

IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO
CIVIL DIVISION

Virginia LeFever,
c/o Franklin Pre-Release Center
1800 Harmon Avenue
Columbus, Ohio 43223,

Heather Reynolds,
255 Timber Meadow Drive
Wildwood, MO 63011

Plaintiffs,

v.

Licking County Coroner's Office,
2102 Cherry Valley Road
Newark, Ohio 43055,

Franklin County Coroner's Office,
520 King Avenue
Columbus, Ohio 43201,

Dr. Robert P. Raker,
2102 Cherry Valley Road
Newark, Ohio 43055,

Dr. Patrick M. Fardal,
520 King Avenue
Columbus, Ohio 43201,

Defendants.

Case No. _____

EVIDENTIARY HEARING REQUESTED

COMPLAINT

NOW COME Plaintiffs, Virginia LeFever and Heather Reynolds, and for their Complaint
against Defendants state as follows:

1. Plaintiff Virginia LeFever (Virginia) and William LeFever (William) were married in September, 1977.¹ They had four children together although one child died shortly after birth. One of Virginia's children from a previous marriage, Heather Reynolds, is also a Plaintiff in this matter.
2. Virginia and William were separated in 1988 and an action for divorce was filed by Virginia in Licking County Common Pleas Court. The final divorce proceeding was scheduled for September 27, 1988, five days after William died. There was evidence presented that shortly before his death, William was despondent and contemplated suicide. William had just learned that his employer was selling his business and the business would be moved out of Licking County. William was concerned that due to his poor work attendance, he would be fired. There was additional evidence presented that William had contemplated suicide. Virginia testified at the trial that shortly after she filed for divorce, William prepared a poster indicating he would only live for a short period of time. He scrawled messages on mirrors for her to see including: "Roses are red, violets are blue, there is no way I can live without you."
3. On September 19, 1988, William came to Virginia's home to baby sit their children. He left Virginia's home around 8:30 p.m.
4. On September 20, 1988, William went to Virginia's house to retrieve some of his possessions in anticipation of the final divorce. He ended up staying overnight. He was distraught over the end of the marriage and the probable loss of his employment. Virginia and two of her children were out of the house for approximately twenty-five minutes. When they returned, the family watched videos. William fell asleep on the

¹ The majority of the facts surrounding the death of William LeFever are reflected in the transcript or other documents filed in Licking County Common Pleas Case No. 88-L-17117.

couch. Late in the evening or early the next morning, Virginia's son, Corey, heard loud banging. He left his room and heard his father downstairs going crazy. He woke Virginia who told him to go back to bed. Corey awoke later and again heard noises downstairs. Corey observed William downstairs thrashing about and becoming very violent. His father was naked, hugging the trash bag and calling out to the family cat asking it why it had died.

5. Corey went to Virginia and stated that his daddy was drunk and acting weird. Virginia went downstairs to find William on the floor, on his back and babbling. The bathroom shower stall door was off its hinges with the shower running and the toilet overflowing. Water was everywhere in the bathroom area. She observed bruises on William's knee and elsewhere on his body. Virginia suspected William had overdosed on drugs but did not immediately call the emergency squad because William had previously threatened to beat her if she ever did so. William felt this way because of the embarrassment a friend had suffered due to the paramedics being called when he was too high. William told Virginia he would beat her if she was disloyal like that.
6. Virginia got William dried off and brought him upstairs where she could keep an eye on him. He would not sleep. He alternated between lucidity and irrational thoughts. In the morning, Virginia went into the kitchen where medications were kept and noticed that the Elavil (amitriptyline) bottle was missing. She found the pill bottle in her bedroom next to her bed. The bottle had not been used for several years. Virginia had been prescribed the Elavil after the death of her daughter Rachel.

Virginia estimated the bottle had 20 pills left from the original prescription but when she saw the pill bottle that morning it only had ½ of one tablet left.

7. On September 21, 1988, late in the afternoon, when William's condition did not improve, Virginia called the emergency medical squad. William LeFever was admitted to Licking Memorial Hospital at approximately 5:26 p.m. William LeFever died on September 22, 1988 at 11:37 a.m.
8. In the hospital, William was alternately calm and combative, sometimes hallucinating and babbling incoherently. At one point, he was placed in a four point restraint after he spit in a nurse's face. William also had profuse diarrhea in the early morning hours of September 22, 1988. A tube was placed in his rectum but not until William had multiple evacuations.
9. At one point in the hospital when William was more aware and alert, a nurse asked him what drugs he had taken and he admitted that he had taken Virginia's pills. William was referencing the Elavil that Virginia had been prescribed years earlier after the death of her daughter Rachel.
10. An autopsy was performed on September 23, 1988, by the Franklin County Coroner's Office.
11. On November 23, 1988, the coroner issued his report. (Exhibit A, Coroner's Report, State's Ex. 56 at Trial) The Franklin County Coroner, Dr. Patrick Fardal, listed William LeFever's cause of death as an overdose of amitriptyline, an antidepressant medication. The Franklin County Coroner's Office reexamined the body on at least one other occasion. (Exhibit B, Toxicology Reports) Dr. Raker of the Licking County Coroner's Office went to the funeral home where William's body had been

- transported to look for an injection site on the buttock region. The medical records show a Thiamine shot was given to William in the buttock region at the hospital.
12. In 1988, the Licking County Coroner was Dr. Robert Raker. Dr. Raker signed William LeFever's death certificate. He listed the cause of death as an overdose of amitriptyline. (Exhibit C, Death Certificate)
 13. The Licking and Franklin County Coroners determination of the cause, manner, and mode of the death of William LeFever as set forth in the Coroner's report and death certificate are legally and medically incorrect and must be changed.
 14. There was not a lethal amount of amitriptyline found in William's body at the time of his death. (See Exhibit D, Affidavit of LeRoy Riddick, Exhibit E., Affidavit of Paul Orsulak and Exhibit F, Affidavit of Michael Kelley)
 15. The coroner's report was and is incorrect because it was based on inaccurate and incomplete information and basic medical or scientific principles. (*Id.*)
 16. On November 30, 1988, Virginia was indicted for the death of her husband, William LeFever. Virginia was arrested on December 1, 1988.
 17. On February 22, 1990, after a bench trial, Virginia was convicted of aggravated murder in William LeFever's death. She was sentenced to life in prison. (Exhibit G, Sentencing Entry) She has remained incarcerated since her arrest in 1988 except for an approximately one month period immediately prior to and during her trial.
 18. At trial, the state's experts, Dr. Patrick Fardal, Dr. Robert Raker and Mr. James Ferguson testified that William died from an overdose of a tricyclic antidepressant known as amitriptyline.

19. Dr. Raker testified that the level of amitriptyline in William's system was increasing while he was in the hospital. This testimony is erroneous and rebutted by William's medical records.
20. Dr. Raker testified that the increasing levels of amitriptyline in the hospital meant either that William was taking more of the medication orally in the hospital or he had been given an injection. Dr. Raker's testimony regarding an intramuscular injection is false and is not supported by the records or known medical facts.
21. Dr. Raker testified that William died from an acute amitriptyline and nortriptyline poisoning administered intramuscularly by injection.
22. Dr. Fardal, who performed the autopsy, testified that William's amitriptyline levels rose during hospitalization. The medical records prove Dr. Fardal's testimony was and is factually and medically wrong.
23. Dr. Fardal concluded that Mr. LeFever died of an overdose of amitriptyline. Dr. Fardal testified the amitriptyline was given intramuscularly via injection into the buttocks of William.
24. Mr. James Ferguson testified that he believed the amitriptyline was not orally administered but injected in the buttock region of William and that it was the cause of his death.
25. Ferguson testified that William would have been dead in three hours if he had ingested 20, 100 mg. pills of amitriptyline 18 hours before admission to the hospital.
26. Ferguson testified that the injection of amitriptyline leaked slowly into William's bloodstream causing the substance to continue rising over time. Ferguson's conclusions were and are factually and medically wrong. (See Exhibits D, E, and F)

27. Ferguson testified the amitriptyline was higher in the tissue extracted from the buttock region because that is where the injection site was. Ferguson testified the amitriptyline at the injection site could not be from pooling of blood in the area caused by the bruising in the area at the injection site. However, Ferguson's conclusions are incorrect for several reasons. Mr. LeFever was lying in bed from the time of admission to the hospital until the time of death. This would contribute to the pooling of blood around the bruise and the higher levels of amitriptyline at the site of the bruise. (See Exhibit D, Affidavit of LeRoy Riddick) In addition, post mortem lividity would increase the settling of blood in the area of the bruise since Mr. LeFever was lying on his back for 23 hours after death before the autopsy was performed. (*Id.*)
28. For reasons stated more fully later, the opinions of Raker, Fardal and Ferguson are absolutely unsupported by the facts of this case and accepted medical principles. William LeFever did not die of an amitriptyline overdose but died of acute and chronic arsenic poisoning.
29. Plaintiffs experts have reviewed the records and findings in this matter. The affiants all agree that the cause of death listed by the coroner, an overdose of amitriptyline, is not correct; there was not a lethal amount of amitriptyline in William's system at the time of death. (See Exhibits D, E, and F)
30. One of the most serious flaws in the testimony of Dr. Fardal and Mr. James Ferguson is their conclusion that William LeFever's amitriptyline levels were increasing at the time of his death. William LeFever's Hospital Records prove that Fardal and Fergusons conclusions were and are false. William's blood was taken twice, upon

admission to the hospital at approximately 6:00 p.m. and again at 4:00 a.m. the following day, and the results indicate that the level of amitriptyline was decreasing. Plaintiffs experts establish that the levels are consistent with normal elimination of the drug. (*Id.*)

31. Dr. Fardal and Mr. James Ferguson's conclusion that the high level of amitriptyline at autopsy was due to an intramuscular injection is absolutely unsupported by the evidence. It is textbook medicine that the higher blood levels found post-mortem are due to post-mortem redistribution of the tricyclic amitriptyline. It was not due to leeching into the bloodstream or from an injection as testified to by the State's experts at trial.
32. The testimony at trial that the amitriptyline was injected in the buttock region is also unsupported by sound medical data. It would have been virtually impossible to obtain injectable amitriptyline in the United States at the time of the alleged incident. Even if obtained, an overdose would have required a far higher dosage than was present in William LeFever. Moreover, it would have been equally implausible that tablets of amitriptyline could have been melted down and used for injection especially in a non-laboratory setting.
33. If amitriptyline had been injected, there would have been a golf ball sized lump at the injection site. There also would have been an abundance of excipients, including talc crystals, at the site, in the lungs, and the excipients would have been apparent to medical personnel. The medical records prove that no lump or excipients were present at the alleged injection site.

34. The levels of amitriptyline found in the lower sigmoid colon are consistent with an oral administration of the drug.
35. The comparison of tissue samples taken from William's left and right buttocks is meaningless. The samples from the left buttock were taken from an area of bruising but the samples from the right buttock were not bruised. Thus, the bruised area would have a much higher concentration of amitriptyline than the non-bruised area. In addition, there was testimony that William had been given an injection of Thiamine when he was admitted to the emergency room. The Thiamine injection was given in the area the State's experts claimed was the site of the amitriptyline injection. The ratio of amitriptyline to nortriptyline found at the site where the thiamine was injected is consistent with the levels expected in the area of a hemorrhagic bruise.
36. William did not exhibit the symptoms of an amitriptyline or tricyclic overdose while in the hospital. His symptoms were signs of acute and chronic arsenic poisoning.
37. The State's experts admitted that William had arsenic and strychnine in his system but did not address the fact that William showed symptoms of both acute and chronic arsenic ingestion. In addition, the State's experts suggested that the arsenic and strychnine were rectally inserted. This theory is also medically implausible.
38. The medical records show that William experienced profuse diarrhea in the hospital lasting at least five hours. The arsenic, amitriptyline and rodent bait containing strychnine would had to have been ingested orally because they never could have remained in the sigmoid colon and rectum during the five hours of profuse diarrhea.

39. Because William had profuse and prolonged diarrhea, a rectal tube was inserted. The suggestion by Dr. Fardal that a rectal tube created a pouch below the opening of the tube which would have trapped the rectally inserted material, does not fit the facts. The rectal tube was not inserted until three hours after the diarrhea had begun. Thus, if any material ever was inserted in the rectum, it would have been expelled by the time the tube was inserted.
40. Dr. Raker's theory that a pouch was formed by impacted feces around which the liquid stool passed does not fit the facts. After three hours of profuse diarrhea, the entire contents of the colon would have been expelled leaving only the contents of the small intestine and stomach to enter into the colon. Dr. Fardal indicated the colon contained no solid material. No pouch could have formed.
41. It was also erroneous for the State's experts to conclude the arsenic and strychnine ingestion was not oral due to a lack of gastritis. Gastritis does not always occur with arsenic poisoning. If the arsenic is in a dilute solution or if other material such as food is in the stomach, the chemical will not cause an inflammation. If the State's theory was true, and there was a rectal insertion, there would have been signs of colitis in the rectum or sigmoid colon but no such signs were present.
42. The calculations made by James Ferguson as to the levels of arsenic are not supported by the medical records and by sound medical principles. Ferguson did not take into account the levels of arsenic in the blood, heart and other tissues. Moreover, Ferguson did not account for the large past ingestions of arsenic by Mr. LeFever.

43. The blood tests also support the fact that William died of acute and chronic arsenic poisoning. The arsenic poisoning caused cardiac arrest which resulted in William's death.
44. Pursuant to R.C. 313.19, the Court must review the coroner's verdict regarding the cause of death and the manner and mode in which the death occurred. Such review is warranted and necessary under the Due Process Clauses of the Ohio and Federal Constitutions.
45. The "coroner's factual determinations concerning the manner, mode and cause of decedent's death, as expressed in the coroner's report and death certificate, create a non-binding, rebuttable presumption concerning such facts in the absence of competent credible evidence to the contrary." *Vargo v. Travelers Ins. Co.* (1987), 34 Ohio St.3d 27.
46. R.C. 313.19 mandates a hearing on the challenge and empowers the court to direct the coroner to change his verdict. *Perez et al. v. Cleveland, Cty. Coroner* (1997), 78 Ohio St. 3d. 376.
47. Jurisdiction and venue are proper in the county in which the death occurred. *Estate of Severt v. Wood* (1995), 107 Ohio App.3d 123, (affirming Court of Common Pleas application of statute to force coroner to change cause of the death).
48. Plaintiffs will present competent and credible evidence that the coroner's report and death certificate listing William's cause of death as amitriptyline overdose are incorrect both legally and medically.

CONCLUSION

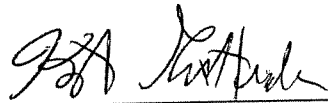
R.C. 313.19 states:

The cause of death and the manner and mode in which the death occurred, as delivered by the coroner and incorporated in the coroner's verdict and in the death certificate filed with the division of vital statistics, shall be legally accepted manner and mode in which such death occurred, and the legally accepted cause of death, *unless the court of common pleas of the county in which the death occurred, after a hearing, directs the coroner to change his decision as to such cause and manner and mode of death.* (Emphasis added).

Ohio law provides, pursuant to R.C. § 313.19, a procedure through which an individual may challenge a coroner's findings regarding the cause of death. By enacting R.C. 313.19, the General Assembly provided a way to challenge a coroner's determination of cause of death as set forth in the death certificate. *Perez et al., v. Cleveland, Coroner* (1993), 66 Ohio St. 3d 397, 399.

Plaintiffs, Virginia LeFever and Heather Reynolds respectfully request that the Court order the Licking County Coroner, Dr. Robert Raker, to change William LeFever's death certificate to indicate that his death resulted from acute and chronic arsenic poisoning rather than from an overdose of amitriptyline.

Respectfully submitted,



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