

IN RE ESTATE OF WORSTELL.

[Cite as *In re Estate of Worstell*, 100 Ohio St.3d 1258, 2003-Ohio-6387.]

Appeal dismissed as improvidently allowed.

(No. 2002-1981 — Submitted November 4, 2003 — Decided December 17,
2003.)

APPEAL from the Court of Appeals for Montgomery County, No. 19133, 2002-
Ohio-5385.

{¶1} The cause is dismissed, sua sponte, as having been improvidently
allowed.

MOYER, C.J., LUNDBERG STRATTON, O’CONNOR and O’DONNELL, JJ.,
concur.

RESNICK, F.E. SWEENEY and PFEIFER, JJ., dissent.

PFEIFER, J., dissenting.

{¶2} A jury found that Mr. Ralph Worstell did not have testamentary
capacity to make a will. The jury based its decision on the testimony of
Worstell’s nephew, Worstell’s tenant, and most important, on the testimony of Dr.
Albert Bayer, a medical doctor and board-certified geriatric psychiatrist. Little
contrary evidence was presented, primarily that of the attorney who drafted the
will, who could hardly be expected to testify that he allowed a man lacking
testamentary capacity to sign a will. Nevertheless, the court of appeals
determined that the jury verdict was against the manifest weight of the evidence
and reversed the judgment.

{¶3} The court of appeals relied on *State v. Thompkins* (1997), 78 Ohio
St.3d 380, 678 N.E.2d 541, where this court explained when it is appropriate to

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overturn a jury verdict to prevent a manifest miscarriage of justice in a criminal trial. This reliance was misplaced because the standard of proof in a criminal trial is higher than in a civil trial. We should render an opinion in this case that clarifies the standard. I dissent and would reverse the judgment of the court of appeals.

RESNICK and F.E. SWEENEY, JJ., concur in the foregoing dissenting opinion.

Murray, Murphy, Moul & Basil, L.L.P., and Joseph F. Murray; Ekonomou, Atkinson & Lambros, L.L.C., Michael G. Lambros, Thomas J. Cullen and Paul E. Nystrom III, for appellant Gary M. Worstell.

Porter, Wright, Morris & Arthur, L.L.P., Paul G. Hallinan, Armistead W. Gilliam Jr., Philip E. Kessler and Robin D. Ryan, for appellee American Cancer Society, Western Ohio Division, Inc.
