative determinations simply because they were certified by a medical examiner. Accordingly, the **actual manner and cause of Sullivan's death was a matter of fact for the circuit court to resolve.**

Sullivan v. Waukesha County, 218 Wis.2d 458, 466–67, 578 N.W.2d 596, 599 (Wis. 1988) (emphasis added); *see also* WIS. STATS. §§ 69.18 and 69.19 (constituting statutory provisions resolving the gap as to challenging the accuracy of vital records that currently exists in Minnesota).

Importantly, if the District Court's ruling dismissing Plaintiff's lawsuit is allowed to stand, it would bar parents from bringing an action to correct an inaccurate vital record for a newborn baby. If the vital record had a newborn baby boy incorrectly listed as a girl, or even the incorrect parents for the child, the parents of the baby would not have a tangible interest in bringing a declaratory relief action to correct those errors, only a tangible right in obtaining a copy of the inaccurate vital record. The District Court's interpretation of MINN. STAT. § 144.225 would keep parents from correcting the vital record for both death and birth inaccuracies. It is difficult to fathom that the legislature intended such an expressly narrow definition of parents' "tangible interest" in their children's vital records.

B. PLAINTIFFS HAVE A RIGHT TO RYAN HOEFT'S ACCURATE DEATH CERTIFICATE PURSUANT TO THE MINNESOTA CONSTITUTION

The Minnesota Constitution also speaks directly to the situation the Plaintiffs find themselves in this action—correcting their son's manner of death on his death certificate as a matter of protecting his character and the character of their family:

Every person is **entitled to a certain remedy in the laws for all injuries or wrongs** which he may receive to his person, property or **character**, and to **obtain justice freely and without prejudice, completely and without denial**, promptly and without delay, **conformable to the laws**.

Minnesota Constitution, Art. I, § 8 (emphasis added); *see also Perez v. Cleveland*, 78 Ohio St.3d 376, 376–77, 678 N.E.2d 537, 538–39 (holding that Plaintiffs' request for “judicial review of a coroner's verdict regarding the cause of death and the manner and mode in which the death occurred” **presented a justiciable controversy pursuant to the Ohio and United States Constitutions**) (emphasis added); *State v. Rodriguez*, 738 N.W.2d 422, 428 (Minn.App. 2007) (“We review questions pertaining to the interpretation of the state and federal constitutions **de novo**.”) (emphasis added) (citation omitted).

It is not a controversial position to note that the **character** of the deceased and the Plaintiffs in this action is **damaged significantly** by an incorrect determination that Ryan Hoeft intentionally took his own life. *See, e.g., State ex rel. Nelson v. Whaley*, 246 Minn. 535, 543, 75 N.W.2d 786, 791 (Minn. 1956) (indicating that even “**feign[ing] suicide**” can directly “indicate[] a **lack of character** and stability”) (emphasis added).

Even if there were no laws protecting Plaintiffs' tangible interest in the accuracy of Ryan Hoeft's death certificate, the Minnesota Constitution plainly states that Plaintiffs “are entitled to a **certain remedy . . . for all injuries or wrongs . . . to . . . character.**” Minnesota Constitution,

Art. I, § 8 (emphasis added). However, Minnesota laws are “conformable” to the Plaintiff’s situation, as MINN. STAT. § 144.225 gives Plaintiffs a “tangible interest” in making Ryan Hoeft’s death certificate accurate, thus remedying the harm to Plaintiff’s character and the character of their deceased son as directed by the Minnesota Constitution.

III. PLAINTIFFS AND DEFENDANTS HAVE ADVERSE INTERESTS REGARDING THE ACCURACY OF RYAN HOEFT’S DEATH CERTIFICATE AND THE APPLICATION OF THE COMMON LAW PRESUMPTION AGAINST SUICIDE TO DETERMINATIONS MADE BY THE HENNEPIN COUNTY MEDICAL EXAMINER ON DEATH CERTIFICATES

The factual dispute between Plaintiffs and Defendants is clear. Defendants maintain that Ryan Hoeft took his own life by intentionally shooting himself in the head while operating his patrol car on the night of November 6, 2001. Defendant Hennepin County Medical Examiner, relying on the factual investigation of the Hennepin County Sheriff and the St. Louis Police Department, designated that Ryan Hoeft committed suicide on his death certificate. Plaintiffs contend that, due to Defendants’ insufficient discovery of facts and failure to conduct a proper investigation, Defendant Hennepin County Medical Examiner incorrectly determined that Ryan Hoeft committed suicide and that his resulting death certificate is inaccurate. Disputed questions of fact are appropriate for summary judgment. *See* MINN. STAT. § 555.09.

There is also a clear legal dispute between Plaintiffs and Defendants regarding whether Minnesota’s established common law presumption against suicide applies to determinations made by the Hennepin County Medical Examiner in completing death certificates.

There is no express precedent in Minnesota regarding the presumption against suicide as it applies to challenging the designated manner of death on a death certificate. As such, Plaintiffs rely on other cases where a cause of death was determined by Minnesota Courts. *See*,

e.g., *Beach v. American Steel & Wire Div. of U.S. Steel Corp.*, 248 Minn. 11, 78 N.W.2d 371 (Minn.1956); *Ryan v. Metropolitan Life Ins. Co.*, 206 Minn. 562, 289 N.W. 557 (Minn. 1939); *Garbush v. New York Life Ins. Co.*, 172 Minn. 98, 214 N.W. 795 (Minn. 1927); *Kornig v. Western Life Indemnity Co.*, 102 Minn. 31, 112 N.W. 1039 (Minn. 1907); *Lindhal v. Supreme Court I.O.F.*, 100 Minn. 87, 110 N.W. 358 (Minn. 1907); *Hale v. Life Indem., etc., Co.*, 61 Minn. 516, 63 N.W. 1108 (Minn. 1895); *Sartell v. Royal Neighbors*, 85 Minn. 369, 88 N.W. 985 (Minn. 1902).

In several of these cases, **suicide was initially designated as the manner of death.** *Beach*, 248 Minn. at 15, 78 N.W.2d at 374; *Ryan*, 206 Minn. at 563, 289 N.W. at 558; *Hale*, 61 Minn. at 518, 63 N.W. at 1108. Like Ryan Hoeft, many of the deceased individuals were **living a happy life** with friends and family, had no significant monetary problems, and left **no evidence of a desire to commit suicide.** *Beach*, 248 Minn. at 13–15, 78 N.W.2d at 373–74; *Garbush*, 172 Minn. at 99, 214 N.W. at 795–96; *Kornig*, 102 Minn. at 33, 112 N.W. at 1040; *Hale*, 61 Minn. at 519, 63 N.W. at 1109; *Sartell*, 85 Minn. at 370–71, 88 N.W. at 986. Each death in the aforementioned cases **could be viewed as an accident or as suicide.** *Beach*, 248 Minn. at 16, 78 N.W.2d at 375; *Ryan*, 206 Minn. at 569–71, 289 N.W. at 561; *Garbush*, 172 Minn. at 99, 214 N.W. at 796; *Kornig*, 102 Minn. at 38, 112 N.W. at 1042; *Lindhal*, 100 Minn. at 98, 110 N.W. at 362; *Hale*, 61 Minn. at 519, 63 N.W. at 1108; *Sartell*, 85 Minn. at 372–74, 88 N.W. at 986–87. In each case the deciding **courts honored Minnesota’s strong legal presumption against suicide** in determining the manner of death. *Beach*, 248 Minn. at 15, 78 N.W.2d at 375; *Ryan*, 206 Minn. at 567, 289 N.W. at 560; *Garbush*, 172 Minn. at 99–101, 214 N.W. at 796–97; *Kornig*, 102 Minn. at 37, 112 N.W. at 1041; *Lindhal*, 100 Minn. at 96, 110

N.W. at 361; *Hale*, 61 Minn. at 519–20, 63 N.W. at 1109; *Sartell*, 85 Minn. at 373, 88 N.W. at 987.

It has been the law in Minnesota for over one hundred years that the manner of death should be presumed accidental when the facts suggest either an accidental cause of death or an intentional taking of one's own life:

We think that it is a **presumption of law that when death may have resulted from accident, mistake, or suicide, it should not be presumed to be on account of suicide, but rather from accident or mistake**, and that in this case the character of the evidence is such that the defendant should not have been debarred from submitting it to the jury upon the question of suicide by Rouse. Of course, as the suicide is set up by the defendant, the burden of proving it as a defense rests upon it, especially as there is no concession on the part of the plaintiff that Rouse came to his death by any other than a natural cause. The order denying the motion for a new trial is reversed.

Hale, 61 Minn. at 519–20, 63 N. W. at 1109 (emphasis added).

Common experience teaches that the love of life, the instinct of self-preservation, respect for the laws of the land, and the principles and teachings of religion are ordinarily sufficient to prevent a person from destroying his own life, and therefore, **when the facts proved with reference to death admit equally of the inference that the death resulted from accident or suicide, the presumption is that death was accidental. . . .**

As long as the evidence is consistent with the theory of accidental death, the presumption against suicide is controlling. The issue being the fact of suicide, it is for the defendant to prove this ultimate fact by a fair preponderance of the evidence. It starts with the **burden of overthrowing the presumption** that a person does not voluntarily destroy what is commonly regarded as the most precious of all possessions, life itself.

Lindahl, 100 Minn. at 95–96, 110 N.W. at 361 (emphasis added) (citing *Hale*, *supra*, and *Sartell*, *supra*).

Although these actions do not specifically involve a challenged determination by a medical examiner regarding a death certificate or other vital record, it is the clear preference of Minnesota Courts that the presumption against suicide should be applied liberally when making factual determinations regarding a disputed manner of death. As such, Plaintiffs pray that the Court of Appeals rule that the strong presumption against suicide under Minnesota law applies to findings made on death certificates by medical examiners when the applicable facts may allow inference of either accidental death or death by suicide.

Defendant Hennepin County Sheriff's Office investigated the death of Ryan Hoeft. A thorough investigation into the background of Ryan Hoeft, as well as the reconstructed accident scene, such as the investigation provided by Dr. Amatuzio, Sgt. Schmalzbauer and Mr. Stanley, would have uncovered the same facts leading to the conclusion that Ryan Hoeft died accidentally. The conduct of the Hennepin County Sheriff's Office and the investigation they conducted—or the lack thereof—is materially relevant to the accuracy of the determination made by the Hennepin County Medical Examiner.

Defendant St. Louis Park Police Department provided limited training to Ryan Hoeft on how to handle his service revolver. Defendant St. Louis Park Police Department created the circumstances in which officers would leave their weapon in their vehicle so as not to risk forgetting their service weapon in the station "Sally Port." Defendant City of St. Louis Park prematurely destroyed evidence relating to the death of Ryan Hoeft by failing to maintain Ryan Hoeft's service weapon. *See Foust v. McFarland*, 698 N.W.2d 24, 30 (Minn.App. 2005) (holding that a variety sanctions can be imposed against a party for spoliation of evidence including a presumption that **"the evidence, if produced, would have been unfavorable to that party"**) (quoting *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d

434, 437 (Minn. 1990)). The conduct of the St. Louis Park Police Department—the training they provided Ryan Hoeft, their protocol regarding booking prisoners and their spoliation of evidence—is materially relevant to the accuracy of the determination made by the Hennepin County Medical Examiner.

Defendant City of St. Louis Park is also the employer listed on Ryan Hoeft’s life insurance policy. The Human Resources Department for the City of St. Louis Park prematurely declared that “Accidental Death benefits” were not being claimed, three months prior to a manner of death determination for Ryan Hoeft. AA at 002, 005–08 and 242. The conduct of the City of St. Louis Park in pre-filling out Plaintiffs’ insurance claim form—and whether the City of St. Louis Park’s conduct precluded Plaintiffs from seeking such benefits—impacts Plaintiff’s claims against Defendant Prudential Insurance Company of America. *Id.*; *see also infra* at § V.

IV. JUDGMENT BY THE DISTRICT COURT WOULD SETTLE THE DISPUTE BETWEEN PLAINTIFFS AND DEFENDANTS REGARDING THE ACCURACY OF RYAN HOEFT’S DEATH CERTIFICATE

Plaintiffs respectfully request in their action for declaratory relief that the District Court adjudicate Plaintiffs’ present rights in the accuracy of Ryan Hoeft’s death certificate on established facts and facts to be established at trial. AA at 228–30; *see also Thurma v. Kroschel*, 506 N.W.2d 14, 20–21 (Minn. App. 1993). Plaintiffs are not asking the Court to render an advisory opinion on Ryan Hoeft’s death. Plaintiffs have presented an abundance of facts that it seeks to establish in this case to support Plaintiff’s conclusion that Ryan Hoeft’s death was accidental. *See supra*, Statement of Facts at 7–13.

Importantly, the independent experts have presented **undisputed facts** to substantiate the determination of an accidental manner of death for Ryan Hoeft. *See supra*, Statement of Facts at 7–13. Defendant Hennepin County Medical Examiner has not presented facts to substantiate a

manner of death of suicide for Ryan Hoefft, particularly given the strong presumption against suicide under long-established Minnesota law.

Plaintiffs are asking the Court to resolve this question of fact. Plaintiffs are also asking this Court to issue judgment regarding important questions of law regarding, *inter alia*, the application of the established common law presumption against suicide to death certificates and declare Plaintiffs' rights with regard to the facts—including their tangible interest in the accuracy of Ryan Hoefft's death certificate pursuant to Minnesota Statute and the Minnesota Constitution. Plaintiffs have presented sufficient facts to support a manner of death by accident and have requested a specific legal resolution from the District Court: a declaration that Ryan Hoefft's manner of death was accidental and a corresponding correction of Ryan Hoefft's death certificate as a vital record of the State of Minnesota. AA at 228–30.

V. PLAINTIFFS SHOULD BE GRANTED LEAVE TO AMEND THEIR COMPLAINT TO PRESERVE THEIR CLAIMS AGAINST DEFENDANTS RELEVANT TO THEIR CLAIM FOR INSURANCE COVERAGE

It is a standard provision in life insurance contracts that there is an exclusion for any death by suicide. *See, e.g., Krema v. Great Northern Life Ins. Co.*, 204 Minn. 186, 187, 282 N.W. 822 (Minn. 1938). Specifically, it is apparent that “**Accidental Death benefits**” can not be claimed if the manner of death is determined to be that of suicide. *See* AA at 007. Defendants have materially prejudiced Plaintiffs' claims against Prudential Insurance Company of America with their insufficient investigation, spoliation of evidence, representations regarding Ryan Hoefft's insurance benefits and the incorrect determination of Ryan Hoefft's manner of death as suicide. *See supra* at § III.

Discovery revealed to Plaintiffs that the City of St. Louis Park had information regarding Ryan Hoeft's life insurance benefits that have not been paid—by virtue of their relationship with the Prudential Insurance Company of America. AA at 005–08. Defendants represented to Plaintiffs that they were not entitled to receive “Accidental Death benefits” from Prudential Insurance Company of America. *See, e.g.*, AA at 002 and 005–08. Plaintiffs reasonably relied on all of the information provided by Defendants—including representations made by the Hennepin County Medical Examiner—in not seeking life insurance proceeds following the death of Ryan Hoeft to their material detriment. AA at 186–87. These facts establish a claim of estoppel regarding Plaintiffs rights to the insurance proceeds of Ryan Hoeft's life insurance and accidental death benefits:

“Equitable estoppel prevents the assertion of otherwise valid rights where one has acted in such a way as to induce another party to detrimentally rely on those actions.” *Drake v. Reile's Transfer & Delivery, Inc.*, 613 N.W.2d 428, 434 (Minn.App.2000). Parties seeking to invoke the doctrine of equitable estoppel must prove (1) that promises or **inducements were made**; (2) that they **reasonably relied upon** the promises; and (3) that they will be **harmed if estoppel is not applied**. *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn.1990). The application of equitable estoppel ordinarily presents a question of fact, unless only one inference may be drawn from the facts. *Drake*, 613 N.W.2d at 434.

Pollard v. Southdale Gardens of Edina Condominium Ass'n., Inc., 698 N.W.2d 449, 454 (Minn.App. 2005); *see also Duluth Herald and News Tribune v. Plymouth Optical Co.*, 286 Minn. 495, 499, 176 N.W.2d 552, 555–56 (Minn. 1970) (stating that a claim for estoppel may arise where a third-party had apparent authority for the principal).

The fact that this determination regarding Ryan Hoeft's “Accidental Death benefits” was made by the City of St. Louis Park *before* the Hennepin County Medical Examiner ruled Ryan Hoeft's death a suicide is further exemplary of the improper decisions made with insufficient

investigation regarding the death of Ryan Hoeft. *See* AA at 006 and 242. These are precisely the decisions that Plaintiffs seek to correct, in part to assert their tangible interests in the life insurance proceeds of Ryan Hoeft against all Defendants. *See, e.g.* AA at 231–39.

Minnesota law provides that “leave shall be freely given [to amend complaint] when justice so requires.” Minn.R.Civ.P. 15.01; *Schroeder v. Jesco, Inc.*, 296 Minn. 447, 455, 209 N.W.2d 414, 419 (Minn. 1973). This is consistent with the liberal approach to amending pleadings provided in the Rules of Civil Procedure. *Id.* The Rules even allow for the amendment of pleadings during or after trial. Minn.R.Civ.P. 15.02 (2006).

Plaintiffs began this action for declaratory relief with the sole objective of correcting Ryan Hoeft’s death certificate as a vital record of the State of Minnesota. *See* AA at 228–30. Subsequently, the facts have revealed an actionable claim of estoppel against Defendants arising out of the same factual circumstances as Plaintiffs’ claim against Prudential Insurance Company of America. AA at 001–02, 005–08 and AA 235–36. The District Court abused its discretion in not granting leave to amend Plaintiff’s Complaint to assert its claims against Prudential Insurance Company of America together with the Defendants of this action.

VI. PLAINTIFFS’ CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS DUE TO DEFENDANT HENNEPIN COUNTY MEDICAL EXAMINER’S REPEATED ASSURANCES THAT THE INVESTIGATION REGARDING THE ACCURACY OF RYAN HOEFT’S DEATH CERTIFICATE WAS ONGOING.

Defendants’ contend that MINN. STAT. § 541.06 applies to Plaintiff’s action for declaratory relief, providing that a cause of action “[a]gainst a sheriff or coroner for any act done in an official capacity and in [sic] virtue of an office, or for any omission of an official duty,” must be brought within three years. AA at 250. Even assuming this contention to be true,

Defendants are estopped from asserting a statute of limitations defense against Plaintiffs due to the representations made by Defendant Hennepin County Medical Examiner.

Defendant Hennepin County Medical Examiner is estopped from asserting the statute of limitations against Plaintiffs, as the Hennepin County Medical Examiner's office repeatedly told Mary Hoeft that the investigation was ongoing and that a final determination had not been made:

When the defendant makes assurances or representations that the injury will be repaired and the plaintiff reasonably relies on these assurances to their detriment, the defendant may be estopped from asserting a statute of limitations defense. *Mutual Serv. Life Ins. Co. v. Galaxy Builders, Inc.*, 435 N.W.2d 136, 140-41 (Minn.App.1989), review denied (Minn. Apr. 19, 1989).

“Estoppel depends on the facts of each case and ordinarily presents a question for the jury.” *Brenner v. Nordby*, 306 N.W.2d 126, 127 (Minn.1981). But, “when only one inference can be drawn from the facts, the question is one of law.” *L & H Transp., Inc. v. Drew Agency, Inc.*, 403 N.W.2d 223, 227 (Minn.1987).

Oreck v. Harvey Homes, Inc., 602 N.W.2d 424, 428 (Minn.App. 1999) (emphasis added). The evidence of the Plaintiffs' reliance on statements made by Hennepin County is also sufficient to show Hennepin County's waiver of the Statute of Limitations. AA at 002–03; *See Tackleson v. Abbott-Northwestern Hosp., Inc.*, 415 N.W.2d 733, 735 (Minn.App. 1987).

Ryan Hoeft died on November 6, 2001. The Medical Examiner issued a certificate of death, determining Hoeft's death to be a suicide, on February 8, 2002. Plaintiffs petitioned the Medical Examiner to re-evaluate the evidence surrounding the death of Ryan Hoeft. *See, e.g.*, AA at 009–11 and 015–16. The Medical Examiner reopened the investigation into Hoeft's death on April 15, 2004, explicitly referring to the “reinvestigation of the death of your son Ryan,” assuring Plaintiffs “that the case has not fallen between the cracks,” and concluding that Plaintiffs would be notified “of our decision as soon as it is completed.” AA at 009. The investigation continued even when a new Medical Examiner took the job of Hennepin County

Medical Examiner, who stated that he wished to meet with Plaintiffs in person “when I have finished my review” and that he would communicate to Plaintiffs “whatever opinion that my office ultimately reaches after this review.” AA at 010–11.

Defendant Hennepin County Medical Examiner re-reviewed the evidence in its official capacity as the Hennepin County Medical Examiner and again ruled the cause of death to be suicide. AA at 003. The Medical Examiner informed the Hoefts of their final decision on the manner of death via telephone conversation between Mary Hoeft and the Hennepin County Medical Examiner at some point after June 15, 2004. *Id.* Defendants do not dispute that they were served with summons and complaints prior to June 15, 2007. The Hoeft family waited to start an action against Defendants due to their reasonable reliance² on the Hennepin County Medical Examiners ongoing investigation into Ryan’s death, the continued correspondence with the Medical Examiner, and the Medical Examiners expressed willingness to consider changing rulings on the manner of deaths, including Ryan Hoeft. *See, e.g.*, AA at 009–11 and AA at 014.

Additionally, Defendants’ argument that an action against a Medical Examiner must be brought within three years does not apply. This is not an “action against the Medical Examiner” within the meaning of MINN. STAT. § 541.06. This is an action for declaratory judgment to change and make accurate the manner of death on Ryan Hoeft’s death certificate as a vital record of the State of Minnesota pursuant to MINN. STAT. § 555.01, *et seq.* Thus, MINN. STAT. § 541.05 would apply, which provides for a six year statute of limitations.

² During the same time frame the Medical Examiner was reinvestigating the manner of death for Ryan Hoeft, another Minnesota family was going through a similar ordeal. Chris Jenkins, a 21 year old University of Minnesota student, was found dead in the Mississippi River. The Minneapolis Police Department and the Hennepin County Medical Examiner initially ruled Chris Jenkins death either suicide or accidental death by drowning. After meetings with the Medical Examiner, the Jenkins’ own team of independent specialists determined that Chris was murdered. The Jenkins family presented their specialists’ evidence, and four years later the Medical Examiner and Minneapolis Police Department changed the manner of death from suicide or accidental to homicide. The Hoefts were reasonably optimistic that they would be treated similarly. An opportunity to conduct discovery in this action—which was not afforded by the District Court—would allow Plaintiffs to establish these facts tending to show their reasonable reliance on the Hennepin County Medical Examiner’s Office.

CONCLUSION

As a matter of first impression in Minnesota, this is an important case that merits review and reversal. The decisions of the Hennepin County Medical Examiner should not be immune from judicial review, consistent with the sound policies in other states that have addressed this precise issue. The strong presumption against suicide established in Minnesota law should protect all citizens of Minnesota, not just those afforded life insurance.

Most importantly, the recognized rights of parents should go beyond getting copies of inaccurate death certificates. The vital records of this state should bear the truth.

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