No. 56

In the Matter of George Infante, as Administrator of the Estate of Rosemary A. Infante, Deceased,
Respondent,
v.
Caroline R. Dignan, M.D., as Medical Examiner of Monroe County and Paul D. Gosnick, M.D., in his official capacity as Deputy Medical Examiner,
Appellants.

Howard A. Stark, for appellants.
Paul F. Stavis and Kenneth J. Doyle, for respondent.
Office of the Chief Medical Examiner of the City of New York; Most Rev. Howard J. Hubbard, D.D., amici curiae.

READ, J.:

Because of the circumstances of decedent Rosemary A. Infante's death on April 16, 2006, the Monroe County Office of the Medical Examiner investigated its cause. In an autopsy report dated August 8, 2006, the medical examiner assigned to the case, an experienced forensic pathologist, concluded that decedent had died of multiple drug intoxication and that the manner of her death was suicide.

On December 8, 2006, petitioner George Infante, decedent's father and the administrator of her estate, commenced this CPLR article 78 proceeding, alleging that "th[e] classification of decedent's death as a suicide [was] not based upon any credible evidence and [was] simply speculation, and as such the finding [was] arbitrary and capricious and/or an abuse of discretion." He sought a declaration that the manner of decedent's death was unintentional or undetermined rather than suicide.

On February 2, 2007, Supreme Court dismissed the petition, adopting the reasoning of the Appellate Division's decision in Matter of Mitchell v Helpern (17 AD2d 922 [1st Dept 1962], affd without opn 14 NY2d 817 [1964]), where a petitioner likewise sought to compel a medical examiner to revise a death certificate attributing death to suicide. Quoting Mitchell, the trial judge observed that "[w]hen the medical and other facts could sustain different inferences, 'the determinations of the Medical Examiners must be sustained as far as their entries on the public record are concerned unless the determinations are arbitrary'"; and that "'[a] public determination is arbitrary when no reasonable man would be expected to make it.'" Applying these principles to the facts of the case, Supreme Court acknowledged that "[a]n impartial evaluation of the medical and factual circumstances . . . could result in differing conclusions of the manner of death as an accident or cause unknown or

suicide"; however, because "[t]here [was] sufficient information on the record for a reasonable person to make the finding of suicide," the medical examiner's "determination of the manner of death as suicide . . . [was] not arbitrary."

On appeal, the Appellate Division, with two Justices dissenting, reversed on the ground that "the evidence before [the medical examiner] was insufficient to rebut the presumption against suicide" (Matter of Infante v Dignan, 55 AD3d 1258, 1259 [4th Dept 2008]). The majority recognized that the medical examiner's "determination was based upon the autopsy and toxicology report as well as information concerning the scene of the death," but nonetheless concluded that "[t]he evidence from which the determination was made failed to rebut the presumption against suicide, and thus . . . [was] arbitrary and capricious" (id. at 1261).

The two dissenting Justices would have applied the CPLR article 78 standard of review unencumbered by any common-law presumption. As a result, although there were facts "suggest[ing] that [the medical examiner's] determination of suicide may well [have been] mistaken," his determination was not "arbitrary or irrational" in their view (id. at 1263). The dissenting Justices found no authority indicating that the presumption against suicide -- an evidentiary rule in litigation involving life insurance claims -- was relevant where "a medical examiner . . . discharg[ed] his or her administrative function of

determining the means or manner of an unattended death" (id. at 1262 [quoting County Law § 674 [3] [a] [internal quotation marks omitted]). The double dissent on an issue of law brought the case to us (see CPLR 5601 [a]), and we now reverse.

New York's common-law presumption against suicide has no role to play in a medical examiner's determination of the cause or manner of a decedent's death, or the judicial review of such a determination (see e.g. Public Health Law § 4143 [3] [directing medical examiner to certify whether a death from external causes was "probably accidental, suicidal or homicidal" (emphasis added)]). The presumption is an evidentiary rule relevant to resolving disputes over life insurance proceeds (see Green v William Penn Life Ins. Co. of N.Y., _ NY3d _, 2009 NY Slip Op _ [decided today]). We have never considered the presumption in any other context.

As a statutory matter, the County Law requires a medical examiner to "determine the means or manner of death" (County Law §§ 671, 674 [3] [a]) for the benefit of the public at large rather than for the benefit of individuals, including a decedent's family members (see e.g. Lauer v City of New York, 95 NY2d 95 [2000] [New York City Medical Examiner did not owe duty of care to father of child whose death was wrongly attributed to homicide]). If medical examiners were forced to leaven their decision-making with a common-law evidentiary presumption, the medical and scientific quality of their work would be seriously

compromised to the detriment of the citizenry.

In this case, there is evidentiary support for the medical examiner's determination of suicide, although -- as every judge who has reviewed the record has observed -- there is also reason to believe that decedent may have accidentally overdosed on prescription medication. As was pointed out 45 years ago in Mitchell, "[i]n . . . an arguable situation capable of sustaining different inferences, the determinations of the Medical Examiners must be sustained . . . unless [they] are arbitrary" (17 AD3d at 922).

Here, the medical examiner's determination was not arbitrary. He performed an autopsy, during which he removed samples of decedent's heart blood, urine, liver, brain, and gastric contents for comprehensive drug screen analysis. The results of this analysis, which were reported by an experienced forensic toxicologist, disclosed an extremely high heart blood concentration of the drug Fluoxetine (commercially known as Prozac) -- a level 18 to 20 times higher than would be expected with normal therapeutic usage. In addition, the level of a Fluoxetine metabolite in decedent's liver was comparatively high in relation to the parent drug's level in her heart blood. The medical examiner characterized these autopsy and toxicological findings as "most significant" in leading him to conclude that decedent's manner of death was suicide. In his opinion, these levels and their ratio were consistent with intentional excessive

consumption, but not chronic overusage or accidental overdose. In short, the medical examiner set forth a reasonable basis for his determination in an area where administrative judgment involves specialized medical and scientific expertise (see generally Flacke v Onondaga Landfill Sys., 69 NY2d 355, 363 [1987] ["where . . . the judgment of the agency involves factual evaluations in the area of the agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference"]).

Accordingly, the order of the Appellate Division should be reversed, with costs, and Supreme Court's judgment reinstated.

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Order reversed, with costs, and judgment of Supreme Court, Monroe County, reinstated. Opinion by Judge Read. Chief Judge Lippman and Judges Ciparick, Smith, Pigott and Jones concur. Judge Graffeo took no part.

Decided May 5, 2009