

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 10-CV-22236-ASG
Division: Circuit Civil

HOWARD ADELMAN AND JUDITH SCLAWY-ADELMAN,
as co-personal representatives of the
Estate of Michael Sclawy-Adelman,

Plaintiffs,

vs.

BOY SCOUTS OF AMERICA, THE SOUTH FLORIDA
COUNCIL, INC., BOY SCOUTS OF AMERICA;
PLANTATION UNITED METHODIST CHURCH;
HOWARD K. CROMPTON, individually; and
ANDREW L. SCHMIDT, individually.

Defendants.

DEPOSITION OF MANFRED C. BORGES, M.D.
Volume I of I
Pages 1 through 117
4th day of April, 2011
3:00 p.m. to 6:10 p.m.
District Twenty Medical Examiner's Office
Collier County
3838 Domestic Avenue
Naples, Florida

Stenographically Reported By:
Betty G. Althoff, FPR, RPR
Registered Professional Reporter

1 certificate that you had signed?

2 A. Yes, it is.

3 MR. PELTZ: Okay. We'll mark that as Plaintiff's
4 Exhibit 1, if we can.

5 (Plaintiff's Exhibit No. 1,
6 Death certificate, was marked for identification.)

7 BY MR. PELTZ:

8 Q. Doctor, I believe you indicated in reaching that
9 conclusion, although you could not rule out all other
10 causes, that that was your opinion within a reasonable
11 medical probability?

12 MR. SUMMERS: Objection to form, leading.

13 A. Yes, sir.

14 Q. Since there was an objection, I will ask the
15 question this way: Was your opinion that Michael's death
16 was the probable result of heat stroke rendered within a
17 reasonable medical probability?

18 A. Yes, it was.

19 Q. And if you had to quantify how certain you were
20 on a scale of one to one hundred, how would you be able
21 to?

22 A. It would be more certain than not. It would be
23 this side of 75 percent, if I had to. It is not, it is
24 certainly not without an autopsy, I wouldn't render my
25 opinion to a hundred degree certainty.

1 For instance, let's say I did an autopsy and I do
2 an autopsy on a person and then I find that they have a
3 massive heart infraction, I can render to a hundred degree
4 (sic) of certainty. In this situation, I would say it
5 would be closer to 75, somewhere in that.

6 Q. Okay. So is it your opinion that Michael had
7 died of heat stroke within 75 percent probability?

8 A. Something in that range, yes.

9 Q. Okay.

10 A. If I have to quantitate it.

11 Q. Attorneys ask those questions. Doctor, you and I
12 met --

13 A. Yes.

14 Q. -- about a week and a half ago or so?

15 A. Yes, sir.

16 Q. Okay. And is it unusual for attorneys that are
17 involved in litigation, whether it is criminal or civil,
18 to want to meet with you?

19 A. Absolutely not, our doors are open to both the
20 plaintiffs, defense, anybody that wants to meet, we are
21 open to them.

22 Q. And so if the attorneys for any of the defendants
23 in this case had wanted to meet with you, would you have
24 met with them?

25 A. Absolutely.

1 A. Well, very often times when we do external
2 examinations, we base our cause and manner of death on
3 what the dead person's physician has written. Like let's
4 say that one of the typical things that we have is people
5 from up north that come down here, let's say they are from
6 Michigan. They don't have a local doctor.

7 The terminal circumstances are the person
8 clutches his chest, was having chest pain and passes away.
9 And the person had, and then we obtain the medical records
10 from their physician up north, in Minnesota or wherever,
11 and it says that person had coronary artery disease.

12 We go by those medical records. So it is not
13 unusual for us to base a large part of our determination
14 on the basis of records.

15 Q. Okay. And based on your review -- strike that.
16 You had had these -- received these records from Doctor
17 Bullard's office back at the time that you were doing your
18 investigation --

19 A. Yes.

20 Q. -- prior to the execution of the filling out of
21 the death certificate?

22 A. Yes.

23 MR. SUMMERS: Which one are we talking about, the
24 illegible ones or partially legible ones?

25 A. They are completely legible to me. You have to,

1 they were received May 12, 2009. My death certificate was
2 generated after that.

3 Q. And do you have all the records you received from
4 Doctor Bullard's office together?

5 A. In a pack.

6 MR. PELTZ: Let's mark those.

7 (Plaintiff's Exhibit No. 3, Records from
8 Dr. Bullard, was marked for identification.)

9 BY MR. PELTZ:

10 Q. You were also asked some questions by
11 Mr. Hasty about Michael's cholesterol, and being 260 at
12 one point. Based on the, looking at all of the records
13 that you were provided by Doctor Bullard's office, did
14 Mr. -- did Michael's cholesterol, in fact, decrease
15 significantly over a number of years?

16 MR. HASTY: Object to the form, leading.

17 A. I don't recall that, but I would have to go back
18 and relook at the records. Cholesterol here, August 13th,
19 I am seeing it as 233. August, this is dated 7-28, 2005,
20 it was 211.

21 Q. Okay. Is that the most recent cholesterol
22 reading that is in the chart?

23 A. I have a cholesterol from, looks like July, let
24 me see the date on this one. I have 201 cholesterol, but
25 I don't have a date on this one. I can't make out the

1 heart shuts down, our brain shuts down, our liver shuts
2 down, that is the definition of death. But in him, you
3 can see that his lungs were filling up with blood. He is
4 in congestive heart failure. And this is something that
5 was happening when he was still alive, this foam --

6 Q. In your opinion --

7 A. -- but that is consistent with heat stroke.

8 Q. Now, you were asked a question about Claritin.
9 You were aware that he had had Claritin back at the time
10 you did your death certificate?

11 A. Yes, I believe I was, but as I said, I defer any
12 questions as to toxicology to Doctor Hern.

13 Q. No, the only reason I asked was, they made it
14 sound like you found it out afterwards.

15 MR. SUMMERS: Objection to form.

16 MR. SCHEVIS: Object to the form.

17 BY MR. PELTZ:

18 Q. Now, with regard to, if someone is going to do an
19 autopsy, as you were describing the process, would you
20 have removed Michael's heart?

21 A. Yes.

22 Q. Would you have removed Michael's brain from his
23 body?

24 A. Yes.

25 Q. Would you have taken out all of his organs?

1 A. Yes.

2 **Q. What else would you have done in an autopsy?**

3 A. Well, in an autopsy, I would have taken out all
4 the organs. This is how we do an autopsy. I would have
5 examined the organs. I would have dissected the organs
6 thoroughly. The brain would have been examined.

7 We don't do partial autopsies here. Generally
8 speaking, we take, we keep a representative section from
9 each organ for the future. We keep it at least a year.

10 We may waive that if the person is an Orthodox
11 Jew, because everything has to go back with the body, but
12 we prefer to do that. We will take histologic sections.
13 In this case I would have preferred to have the had heart
14 examined by a cardiac pathologist. But given the fact he
15 was Orthodox Jewish, we may have had to waive that.

16 The brain, I would have preferred to have a
17 neuropathologist look at. But again, we may have waived
18 that. But if I was able to do a full autopsy, with no
19 restrictions, that is what I would have done.

20 **Q. And you understand, don't you, doctor, that the**
21 **objections of individuals to, who are Jewish, to having**
22 **autopsies performed, has to do with their view of the body**
23 **being desecrated, as opposed to just simply having a Rabbi**
24 **present?**

25 MR. SUMMERS: Objection to the form.

1 MR. SCHEVIS: Object to the form.

2 A. I am aware of that. I am also aware, because of
3 previous situations -- in Miami we were trained -- there
4 were quite a few people that were Orthodox Jewish. So we
5 were trained there is not an absolute prohibition, that
6 autopsies can be done.

7 So, you know, they can be, and we try to work
8 with the family, so they understands that we are -- but
9 again, we also understand if they don't want to, and we
10 can't, basically, we don't have an absolute duty to do it.
11 We can't do it. We can't force it on the family.

12 Q. Okay. And in those cases where autopsies are, in
13 your experience have been done, you refer to Jewish people
14 who are Orthodox or Conservative, in those cases has the
15 autopsy been necessary to fulfill your function as a
16 Medical Examiner in determining the cause of death?

17 A. Well, yes.

18 Q. Okay. And in this case you were able to
19 complete, you were able to complete your examination and
20 prepare and execute a death certificate, which has been
21 marked as an exhibit, without doing the autopsy?

22 A. I was able to do so.

23 Q. And just so we are clear, so the objection to
24 having an autopsy done on a religious grounds is not just
25 simply having a Rabbi present, but your understanding of

1 it is, it is an objection based upon desecration of the
2 body?

3 MR. SCHEVIS: Objection to form, asked and
4 answered.

5 MR. SUMMERS: Objection to form.

6 A. Again, I understand that the family, that is the
7 main concern from having read about this subject. I also
8 know it is not an absolute prohibition. Although I think
9 that there may be variations, different Rabbi's would have
10 different disagreements.

11 Q. I take it, are you familiar with the different
12 denominations of Judaism?

13 A. Not intricately, just slightly.

14 Q. Okay. With an individual who -- well, strike
15 that. Let me show you another document, which I don't
16 believe we have marked previously.

17 MR. SUMMERS: And this is on re-recross?

18 MR. PELTZ: You went six times on the last
19 witness, so --

20 MR. SUMMERS: I will object to this line of
21 questioning.

22 MR. PELTZ: Whatever.

23 MR. HASTY: I will, too, it is outside of the
24 scope of direct, redirect.

25 MR. SCHEVIS: I join.

1 A. On that, and also by looking at him, and looking
2 at his physical habitus, his body habitus, and his review
3 of records as well, by looking at those --

4 MR. SUMMERS: Let him finish.

5 A. -- heart rate and so forth.

6 Q. And as far as, unlike Doctor Bullard, who had the
7 opportunity to actually examine his heart rate and listen
8 for himself, you did not have that option?

9 A. Absolutely, I did not have that option.

10 Q. You were asked some questions by Mr. Summers
11 about why one person involved in an incident may die and
12 other people may not. Have you been involved in cases, as
13 a Medical Examiner, where there is an auto accident, and
14 there would be multiple people in the car and only one
15 person will die in the car?

16 MR. SUMMERS: Object to form.

17 A. Oh, absolutely or cases where a boat crashes and
18 people in the boat, only one drowns, and they are the same
19 exact -- let's put it this way -- they are in the same
20 boat.

21 Q. Literally and figuratively?

22 A. Literally and figuratively.

23 Q. And would it be reasonable to assume that an
24 individual, who is on a 20-mile hike on a day where
25 temperatures reach 100 degrees, that that individual,

1 whether they are in good shape or, reasonably good shape
2 or not, may die of heat exhaustion or heat stroke?

3 MR. SUMMERS: Objection to form.

4 MR. SCHEVIS: Objection to form.

5 A. Could you ask me that question again?

6 Q. Yes. Would it be reasonable for people that are
7 in relatively normal shape, who are on a 20-mile hike in
8 one hundred degree weather, to die of heat stroke or heat
9 exhaustion?

10 MR. SUMMERS: Objection to form.

11 MR. HASTY: Objection to form.

12 A. Certainly.

13 THE WITNESS: Don't -- would you mind not
14 altering my records. I think you took that blue slip
15 of paper.

16 MR. HASTY: I did, I can put it back.

17 THE WITNESS: You altered my records. Please
18 don't do that. Don't take that liberty.

19 MR. HASTY: All right.

20 BY MR. PELTZ:

21 Q. I just have one or two more quick questions. If
22 an individual suffers from heat exhaustion, does that, and
23 it is not treated, will that progress to heat stroke?

24 A. Yes.

25 Q. And is there some time period involved where the