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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*

## APPELLANTS' REPLY BRIEF

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Appellants Terry and Mary Hoeft ("Appellants"), by and through their attorneys Michael D. Schwartz, P.A., hereby submit the following reply to Respondents' City of St. Louis Park, Hennepin County Medical Examiner and Hennepin County Sheriff ("Respondents") Response Briefs, and in support therefore, state as follows:

## INTRODUCTION

Appellants Terry and Mary Hoeft have pursued this litigation seeking to correct the death certificate pertaining to their son Ryan Hoeft's death. Appellants' efforts to correct the determination of their son's manner of death underscores the importance of a justiciable right to an *accurate* death certificate as a vital record of the State of Minnesota. The statutorily recognized rights of parents go beyond obtaining copies of inaccurate death certificates.

Appellants have further pursued the right to have the manner of their son's death determined giving full legal effect to the presumption under Minnesota law against suicide. The Respondent Medical Examiner did not recognize this legal presumption in the determination of the manner of death of Ryan Hoeft.

Appellants have presented a justiciable controversy. This is a real case involving real people that can be resolved by a declaration from the Court declaring that Appellants are entitled to an accurate death certificate for their son.

## ARGUMENT

### I. ESTOPPEL IS APPLICABLE UNDER THE FACTS OF THIS CASE.

The Hennepin County Respondents argue that estoppel does not apply to the statute of limitations considerations in this case arguing that "In the present case, the

Medical Examiner neither made a promise of future action nor attempted to conceal anything; rather, he **acceded to the Appellants' request to consider** their theory about their son's death. This **accommodation** by the medical examiner provides this Court with no basis for a finding of estoppel". (emphasis added) Hennepin County Respondent's Brief at page 8.

Importantly, the Medical Examiner can not and does not dispute its written assurances by letter dated April 15, 2004 "regarding our **reinvestigation** of the death of your son Ryan", ... the assurance that "the case has not fallen between the cracks", ... the assurance that the Medical Examiner would "once again **consider the conclusions** regarding Ryan's death" and the assurance that a final decision had not yet been made – "I will notify you of **our decision** as soon as that is completed". (emphasis added) AA at 009.

Further assurance were made in the June 15, 2004 letter from the Medical Examiner, where he specifically represented that the cause and manner of death were being revisited, that when he finished his review of all information and opinions he would meet with the Plaintiffs, and that his office had not yet ultimately reached an opinion – "regardless of **whatever opinion that my office ultimately reaches** after this review". (emphasis added) AA at 010-011.

The Medical Examiner has argued that in the absence of a promise of future action or an attempt to conceal, estoppel would not apply. Estoppel does not require either. As noted in Appellants' Brief, estoppel prevents a defendant from asserting the statute of limitations defense when the "defendant **makes assurance or representations** that the injury will be repaired and the plaintiff reasonably relies on **these assurances** to

their detriment". Appellants' Brief at p. 29. These assurances and representations were clearly made in the April 15, 2004 and June 15, 2004 letters from the Medical Examiner.

Respondents are critical of Appellants' reference to another Minnesota family who went through a similar ordeal with respect to the conclusions of the Medical Examiner. As noted in Appellants' Brief, estoppel depends on the facts of each case and ordinarily presents a question for the jury. Appellants' Brief at page 29. Appellants maintain that the Jenkins situation, where the manner of death was changed from suicide or accidental to homicide four years after the initial determination, establishes there is, at minimum, a question of fact as to the reasonableness of Appellants' conduct in relying upon the assurances and representations from the Medical Examiner's office in not commencing an action earlier.

Respondents argue that the Complaint seeks "judicial criticism" of the Medical Examiner's conduct and that to find estoppel in these circumstances would be "poor public policy". Hennepin County Respondent's Brief at page 9. To the contrary, Appellants seek judicial affirmation of long standing Minnesota law recognizing the presumption against suicide and requiring the application of that presumption in this case. Appellants further seek judicial affirmation that a parent has a right to an accurate vital record, not just a right in "obtaining" a copy of the record. To establish law in Minnesota that only those citizens who have life insurance are entitled to the presumption against suicide would be poor public policy. To require families to commence litigation against the Medical Examiner before a final opinion regarding the manner of death would be poor public policy and would invite unnecessary litigation, as clearly demonstrated by the Jenkins Family situation.

Appellants do not consider the determination of the manner of death requiring due consideration to the presumption against suicide a circumstance that would "in effect "punish" the medical examiner for re-examining his findings at the request of the decedent's family, nor do Appellants consider that such a finding would "discourage public officials from being responsive to the concerns of citizens". See Respondent's Brief at page 9. To not find estoppel given the circumstances of this case would however punish the Appellants for not commencing litigation pending a final outcome and would create a legal standard that would allow the Medical Examiner to simply say a case is being re-examined, wait for the statute of limitations to run and then say we stand by our original determination.

## II. APPELLANTS HAVE ASSERTED ENFORCEABLE RIGHTS.

Respondents maintain that Appellants cannot seek declaratory judgment in this case because Appellants have not asserted an "enforceable right", that Appellants do not have any "legal interests" and that Appellants have not asserted any "cognizable rights". To the contrary, as parents, Appellants have a statutorily protected rights and tangible interests in the death record of Ryan Hoeft as a vital record afforded special recognition under Minnesota law. See MINN. STAT. § 144.225, subd. 7(a)(1), Appellants' Brief at p. 17-18. In response, Hennepin County Respondents argue that the statute affords only "a tangible interest in **obtaining** a requested vital record, not in the substance of the records." Respondents' Brief at p. 13

Importantly, Respondents cite no authority for the proposition that the statutorily created tangible interest in the requested vital record only affords parents a right to obtain a copy of the record. With limited exceptions specifically enumerated, anyone can obtain

a copy of a vital record – "Except as otherwise provided for in this section and §144.2252, **information contained in vital records shall be public information**". MINN. STAT. §144.225 (1). The statute affording parents a "tangible interest" in a death record of a child necessarily has meaning and import. Appellants maintain that the statute means they as parents have a tangible interest in an **accurate** death record.

Respondents do not address the constitutional authority cited by the Appellants establishing that every person is entitled to a remedy in the law for **injuries or wrongs to character** pursuant to Article I, Section 8 of the Minnesota Constitution. Moreover, the Respondents do not seek to distinguish the analogous case law cited by Appellants holding that a request for judicial review regarding the cause of death and manner and mode in which the death occurred presented a justiciable controversy pursuant to the Ohio and United States Constitutions. See Appellants' Brief at p. 20. Accordingly, Respondents apparently acknowledge the constitutional rights and tangible interests of the Appellants at issue in protecting those rights in this case.

## III. THE PARTIES DO HAVE ADVERSE INTERESTS.

The Medical Examiner Respondent maintains that it has sole authority to rule on the manner and cause of death and that its determinations are not subject to any review or challenge. Appellants do not agree that the Medical Examiner has absolute power; not subject to any judicial review. Appellants clearly have an adverse interest in this justiciable controversy, maintaining that they have a right under the Minnesota Constitution and under Minnesota statute to challenge a determination of suicide.

The Respondents maintain that the presumption of law in Minnesota that the manner of death should be presumed accidental when the facts suggest either an accidental death or an intentional taking of one's own life need not be recognized in this case. Importantly, Respondents did not address in their briefs and accordingly apparently acknowledge that the law regarding the presumption against suicide was properly and accurately stated by Appellants in their brief. See Appellants' Brief at pp. 20-24.

Respondent Hennepin County argues that it receives "no benefit" from investigating the death or in determining the matter of death or in returning the weapon and squad car to St. Louis Park, and there is no adversity of interests. Respondent Hennepin County argues that it would not "lose anything tangible" if the Medical Examiner were found to be incorrect in his methods or conclusions. See Hennepin County Respondent's Brief at p. 14. This argument misses the point. The legal interests of the Medical Examiner are **adverse** to the legal interests of the Hoefts with respect to the **legal issue** of whether or not parents have a **tangible interest in the accurate death records** of their children, with respect to the **legal issue** of **presumption against suicide** in all cases and with respect to the **factual determination** of whether the **death** of Ryan Hoeft was **accidental or suicide**. On these legal and factual issues, the interests of the Respondents and the Appellants could not be more adverse.

## IV. A DECLARATORY JUDGMENT WOULD SETTLE THIS DISPUTE.

This is not a case involving hypothetical facts or requesting an advisory opinion. The facts of this case are actual, and in all material respects are undisputed. The opinion sought in this case is real, not advisory.

A declaration from the Court would resolve the dispute that exists between Appellants and Respondents as to whether parents have a tangible interest in the accuracy of the death records of their children, and not just a right to obtain a copy of an inaccurate record.

A declaration from the Court would resolve the dispute that exists between the Appellants and Respondents as to whether the presumption of suicide applies to all cases in the State of Minnesota, and not just those involving a legal contest over life insurance.

A declaration from the Court would resolve the dispute that exists between the Appellants and Respondents as to whether the death was accidental or suicide.

## V. A DECLARATORY JUDGMENT DOES NOT VIOLATE THE MINNESOTA CONSTITUTION

The argument by the Hennepin County Respondents that the declaratory relief sought by the Appellants violates the separation of powers provision of the Minnesota Constitution fails to recognize the checks and balances inherent in the three branches of government. Respondents are essentially arguing that an act by the Executive Branch is not subject to review by the Judicial Branch. Respondents do not cite any authority for this broad proposition, nor is this the law.

In essence, the Respondents are arguing that the statutory authority provided by the legislature to the Medical Examiner as a member of the Executive Branch is immune from judicial review, that the Medical Examiner need not give effect to Minnesota law in making its determination and that a determination by the Medical Examiner is never subject to challenge or review. Appellants maintain that the declaratory judgment statute and the vital records statute expressly recognize the tangible interests a parent has in an

accurate death record of a child and that the Medical Examiner is subject to judicial review by declaratory judgment to ensure compliance with Minnesota law.

## VI. THE AMENDMENTS TO THE COMPLAINT SHOULD HAVE BEEN ALLOWED.

The Appellants first sought to amend their Complaint to add Ryan Hoeft's sister as a named Plaintiff. Pursuant to MINN. STAT. § 144.225(1)(vi) the sister of Ryan Hoeft as "a sibling of the subject" as a statutorily defined person who has a tangible interest in a requested death record. In the absence of any prejudice to the Defendants, Appellants maintain Kelly Hoeft should have been allowed to be named as a Plaintiff.

Upon learning of the existence of the life insurance proceeds and upon learning that the Respondents apparently conceded the existence of a justiciable controversy if there was a dispute involving life insurance, the Appellants sought to amend the Complaint to add Prudential.

Respondent St. Louis Park maintains that the Appellants could have brought an action at any time against Prudential to collect the life insurance proceeds. Respondent City Brief at page 2. This is not so, given the actions of the Respondent St. Louis Park.

Respondents do not dispute that the City of St. Louis Park submitted a "Group Life Insurance Claim Form to the Prudential on November 15, 2001". AA 007-008. The City Respondent does not dispute or address its role in failing to disclose to Appellants the existence of the life insurance policy or the City's role in submitting a form to the group life insurance company stating that no accidental death benefits are being claimed. See AA 007. Respondents do not address why or how this claim form could have been

filed less than two weeks after the death; months prior to any rulings by Respondent Hennepin County Medical Examiner as to the manner of death.

The position by Respondent Hennepin County that it "had no role in determining Appellants' eligibility for such benefits" ignores the impact of the subsequent suicide determination by the Medical Examiner in support of the group life insurance claim form submitted by the City of St. Louis Park.

In short, Appellants seek to stop the Respondents from asserting on November 15, 2001, that no accidental death benefits are being claimed, and asserting on February 8, 2002, in support thereof, that the manner of death was not accidental.

## CONCLUSION

Appellants maintain that all Minnesota citizens are entitled to the presumption under Minnesota law against suicide and that the presumption must be recognized by the Medical Examiner in determining manner of death.

Appellants maintain that parents and siblings are entitled to accurate death records, not just to a copy of an inaccurate record.

Appellants maintain that an employer should not be completing and submitting a Group Life Insurance Claim Form stating that accidental death benefits are not being claimed prior to a determination that the death was not accidental.

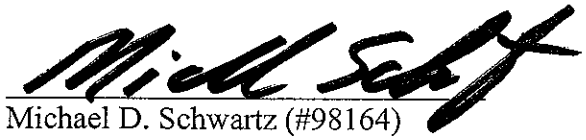
Appellants maintain that the Minnesota Constitution protects every person's character and every person's right to obtain justice conformable to the laws.

Justice requires that the vital records of this State regarding the manner of death of Ryan Hoeft be corrected to reflect his tragic death was accidental.

Respectfully Submitted,

Dated: December 3, 2007

MICHAEL D. SCHWARTZ, P.A.



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