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No. A07-1587

STATE OF MINNESOTA
IN COURT OF APPEALS

Mary Hoeft and Terry Hoeft,

Appellants,

vs.

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

Respondents.

HENNEPIN COUNTY
RESPONDENTS' BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

1. **Is this case barred by the applicable statute limitations?**

   District Court Ruling: Yes.

   Case Law and Statutes Apposite Trial Court's Ruling:

   Minn. Stat. § 541.06 (2007)

2. Does this case present a justicable controversy?

   District Court Ruling: No.

   Case Law and Statutes Apposite Trial Court's Ruling:

   Minn. Stat. § 555.01 (2007)

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

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

3. Have plaintiffs asserted a cognizable right in this action?

   District Court Ruling: No.

   Case Law and Statutes Apposite Trial Court's Ruling:

   Minn. Stat. § 390.11(5) (2007)

   Minn. Stat. § 390.23 (2007)

   Minn. Stat. § 390.32 (2007)

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4. Do the parties have adverse interests?

District Court Ruling: No.

Case Law and Statutes Apposite Trial Court's Ruling:

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

Board of Education for Unorganized Territory of St. Louis Co. v. Borgen, 192 Minn. 512, 517, 257 N.W. 92, 94 (1934)

5. Would a judgment by the District Court settle the dispute?

District Court Ruling: No.

Case Law and Statutes Apposite Trial Court's Ruling:

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

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

6. Should plaintiffs be allowed to amend their complaint in this action?

District Court Ruling: No.

Case Law and Statutes Apposite Trial Court's Ruling:

Minn. R. Civ. P. 15.01

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Stead-Bowers v. Langley, 636 N.W.2d 334, 341 (Minn. App. 2001)

7. Does the District Court have jurisdiction to reinvestigate this death?

District Court Ruling: Court did not address this issue.

Case Law and Statutes Apposite Trial Court's Ruling:

Minn. Stat. § 390.11, subd. 5 (2007)

Minn. Stat. § 390.23 (2007)

8. Would issuing a declaratory judgment in this action violate the Minnesota Constitution?

District Court Ruling: Court did not address this issue.

Case Law and Statutes Apposite Trial Court's Ruling:

Minn. Const. Art. 3, Sec. 1

Minn. Stat. § 390.11 (2007)

Minn. Stat. § 390.23 (2007)

STATEMENT OF THE CASE

On December 15, 2006, plaintiffs (appellants here) served a summons and complaint on defendants Hennepin County, Hennepin County Sheriff's Office and Hennepin County Medical Examiner's Office (Hennepin County Defendants/Respondents), seeking a declaration that: 1) the Hennepin County Sheriff's Office conducted an insufficient investigation into the death of plaintiffs' son and returned evidence used in the investigation to the St. Louis Park Police Department prematurely; and 2) that the Hennepin County Medical Examiner conducted an insufficient investigation, resulting in an erroneous statement of the manner of death on their son's death certificate. Complaint, paras. 21 – 24, 32 – 33. Appellants' App. 3-5. Plaintiffs filed their summons and complaint in Hennepin County District Court on February 14, 2007.

On February 22, 2007, the Hennepin County defendants filed a motion to dismiss pursuant to M.R.C.P. 12.02(a), (b) and (e) on the grounds that the complaint failed to state a claim upon which relief could be granted and failed to present the court with a justiciable case or controversy. Respondents' App, 1-2. On March 16, 2007, the Hennepin County Defendants filed an amended motion to dismiss, citing the additional grounds that plaintiffs' action was barred by the applicable statute of limitations and prohibited by the Separation of Powers Doctrine in Article III of the Minnesota Constitution. Respondents' App. 3-4.

On May 1, 2007, plaintiffs filed a memorandum in opposition to the Hennepin County defendants' motion to dismiss[1], together with a motion to amend the complaint, adding the decedent's sister, Kelly Hoeft, as a plaintiff. Respondents' App. 5-6. On May 9, 2007, plaintiffs filed an amended motion to amend the complaint, seeking to add Prudential Insurance Company of America as a defendant. Appellants' App. at 231 – 239.

On May 10, 2007, the Hennepin County defendants' motion to dismiss, along with the motion of defendant St. Louis Park, was argued before the District Court. On June 19, 2007, the court entered an order granting all defendants' motions to dismiss and entering judgment. Appellants' App. 249 – 251. Appellants appeal from that order.

STATEMENT OF FACTS

On November 6, 2001, Ryan Hoeft, a St. Louis Park police officer, died from a gunshot wound to the head. Complaint, paras. 15 – 20 (Appellants' App. 226;

[1] Plaintiffs' memorandum included much appended material, including an affidavit from one of the plaintiffs; documents related to the insurance policy provided by their son's employer, the City of St. Louis Park; correspondence from the Hennepin County Medical Examiner's Office; curriculum vitaes for plaintiffs' experts; and a compact disc containing a PowerPoint presentation created by one of plaintiffs' experts. Appellants' App. 5-185. These materials, being factual in nature, were improperly attached to a memorandum in response to a Rule 12 motion. This point will be discussed *infra*.

Hennepin County defendants' Ex. 1 – 5, Respondents' App. 7 - 17).[2] Hoeft was alone on duty in his patrol car, and the bullet was fired from his service weapon. Because Hoeft was its employee, the St. Louis Park Police Department requested that the Hennepin County Sheriff's Office investigate. Respondents' App. 8, 9, 11, 12, 14. When the investigation was concluded, the Sheriff returned Hoeft's service weapon and patrol car to the St. Louis Park Police Department. Plaintiffs made no request, and have not alleged such a request, for retention of that evidence by the Sheriff. Complaint, Appellants' App. 224 – 230.

Hoeft's parents, the plaintiffs in this action, disagreed with the manner of death stated on the death certificate (suicide), and alleged that the manner of death was accidental. *Id.*

Beyond those facts, the complaint identifies the plaintiffs' three experts and alleges that they are unanimous in their opinions that the manner of death was

[2] The Hennepin County defendants attached five exhibits to their motion to dismiss. (Respondents' App.7-17.) While consideration of matters outside the pleadings would normally convert a motion to dismiss to a motion for summary judgment (M.R.C.P. 12.02), a court may nevertheless consider authentic documents that are central to the plaintiff's claim and referred to, or necessarily embraced by, the complaint without converting the motion to one for summary judgment. *See Johnson v. State*, 536 N.W.2d 328, 332 (Minn. Ct. App. 1995) *reversed on other grounds*, 553 N.W.2d 40 (Minn. 1996). Although the District Court did not address this issue specifically, the court's order consistently treated the motion as one to dismiss under Rule 12. District Court Order and Memorandum, Appellants' App. 241, 244, 251.

accidental. Complaint, paras. 27 – 30; Appellants' App. 227 – 228.[3]

ARGUMENT

I. THIS CASE IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS

Ryan Hoeft died on November 6, 2001. The Sheriff and Medical Examiner completed their investigations, and the Medical Examiner did an autopsy in early 2002 and the Medical Examiner issued a certificate of death dated February 8, 2002.

This action was commenced on December 15, 2006, by service upon the Hennepin County defendants.

Minn. Stat. § 541.06 provides that a cause of action "[a]gainst a sheriff or coroner[4] for any act done in an official capacity and in virtue of an office [sic], or for any omission of an official duty," must be brought within three years. Commencement of the present action occurred almost five years after the last official act by the Sheriff and the Medical Examiner. Thus, even if appellants could prove that the Sheriff or Medical Examiner had failed to perform an official duty properly, the statute of limitations had run almost two years before this action was commenced.

Appellants argue that the Medical Examiner is estopped from asserting the statute of limitations because he agreed in 2004 to reexamine their son's manner of

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[3] Again, documentation outside the complaint was not properly included in opposition to a motion on the pleadings, and the District Court did not rely upon it. The Hennepin County respondents will therefore not respond to the welter of factual material attached by plaintiffs to their memorandum in opposition to the motion to dismiss and included in their appendix here (Appellants' App. 1 – 187), nor will these respondents respond to the corresponding arguments made in appellants' brief (Brief, pp. 4 – 15).

death.[5] The cases relied upon by appellants in making their estoppel argument are clearly inapposite. *Oreck v. Harvey Homes, Inc.* 602 N.W.2d 424, 428 (Minn. App. 1999) was a breach of contract case in which the plaintiff homeowner unsuccessfully asserted estoppel on the basis that the defendant builder had made assurances of a future course of repair, upon which the plaintiff had relied. Likewise, *Tackleson v. Abbott Northwestern Hospital, Inc.*, 415 N.W.2d 733 (Minn. App. 1987) was an unsuccessful attempt by a plaintiff to assert estoppel by virtue of fraudulent concealment by a hospital of the plaintiff's cause of action. 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.[6]

Appellants further argue that this is not an action against the Medical Examiner within the meaning of Minn. Stat. § 541.06, but an action for declaratory judgment under Minn. Stat. § 555.01, et seq., calling for the six-year statute provided in Minn.

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[4] Minnesota Law treats coroners and medical examiners as interchangeable. *See, e.g.*, Minn. Stat. § 390.005, subd. 1 (2007).

[5] Again, appellants improperly rely upon matters outside the pleadings in making this assertion. The documents that they rely upon (Appellants' App. 9 – 11) indicate that the reinvestigation was undertaken pursuant to their request, not sua sponte, as their brief implies.

[6] Appellants depart even further from the record in detailing the circumstances of "another Minnesota family . . . going through a similar ordeal." Brief, p. 30, f.n. 2.

Stat. § 541.05. This argument is inaccurate for two reasons: first, the Medical Examiner is a named defendant[7] and the complaint seeks judicial criticism of his conduct and alteration of his determination of the manner of death. Second, while Minn. Stat. § 541.05 provides for a six-year statute of limitations, it does not include declaratory judgment actions. Finally, for this court to find estoppel in these circumstances would be poor public policy; in effect, it would punish the Medical Examiner for re-examining his findings at the request of the decedent's family. Such a finding would discourage public officials from being responsive to the concerns of citizens.

II. THIS ACTION DID NOT PRESENT THE COURT BELOW WITH A JUSTICIABLE CASE OR CONTROVERSY BECAUSE APPELLANTS' COMPLAINT DID NOT MEET ANY OF THE ELEMENTS OF A DECLARATORY JUDGMENT ACTION

The Uniform Declaratory Judgments Act provides that a court shall have the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect. Minn. Stat. §§ 555.01 - .02. A court, however, only has jurisdiction to issue a declaratory judgment if there is a justicable controversy. *Kahn v. Griffin*, 701 N.W.2d 815, 921 (Minn. 2005) (citation omitted).

A declaratory judgment action presents a justicable controversy if it (1) involves a definite and concrete assertion of a right that emanates from a legal source, (2)

[7] Appellants make no attempt to argue that their action against the Sheriff is not barred by the statute of limitations.

involves a genuine conflict of tangible interests between parties with adverse interests, and (3) is capable of specific resolution by judgment, rather than merely presenting hypothetical facts that call for an advisory opinion. *Unbank Co., LLP v. Merwin Drug Co., Inc.,* 677 N.W.2d 105, 107 (Minn. Ct. App. 2004). The existence of a justicable controversy is essential to a court's power to adjudicate. *Cincinnati Ins. Co. v. Franck* 621 N.W.2d 270, 273 (Minn. App. 2001).

The Uniform Declaratory Judgments Act is not an independent source of jurisdiction. *Alliance for Metropolitan Stability v. Metropolitan Council*, 671 N.W.2d 905, 915-16 (Minn. App. 2003). If the parties to a declaratory judgment action present no justicable controversy, the court is without jurisdiction to declare rights. *Id.*

In the present case, the appellants failed to meet any of the three elements necessary to present a justicable controversy.

A. Appellants Have Not Asserted A Cognizable Legal Right.

Appellants cannot properly seek declaratory judgment here because they have not asserted an enforceable right.[8] The Uniform Declaratory Judgments Act does not grant jurisdiction; a party bringing a declaratory judgment action must have an independent, underlying cause of action based on a common law or statutory right. *Brown v. State*, 617 N.W.2d 421, 425 (Minn. App. 2000). A complainant must prove possession of a legal interest or right which is capable of, and in need of, protection

[8] As noted above, the Uniform Declaratory Judgments Act permits courts to declare rights "affected by a statute, municipal ordinance, contract, or franchise[.]" Minn. Stat. §§ 555.01 – 02. Appellants have not cited any statute, municipal ordinance, contract or franchise underlying any claim in their complaint.

from a claim, demand or objection from a source competent legally to place such legal interest or right in jeopardy. *State ex rel Smith v. Haveland*, 223 Minn. 89, 92, 25 N.W.2d 474, 477 (1946).

Actions of the kind brought by appellants are typically rejected by courts. *See, e.g., Thuma v. Kroschel*, 506 N.W.2d 14 (Minn. App. 1993) (citizen had insufficient interest to pursue declaration that mayor had acted *ultra vires*); *Smith v. Haveland, supra* (plaintiff faced no prejudice from statute that exempted his property from tax assessment, and hence no legal interest).

The gravamen of appellants' claim is their disagreement with the investigations performed by the Sheriff and the Medical Examiner. Those offices derive their authority and responsibility from statutory law. The Medical Examiner has jurisdiction over any death in the county (Minn. Stat. § 390.012 (2007)); Minnesota law prohibits any person other than the Medical Examiner from filing or amending the manner of death in cases of violent or mysterious death. Minn. Stat. § 390.23 (2007).

In the present case, appellants have not asserted any cognizable right, under common law or statute that would be effectuated by granting the relief they request. Appellants cannot claim a legal right to a particular manner of death.[9] Minnesota law is clear that only a coroner or medical examiner has the authority to issue a death

[9] Similarly, appellants have not asserted any cognizable right against the Sheriff, nor do they seek any remedy from him or his office.

certificate in the circumstances defined in Minn. Stat. § 390.11, subd. 1. *Matter of Exhumation and Autopsy of McKinstry*, 372 N.W.2d 828, 830 (Minn. App. 1985).[10]

Appellants argue (Brief, p. 17) that if they are not entitled to adjudicate their "rights" (which are unspecified, beyond the assertion of a right to an "accurate" death record), the Hennepin County Medical Examiner's Office would be given absolute power without any judicial review. In fact, the power to determine the cause and manner of death is granted to the Medical Examiner by statute. Minn. Stat. § 390.11, subd. 8 (2007). The statute makes no provision for appeal from such a determination.[11]

Appellants' attempt to amend the certificate of death is not an appropriate subject for a declaratory judgment action. Even if it had some relevance to the assertion of a legal right, such as a demand for payment of a life insurance policy, the proper action would lie against the insurance company, not the Medical Examiner.[12] In such an action, a death certificate would be admissible to show the cause of death (e.g. gunshot wound), but not the manner of death (e.g. suicide). *See Hestad v. Pennsylvania Life Ins. Co.*, 204

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[10] Minn. Stat. § 390.32 permits a county attorney or a medical examiner to request an inquest. In such an instance, the judge presiding over the inquest may find the cause and manner of death and sign and file a death record.
An inquest is optional; and the medical examiner may investigate and certifying a death without one. Minn. Stat. § 390.11, subd. 5 (2007). There is no allegation in the present case that either the Hennepin County Attorney or the Medical Examiner sought an inquest.

[11] Appellants' argument that they have no recourse is contradicted by the Medical Examiner's agreement to reconsider his findings at their request. Appellants' App. 9-11.

[12] Appellants attempted to amend their complaint to name their son's insurer only after this point was raised by appellees below. Relatedly, in their memorandum in support of motion to amend, appellants asserted that they "never set out in hopes of receiving money or compensation for their family member being killed accidentally in the line of duty." Memorandum, p. 2.

N.W.2d 433 (Minn. 1973); *Backstrom v. New York Life Ins. Co.*, 236 N.W.2d 708, 709 (Minn. 1931) (statement on death certificate indicating "suicide by firearm" was inadmissible hearsay). If appellants seek to recover on their son's life insurance policy, the Medical Examiner and, *a fortiori*, the Sheriff, would, at most, be witnesses.

Appellants argue further (Brief, pp. 17 – 19) that they have a tangible interest in an "accurate"[13] death certificate pursuant to Minn. Stat. § 144.225(a).[14] That statute, which provides for the issuance of records by a state or local registrar, gives family members a tangible interest in **obtaining** a requested vital record, not in the substance of the records.

Lastly, appellants argue that because this is a case of first impression, this court should look to Wisconsin courts for persuasive authority (Brief, p. 18 – 19). Wisconsin, however, has a statute (Wisc. Stat. §§ 69.18) that specifically allows for judicial review of death certificates, which Minnesota does not. Appellants' reliance upon Wisconsin case law is therefore inapposite.

B. The Parties Do Not Have Adverse Interests.

The second requirement in establishing a justiciable controversy is the existence of a genuine conflict in the tangible interests of the opposing parties. *Arens v. Village of Rogers*, 61 N.W.2d 508, 513 (Minn. 1953). Even if appellants could allege a legally

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[13]The use of this term, like the use of analogies such as correcting a misstatement of gender on a birth certificate, suggests that appellants merely seek a clerical "correction" here. That is obviously not the case; a finding of the manner of death differs markedly from the ministerial task of data entry on public records.
[14]The correct citation is Minn. Stat. § 144.225, subd. 7(a)(1)(iv).

protectable interest here, they cannot assert that the Sheriff and the Medical Examiner possess interests adverse to theirs. The Medical Examiner was disinterested in the outcome of his investigation; he received no benefit from investigating the decedent's death, or in determining the manner of death, nor would he lose anything tangible if he were found to be incorrect in his methods or conclusions.[15]

C. A Judgment Would Not Settle this Dispute.

This action also fails because declaratory judgment would not settle a dispute. A declaratory judgment action must be 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) (citation omitted). A court may refuse to enter a declaratory judgment when it would not terminate the uncertainty or controversy giving rise to the proceeding. Minn. Stat. § 555.06 (2007). In this case, the District Court held that appellants were asking it to render an advisory opinion on the cause of their son's death, not to adjudicate their rights or to grant specific relief. Memorandum, p. 9; Appellants' App. 247-248.

Appellants assert that they seek declaratory relief upon "established facts," and that they have presented "an abundance of facts," which they describe as "undisputed"

[15] Likewise, the Sheriff received no benefit from investigating this matter, or from returning the decedent's weapon and squad car to decedent's employer when the investigation was concluded.

(Brief, p. 25) to establish the manner of decedent's death as accidental.[16] Again, however, this appeal is taken from the grant of a Rule 12 motion, which was decided on the basis of the pleadings and the applicable law, not the evidence produced by any of the parties. This is not a fact-finding proceeding.

III. THE DISTRICT COURT LACKED JURISDICTION OVER THE SUBJECT MATTER OF THIS ACTION

A. The Court Lacked Statutory Jurisdiction.

A court does not have jurisdiction to investigate a death except where an inquest is requested. Minn. Stat. § 390.11, subd. 5 (2007). In all other cases, the Medical Examiner has sole authority to rule on the cause of death: "no person, other than the county coroner or medical examiner . . . shall file or amend the cause or manner of death information with the state registrar in cases of likely or expected accidental, suicidal, homicidal, violent, or mysterious deaths occurring in the county." Minn. Stat. § 390.23. *See also Atty. Gen. Op. 117*, p. 199 (Jan. 29, 1935) (coroner possesses considerable discretion in the performance of his duties; mandamus will not lie to compel an inquest unless discretion has been clearly abused). In the present case, where an inquest was not requested, the District Court had no jurisdiction to determine the cause or manner of death, and properly declined to do so. The Medical Examiner alone had the statutory authority to make those determinations.

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[16] Appellants also assert (Brief, p. 27) that "discovery" revealed the availability of life insurance. The use of these terms is inapposite in the consideration of a Rule 12 motion, where the allegations in the complaint are assumed to be correct for the purpose of deciding the motion. See, e.g., *Marquette Nat'l Bank of Mpls. v. Norris*, 270 N.W.2d 290 (Minn. 1978).

B. A Declaratory Judgment Ordering a Change in the Stated Manner of Death Would Violate the Minnesota Constitution.

The Minnesota Constitution provides:

> The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belong to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution. Minnesota Constitution, Art. III, Sec. 1.

As a county official, the Medical Examiner is a member of the executive branch. *See* Minn. Stat. § 390.11 (the medical examiner "is an independent official of the county, subject only to appointment, removal, and budgeting by the county board"). A court may not usurp the medical examiner's authority to determine and record the cause and manner of death. *See* Minn. Stat. § 390.23 (2007), *supra*.

The district court was not authorized to investigate, determine or certify the decedent's manner of death in this case, so the Medical Examiner could not properly be ordered to change the stated manner of death by declaratory judgment. The declaratory relief sought by appellants would be a violation of the separation of powers provision of the Minnesota Constitution.

IV. THE TRIAL COURT PROPERLY DENIED APPELLANTS' MOTION TO AMEND THEIR COMPLAINT

Appellants' Amended Motion to Amend Complaint sought to add the Prudential Insurance Company as a defendant in order to establish a legally assertable right.[17]

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[17] Appellants' original motion to amend the complaint simply sought to add the decedent's sister as a party plaintiff. When the Hennepin County defendants responded that this amendment still did not create a legally cognizable interest, plaintiffs then sought to add the insurance company as a defendant.

A party may amend a pleading by leave of the court. M.R.C.P. 15.01. Such amendment should be liberally granted when the interests of justice so require, and doing so would no result in prejudice to the adverse party. *Id.*; *Stead – Bowers v. Langley*, 636 N.W.2d 334, 341 (Minn. App. 2001). In the present case, however, the District Court found that the interests of justice would not require amendment because an action to recover on a life insurance policy could not brought against the Hennepin County defendants, since they had no role in determining appellants' eligibility for such benefits. The court found, as a result, that the appellants' proferred claim against the life insurance company did not form the basis for a cause of action against these defendants, and denied the motion to amend because the additional claim would not withstand summary judgment. *Ag Services of America, Inc. v. Schroeder*, 693 N.W.2d 227, 235 (Minn. App. 2005). (Court Memorandum, p. 11; Appellants' App. 250.)

Appellants argue (Brief, pp. 26 – 27) that they have been materially prejudiced in their insurance claim by the "insufficient investigation," "spoliation of evidence" and "incorrect determination of Ryan Hoeft's manner of death as suicide". Appellants did not, however, seek damages against the Hennepin County defendants on any of these grounds. Rather, they merely sought a judicial denunciation of the public officials involved for performing what appellants regarded as inadequate investigations (Complaint p. 6; Appellants' App. 229). Likewise, appellants refer to "an actionable claim of estoppel against defendants" (Brief, p. 28), but do not specify what the court would estop the Hennepin County Defendants from doing.

CONCLUSION

This action lacks all three of the elements necessary to bring a declaratory action: assertion of a cognizable legal right, genuinely adverse interests between the parties, and dispute capable of resolution by declaratory judgment.

Appellants' motion to amend would not have created a cognizable claim against the Hennepin County defendants, since it sought no new remedy from them. And the District Court lacked jurisdiction, statutorily and constitutionally, to alter the manner of death on the death certificate.

The trial court properly dismissed this action for lack of a justicable question, and the Hennepin County Respondents respectfully request that this court affirm the dismissal.

Respectfully submitted,

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Dated: November 20, 2007

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