No. 55

Lisa C. Green,
Respondent,
v.
William Penn Life Insurance Company of New York,
Appellant.

Robert D. Meade, for appellant.
Thomas Torto, for respondent.

SMITH, J.:

The Appellate Division held that an attempt to prove a death was caused by suicide must fail as a matter of law, unless suicide is the only reasonable finding permitted by the evidence. We hold that the Appellate Division misconstrued the presumption against suicide. It is a guide for the fact finder, not a rule that compels a result.

I

Alan Green died on February 20, 2002. His life was insured by defendant under a $500,000 policy issued December 3, 2001. The policy provided: "If the insured dies by suicide within two years from the Date of Issue of this contract, the only death benefit will be the sum of premiums paid." Plaintiff, Mr. Green's widow, made a claim for the face amount of the policy. Defendant rejected the claim on the ground that Mr. Green had died by suicide, and plaintiff brought this action.

Considerable evidence supported defendant's contention that Mr. Green committed suicide. He was found lying on his bed, with an empty glass on the nightstand beside him and two empty bottles that had contained recently-prescribed pain medication in the nightstand drawer. He had been unemployed for months. He had seen a doctor on the day before his death; the doctor found him to be in good physical health, but noted that he had "suicidal thoughts." According to a police report, plaintiff said on the night of her husband's death that he had been depressed, and had overdosed on pain medication. She refused to permit an autopsy or a toxicological examination of his body, saying that such intrusions were forbidden by Jewish religious law, but she ordered the body cremated in violation of that religious prohibition.

There was also evidence supporting plaintiff's contention that suicide was not the cause of death. No suicide

note was found. Mr. Green had no history of mental illness, and had not attempted suicide before. The doctor who noted his "suicidal thoughts" also quoted him as saying he was "[n]ot suicidal" and noted that he had "no plans" for suicide. There was no proof of how long the pill bottles had been empty; plaintiff offered testimony suggesting that she and her husband might have taken all the pills in normal doses over a period of weeks. Family members testified that Mr. Green had behaved normally shortly before his death; they described him as "upbeat" and "positive."

After a non-jury trial, Supreme Court found that Mr. Green had committed suicide, and dismissed the complaint. The Appellate Division, with two Justices dissenting, reversed and directed the entry of judgment for plaintiff (Green v William Penn Life Ins. Co. of N.Y., 48 AD3d 37 [1st Dept 2007]). In reversing, the Appellate Division did not exercise its factual review power, but held that "the evidence failed as a matter of law to overcome the presumption against suicide" (id. at 44). It reasoned that because "there are other reasonable conclusions that may be drawn from the evidence, aside from suicide," the "application of the law regarding the presumption against suicide necessitated a directed verdict in this case" (id. at 40). Defendant appeals as of right, pursuant to CPLR 5601 (a), and we now reverse.

II

We have repeatedly held that a presumption against suicide is applicable in litigation under life insurance policies (Schelberger v Eastern Sav. Bank, 60 NY2d 506 [1983]; Wellisch v John Hancock Mut. Life Ins. Co., 293 NY 178 [1944]; cf. Matter of Infante v Dignan, ___ NY3d ___, 2009 NY slip op ___ [decided today]). The presumption "springs from strong policy considerations as well as embodying natural probability" (Schelberger, 60 NY2d at 510), and we held in both Wellisch and Schelberger that the presumption justified leaving the issue of suicide to the jury, even where powerful evidence pointed to suicide as the cause of death.

We have never held, however, that the presumption against suicide requires rejection of a claim of suicide as a matter of law. As long as such a claim finds support in the evidence, a fact finder should decide it. The presumption, as we said in Wellisch, is "really a rule or guide for the jury in coming to a conclusion on the evidence" (293 NY at 184). Where the evidence leaves open two possible findings, it is "the jury's business to resolve the doubt" (id. at 185).

The Appellate Division's error here appears to arise from a jury charge we approved in Schelberger -- a charge based on the New York Pattern Jury Instructions which then, as now, contained this language: "You may make a finding of suicide only if you are satisfied from the evidence, and taking into consideration the presumption against suicide, that no conclusion

other than suicide may reasonably be drawn" (60 NY2d at 509; see PJI 1:63.2). This language should not be taken to mean that, where more than one conclusion is reasonably possible, suicide is excluded as a matter of law. If that were true, the issue of suicide could never be decided by a fact finder; a verdict would have to be directed against the party asserting suicide whenever the evidence was inconclusive, and in that party's favor when suicide was conclusively proved. The main point of both Wellisch and Schelberger is to the contrary: Except in rare cases, a claim of suicide presents a factual issue, not a legal one.

The instruction that a finding of suicide is permissible only when "no conclusion other than suicide may reasonably be drawn" is directed at jurors deciding facts, not at judges deciding the law; it is a way of impressing on jurors' minds that the presumption against suicide is a strong one -- of telling them they should not find suicide unless the evidence shows suicide to be highly probable. Of course, the same is true of a judge sitting as fact-finder in a non-jury trial. Here, the evidence was strong enough to permit a finding of suicide, though not to require it.

Because there was evidence legally sufficient to support Supreme Court's decision, the Appellate Division erred in rejecting the finding of suicide as a matter of law. We remit the case to the Appellate Division, so that it can exercise its weight of the evidence review power, and consider any other

issues necessary to resolve the case.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the case remitted to that court for consideration of the facts and issues raised but not determined on the appeal to that court.

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Order reversed, with costs, and case remitted to the Appellate Division, First Department, for consideration of the facts and issues raised but not determined on the appeal to that court. Opinion by Judge Smith. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

Decided May 5, 2009