IN THE COURT OF APPEALS OF IOWA

No. 1999-80 (9-267) / 98-1117
Filed November 10, 1999

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CLERK SUPREME COURT

JOANNE P. BUSSING, Surviving Spouse and Administrator of the Estate of RALPH ARLISS BUSSING,
Petitioner-Appellant,

vs.

RICHARD CROWL, POTTAWATTAMIE COUNTY ATTORNEY,
Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Gordon C. Abel, Judge.

The petitioner appeals from the district court order denying her petition for declaratory judgment and writ of mandamus. **REVERSED AND REMANDED.**

John A. Rodenburg of Rodenburg Law Offices, P.C., Council Bluffs, for appellant.

Richard D. Crowl, Jr., County Attorney, for appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

STREIT, P.J.

The dead body of man was found on the side of the road. Burial followed. No cause of death by an investigation or an autopsy was ever determined. His widow sought to compel the Pottawattamie County Attorney to order the body exhumed and an autopsy performed. The district court denied a writ of mandamus because a "cursory" investigation had been performed by the county medical examiner. We reverse, finding that although the statute lacks a clear definition of "investigation," the county medical examiner failed to perform an investigation.

I. Background Facts & Proceedings.

Ralph Bussing worked for the City of Council Bluffs Public Works Department. On October 12, 1996, Bussing's boss contacted him at home and asked him to check out a displaced sewer grate. Bussing left his home at approximately 8:30 p.m. He arrived at the location and spoke to an officer at approximately 8:45 p.m. Bussing told the officer he was going to place a barricade over the sewer opening to temporarily remedy the situation. The officer left Bussing at the scene.

At 10:33 p.m. Bussing was found dead on the curb next to his vehicle. The county medical examiner was notified of the death. The medical examiner did not visit the scene, perform an autopsy, or view the body prior to burial. He completed the death certificate, after corrections were made, listing the cause of death as "undetermined."

In July 1997 Joanne Bussing, Ralph's widow, filed a petition for declaratory judgment and writ of mandamus seeking to force the county attorney to apply for a court order to exhume Bussing's body for investigation as to the cause of death. *See* Iowa Code § 331.802(7) (1997) (stating the county attorney shall apply for a court order to exhume a body in the case of sudden, violent, or suspicious death). The county attorney resisted the exhumation.

Following a hearing, the district court denied the petition for declaratory judgment and writ of mandamus finding the county attorney was under no obligation to apply for a court order to exhume the body. The court determined the county medical examiner completed the report of investigation form and death certificate as required by the Code. It also noted the medical examiner was not statutorily required to view the body or perform an autopsy. The court concluded the cursory investigation by the medical examiner was sufficient based upon the information obtained from the scene by law enforcement and emergency medical personnel. Because the trial court concluded an investigation was conducted, it did not address the remaining statutory elements of section 331.802(7).

II. Standard of Review.

"Because an action for mandamus is triable in equity, we make a de novo review of the record on appeal." *Albia Pub. Co. v. Klobnak*, 434 N.W.2d 636, 638 (Iowa 1989); *see* Iowa Code § 661.3 (1997); Iowa R. App. P. 4; *Osborn v. City of Cedar Rapids*, 324 N.W.2d 471, 474 (Iowa 1982). We give weight to the trial court's

findings, but are not bound by them. *Nowlin v. Scurr*, 331 N.W.2d 394, 396 (Iowa 1983).

III. Ralph Bussing Was Buried Without an Investigation.

The statutory vehicle employed by Joanne Bussing to determine the cause of her husband's death is Iowa Code section 331.802(7) (1997). Section 331.807(7) requires the county attorney to seek an order exhuming a body for the purpose of conducting an autopsy, if the death is sudden, violent, or suspicious and the body was buried without investigation or autopsy. The sole issue necessitating our review is whether Ralph Bussing was buried without an investigation.[1] The county medical examiner must "conduct a preliminary investigation, prepare a written report of his findings, promptly submit the full report to the state medical examiner, . . . and submit a copy of the report to the county attorney," if a person's death affects the public interest. Iowa Code § 331.802(2) (1997). A person's death affects the public interest if the death occurred unexpectedly or from an unexplained cause or if the decedent did not have contact with a doctor in the previous thirty-six hours. *Id.* § .802(3)(e) & (g). The investigative procedures utilized by the county medical examiner shall follow the requirements as set by the state medical examiner. *Id.* § .802(4). The state medical examiner has not promulgated mandatory investigative procedures, but rather published detailed guidelines which the county medical examiners where highly

[1] The trial court denied the writ of mandamus solely on its determination that a statutorily adequate investigation was performed by the county medical examiner. The trial court made no findings as to the merit of the remaining elements of section 331.802(7).

encouraged to follow. An investigation is the carrying out of "a systematic or formal inquiry to discover and examine the facts of an incident so as to establish the truth." *The New Oxford Dictionary of English* (visited Sept. 17, 1999) <http://www.uk.aol.com/channels/learning/oup/> (defining investigate).[2]

Ralph Bussing's death did affect the public interest under Iowa Code section 331.802(3)(e) & (g). The death occurred unexpectedly or from an unexplained cause and the decedent did not have contact with a doctor in the previous thirty-six hours. Thus, a preliminary investigation by the county medical examiner was statutorily required. *See* Iowa Code § 331.802(2).

The county medical examiner did not conduct a preliminary investigation.[3] The examiner did not conduct a systematic inquiry into the nature of Ralph Bussing's death, and the simple listing the causal agent of death as "undetermined" cannot be mistaken for an investigation. The examiner did complete some of the appropriate forms, yet the completion of forms does not constitute a preliminary investigation under Iowa Code section 331.802(2). Iowa Code section 331.802(2) requires a county medical examiner to first conduct a preliminary investigation and then armed with that information correctly fill out the appropriate forms. Simply filling out forms cannot

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[2] Because the term investigation lacks statutory definition, we turn to the men and women of Oxford for guidance.

[3] We decline to define "preliminary investigation." The legislature is currently entertaining the promulgation of detailed rules governing the necessary investigative procedures to be performed by county medical examiners. We can, however, make a determination of what does not constitute a preliminary investigation.

be confused for investigation. The county coroner did not go to the scene, contrary to the recommendations of the "County Medical Examiner's Handbook"; did not perform an autopsy, also contrary to the handbook; nor did he even view the body prior to burial.[4] A law enforcement officer's statement over the phone to a county medical examiner that the death looks natural does not discharge the examiner's investigative duties. The intent of the statute is frustrated and the public interest not served by such noninquiries into the death of one of this state's citizens.

The decision of the district court is reversed. Because the district court ruled only that an investigation occurred, the case is to be remanded back to the district court for further proceedings as to the applicability of the remaining elements of Iowa Code section 331.802(7).

REVERSED & REMANDED.

[4] We recognize attending the scene, performing an autopsy, and viewing the body are only recommendations. We do not intimate these recommendations are necessary to perform an investigation. We merely point to them as means for illustrating the lack of investigation in this particular case.