**[Cite as *Mohn v. Ashland Cty. Chief Med. Examiner*, 2015-Ohio-1985.]**

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

| | | |
|---|---|---|
| | | JUDGES: |
| VICKY L. MOHN | : | Hon. W. Scott Gwin, P. J. |
| | : | Hon. John W. Wise, J. |
| Plaintiff-Appellant | : | Hon. Craig R. Baldwin, J. |
| | : | |
| -vs- | : | |
| | : | Case No. 14-COA-031 |
| ASHLAND COUNTY CHIEF | : | |
| MEDICAL EXAMINER, ET AL | : | |
| | : | O P I N I O N |
| Defendant-Appellee | | |

| | |
|---|---|
| CHARACTER OF PROCEEDING: | Civil appeal from the Ashland County Court of Common Pleas, Case No. 13-CIV-196 |
| JUDGMENT: | Affirmed |
| DATE OF JUDGMENT ENTRY: | May 20, 2015 |

APPEARANCES:

| For Plaintiff-Appellant | For Defendant-Appellee |
|---|---|
| CHRISTOPHER CONGENI<br>DANIEL J. RUDARY<br>75 E. Market Street<br>Akron,OH 44308 | MICHAEL DONATINI<br>CHRISTOPHER TUNNELL<br>Assistant Prosecuting Attorney<br>110 Cottage St., Third Floor<br>Ashland, OH 44805 |

*Gwin, P.J.*

**{¶1}** Appellant appeals the October 7, 2014 judgment entry of the Ashland County Court of Common Pleas dismissing appellant's complaint pursuant to Civil Rule 41(B)(2).

*Facts & Procedural History*

**{¶2}** On March 13, 2012, decedent David Mohn died from a gunshot wound to the head at Mohican State Park. Appellee Ashland County Chief Medical Examiner ruled that the cause of death was a penetrating injury to the skull and brain due to a gunshot wound to the head. Appellee ruled the wound was self-inflicted and the manner of death was suicide. On July 7, 2012, appellant Vicky L. Mohn filed a complaint to correct erroneous cause of death determination pursuant to R.C. 313.19. The complaint asserted that there was no effort to investigate the matter as a homicide, and thus the cause of death determination should be changed to undetermined, accidental, or homicide. Appellee filed an answer to the complaint on August 9, 2013.

**{¶3}** In December of 2013, appellee filed a motion to join Prudential Insurance Company of America ("Prudential") as a necessary party. Appellant filed a first amended complaint on January 2, 2014, adding Prudential to the complaint and again asked the court to order appellee to remove all reference to suicide contributing or causing decedent's death. Prudential filed a motion to dismiss, stating that they paid all benefits due and owing to appellant under the group life plan as they paid appellant a total of $402,439.49 for decedent's basic life coverage, optional life coverage, and interest, on May 31, 2012. The trial court granted Prudential's motion to dismiss on March 7, 2014.

**{¶4}** The trial court scheduled a bench trial. In her trial brief, appellant argued that there was no substantial evidence to rebut the common law presumption against suicide and that she could satisfy her burden to show, by a preponderance of the evidence, that appellee's verdict was inaccurate. In his trial brief, appellee argued there was sufficient evidence to rebut the presumption against suicide and that appellant was unable to meet her burden to show that appellee's verdict was inaccurate.

**{¶5}** On September 25, 2014, the trial court conducted a bench trial on appellant's complaint. Michael Frank ("Frank"), appellant's father and decedent's father-in-law, testified that he saw decedent several times per month, did not believe there were any marital issues between appellant and decedent, and that he was not aware of any depression or psychiatric issues of decedent. Frank stated that decedent loved guns, primarily rifles, owned approximately 20-30 guns, and collected them for investments, hunting, and target shooting. Frank did not believe that the gun found by decedent's body was decedent's gun because decedent did not own any revolvers. Frank last saw decedent in early February of 2012 and decedent did not appear depressed, did not appear to be anxious or worried, and never told him about any financial concerns. The Wednesday prior to his death, decedent told Frank he purchased hair dye and a hat for St. Patrick's Day. Frank testified that he does not believe decedent committed suicide.

**{¶6}** On cross-examination, Frank testified that he last spoke to decedent approximately a week before his death and does not know whether something might have upset decedent on the day of his death. Frank confirmed that decedent engaged in private sales of guns and had his concealed carry license. Frank stated he would not

have known if decedent purchased a gun a week prior to his death. However, when he previously rode in the car with decedent, Frank did not recall seeing a weapon in decedent's car.

**{¶7}** April Carroll ("Carroll"), the supervisory special agent at the ATF Firearms Tracing Center testified that an ATF trace on a gun does not necessarily come back with the name of the current owner of the gun because the firearm can change hands through individual, private sales. Carroll stated that if an ATF trace on a gun does not come back with the name of the current owner, it does not necessarily mean that the gun was illegally acquired. ATF does not maintain a registry of current legal gun owners. Carroll testified that state law or state agencies may have other requirements or databases for gun tracing, but she does not know about these regulations or databases in Ohio.

**{¶8}** Appellant testified that she is not employed and has been married to decedent for thirty-one (31) years. Decedent had an active role in raising her children and they had no marital distress. Appellant testified that she and decedent had owned their home for fifteen years, which was insured for approximately $200,000, and they owned three vehicles that were all paid off. Appellant stated she was aware that decedent had outstanding credit card debt, but she was not overly concerned because they previously had debt and they could have done things to eliminate the debt. Decedent was employed at Sysco Food Services for eighteen years. Appellant testified decedent loved his work, loved his family, and especially enjoyed spending time with his granddaughter. Appellant stated she had never seen a gun like the one found by decedent's body either in the home or in his car.

**{¶9}** On the morning of his death, decedent got up, made coffee, showered, hugged appellant, and told her he would try to come home early because it was going to be a nice day. Appellant testified that decedent did not appear depressed, was not anxious or worried, and there was no discussion with her in the days before his death about any financial issues or his credit card debt. Appellant does not believe that decedent could have committed suicide and testified that the investigation into his death was non-existent.

**{¶10}** On cross-examination, appellant testified that decedent was not retired or semi-retired and that she has not worked full-time since 2004. She testified that she was not aware that decedent took money out of his pension funds, but confirmed that, pursuant to the bank records admitted as exhibits, decedent withdrew approximately $78,000 from his pension from 2010-2012. Appellant stated that beginning four years before his death, decedent took care of all their finances, paid the bills, and balanced the checkbook. Decedent never showed her credit card or bank statements and did not talk about finances with her. At the time of his death, appellant had no idea how much money decedent had in his personal bank account. However, according to the financial documents admitted into evidence, on the date of his death, decedent had approximately $470.00 in all of his accounts, including their joint account.

**{¶11}** With regard to credit cards, appellant agreed that, pursuant to the financial documents admitted into evidence, decedent was only making minimum payments in the last few months of his life on his credit card debt. The financial records show that decedent had the following balances on his personal credit cards: $15,155 on a Discover Card (less than $45 from the credit limit) of which a minimum payment of $304

was due the day before he died; $22,112.24 on a Bank of America credit card (less than $500 from the credit limit); $18,429 on a Citibank credit card (approximately $300 from the credit limit); and $26,215 on a Chase Bank credit card, of which a minimum payment of $1,247 was due on March 18, 2012. Appellant confirmed that on the date of his death, decedent transferred all but $1.99 from his personal account into their joint checking account.

**{¶12}** Appellant testified that decedent had been experiencing declining sales commissions starting in 2008, that the recession affected their finances, and that is why decedent utilized his credit cards. Appellant stated she knew decedent had credit card debt, but did not know how much. Appellant testified that she received a life insurance payment from Prudential in May of 2012 for approximately $400,000.

**{¶13}** Appellant stated that decedent had at least twenty guns and had his carry and conceal permit. Appellant testified that decedent had experience handling guns, knew how to use guns safely, knew it was dangerous to point a loaded gun at himself, and he would never do that. Appellant last saw and spoke with decedent at approximately 8:00 a.m. the morning of his death. Decedent never indicated to her that he thought his life was in danger or that someone was trying to kill him. Appellant acknowledged that decedent was having trouble collecting money from some customers and she believed he was facing some pressure from his employer because of that.

**{¶14}** Appellant testified that decedent wore glasses and a wristwatch when he was awake. Appellant did not remember telling the investigator that decedent carried a gun for safety purposes due to his job involving transporting money, even though the investigator's report indicates she did tell the investigator he carried a gun for safety

purposes. Appellant did not know whether decedent had a gun in the car with him on the date of his death.

**{¶15}** On re-direct, appellant testified that decedent was not distressed about the credit card debt and she was not worried about it because they had assets they could sell or mortgage to pay the debts. On re-cross examination, appellant testified that she and decedent never discussed selling the house, guns, jewelry, or vehicles to pay the credit card debts.

**{¶16}** Cassie Imler ("Imler"), a Park Officer with the Ohio Department of Natural Resources for ten years, was the lead investigator in decedent's death. Imler never previously investigated a suicide or a murder. The incident with decedent came over the Loudonville police channel and it took her approximately four minutes to get from where she was patrolling to the scene. Dispatch did not say whether the gunshot wound was self-inflicted. The body was visible from County Road 629 and State Route 3. When she arrived at the scene, Imler found a male lying near a trail head with a gunshot wound to his head and a gun lying above his head, to the left. Decedent had blood on his hands and there was blood on the gun. The Loudonville police were already on the scene when Imler arrived. Imler testified that she knows the officers could have moved things at the scene, but that she trusted them and has no reason to believe they moved anything. Appellee's office also subsequently arrived to investigate the scene. Imler testified, without objection, that one officer told her that when they pulled in, it appeared decedent still had smoke coming off the wound in his head. Within approximately a half-hour of her arrival on the scene, one of the officers told her it looked like the gunshot wound might be self-inflicted. Imler could not tell what the

angle the gun was at when it discharged. Imler has never shot a revolver and does not know how much powder comes off when someone fires a revolver. Imler did not send the gun for a gunshot residue test.

**{¶17}** Imler believes decedent shot himself and thinks he may have been leaning over or bending over. Imler found that one round was spent from the gun, there were bullets in the other chambers, and the revolver was the only gun at the scene. Imler did not send the shell casings for tests. Imler was given appellee's incident report after appellee ruled the incident a suicide, but did speak to someone at appellee's office the day after the incident who told her it was looking like a suicide. Imler's supervisor told her to send the gun to BCI to check for fingerprints. The BCI report Imler received found there were no latent prints that contained sufficient ridge detail for comparison purposes. Imler did not think appellee would need this information prior to making a verdict. Imler testified she did not think this meant there were no fingerprints on the gun, simply that there were just not enough prints to determine whose print it was.

**{¶18}** With regards to her investigation, Imler stated she spoke to witnesses and investigated the scene. Imler spoke to appellant and appellant told Imler that decedent carried a gun in his car because he carried large amounts of cash for work. Imler testified that she had no indication decedent discussed suicide with anyone. Appellant also told Imler that decedent had trouble collecting accounts. Imler testified that appellant did not indicate decedent had enemies or feared for his life. Imler stated that appellant was not very helpful because appellant was too emotional to talk with Imler. When Imler talked to clients of decedent, she learned nothing of interest. She did not look for powder residue. Imler does not believe she needed to be in contact with

appellee's office anymore than she was. At the scene, in decedent's car, Imler found decedent's Ohio driver's license, glasses, cell phone, laptop. The car was unlocked and Imler found the license face-up on the console. Imler found cash, credit cards, a watch, and a pocket knife concealed under decedent's laptop bag. Imler testified that she did not know what the car looked like when decedent exited the car, only how she found it when she arrived at the scene.

**{¶19}** When Imler contacted ATF, she discovered John Lewis ("Lewis") was the original purchaser of the gun involved in the incident. Lewis was apprehensive when he found out his gun was used in a death investigation. Lewis told Imler he did not know if it was his gun or not. Appellee's office did not know about Lewis before reaching its verdict. However, Imler testified that nothing she knew about Lewis made her think decedent's death was anything other than suicide. Imler had no reason to suspect that Lewis was involved in decedent's death.

**{¶20}** When asked why Imler concluded the incident was a suicide, she testified that there was no sign of a struggle at the scene, decedent's valuables were still in his car, including computer and cash, and no one reported any unknown individuals in the area. Imler stated her investigation continued even after an employee from appellee's office told her it was looking like suicide, including talking to decedent's customers and sending the gun to BCI. The factors that went into Imler's determination of suicide included: the gun was found at the scene; decedent's hand was bloody; the lack of any suspicious individuals in the area; the fact that witnesses saw decedent in his car shortly before the shooting; the officer that told her the wound was smoking when he arrived; and the cumulative evidence.

**{¶21}** Michael Coe ("Coe"), an engineer with Babcock & Wilcox and also a firearms instructor, testified that if decedent fired the weapon like appellee said he did, it would have been improbable for decedent not to have gunshot residue on his hands. Coe stated that someone might smell or see the residue, but a gunshot residue test would be more conclusive. Coe testified that if there was no gunshot residue on decedent's hands, there is an 80% chance decedent did not fire the gun. Coe was surprised by the location of the firearm. On cross-examination, Coe testified that he has no experience in examining the hands of a suicide victim whose hands are bloody.

**{¶22}** Appellee made a Civil Rule 41(B)(2) motion to dismiss. The next day, the trial court announced its decision and granted the motion to dismiss. The trial court found that there was sufficient evidence to overcome the presumption against suicide, including the nature of the wound and the manner of death, even though some of the information provided to the court was not known by appellee at the time the determination of death was made. The trial court stated that much of the evidence was consistent with the findings of appellee, that there is no explanation or evidence that any other person was there, and no evidence that decedent was in trouble or had anybody threatening him. The trial court stated it gave weight to the testimony of Imler, which was not objected to, that the officer who was first on the scene told her he still saw smoke coming from decedent's head. The trial court also specifically stated that it gave little weight to Coe's testimony because he is not a medical expert and did not know how blood might affect gunshot residue.

**{¶23}** Appellant made a request that the trial court issue its findings in a judgment entry. Thus, on October 7, 2014, the trial court issued a judgment entry

granting appellee's Civil Rule 41(B)(2) motion to dismiss. The trial court listed as its rationale the following: there were no suspicious individuals reported in the area; witnesses saw decedent in his car shortly prior to the incident; it is possible for decedent to have a self-inflicted gunshot wound with a revolver without an accompanying presence of gun powder residue on his body as this can happen in approximately 20% of such types of shootings; decedent experienced financial troubles as he had problems collecting from his client base, he withdrew $78,000 from his pension accounts in 2010-2012, and he was the only source of income for appellant and decedent; decedent's $80,000 in individual credit card debt; on the day of his death decedent electronically transferred most all of the funds from his personal checking account to the joint checking account he shared with appellant; appellant received a substantial life insurance settlement upon the death of decedent; decedent was known to carry a gun with him; only one gun was found at the scene and only one bullet was spent; decedent's personal effects, including driver's license, cell phone, and glasses were removed from his person and left in the vehicle he was operating just prior to the shooting, neatly arranged; cash and credit cards were found in decedent's car under a laptop computer; there was no evidence to suggest a struggle at the scene; and there was no evidence to suggest an accident or homicide.

**{¶24}** The trial court found that while appellant and decedent owned real estate and personal property of significant value, appellant and decedent had only $400 in their joint bank account, which was just slightly more than the minimum balance payment due on a credit card due the day before the incident. The trial court stated that based upon the exhibits admitted, appellant and decedent possessed insufficient funds

on hand to pay the minimum monthly payments coming on decedent's individual credit cards without liquidating their assets. The trial court also found that although appellant was not aware decedent owned a revolver, decedent engaged in frequent, casual gun transactions as a collector and gun enthusiast. The trial court rejected appellant's contention that the unknown source of the revolver raises a question as to the cause of death and stated that evidence suggests it was possible decedent acquired the revolver through casual transactions and without appellant's knowledge.

**{¶25}** The trial court stated it considered the legal authority and arguments offered by the parties in their trial briefs and additional authority with respect to a Civil Rule 41(B)(2) motion. The trial court found appellant failed to meet the burden, by a preponderance of the evidence, required to overturn appellee's decision that decedent committed suicide by a self-inflicted gunshot to the forehead and stated much of the information provided cooborates the conclusion of appellee.

**{¶26}** Appellant appeals the October 7, 2014 judgment entry of the Ashland County Court of Common Pleas and assigns the following as error:

**{¶27}** "I. THE TRIAL COURT ERRED BY GRANTING DEFENDANT-APPELLEE'S MOTION TO DISMISS PLAINTIFF-APPELLANT'S CASE PURSUANT TO CIV.R. 41(B)(2)."

*Civil Rule 41(B)(2) Standard of Review*

**{¶28}** Civil Rule 41(B)(2) permits a defendant in a nonjury action to move for dismissal of the action after the close of the plaintiff's case. Dismissals under Civil Rule 41(B)(2) are similar in nature to a directed verdict in jury actions; however, because a Civil Rule 41(B)(2) dismissal is used in nonjury actions, it requires the trial court and

reviewing courts to apply different tests. See *Central Motors Corp. v. Pepper Pike*, 63 Ohio App.2d 34, 409 N.E.2d 258 (8th Dist. 1979). Civil Rule 41(B)(2) specifically provides that the trial court may consider both the law and the facts. Therefore, under the rule, the trial judge as the trier of fact does not view the evidence in a light most favorable to plaintiff, but instead actually determines whether the plaintiff has proven the necessary facts by the appropriate evidentiary standard. See *L.W. Shoemaker, M.D., Inc. v. Connor*, 81 Ohio App.3d 748, 612 N.E.2d 369 (10th Dist. 1992); *Harris v. Cincinnati*, 79 Ohio App.3d 163, 607 N.E.2d 15 (1st Dist. 1992). Even if the plaintiff has presented a prima facie case, dismissal is still appropriate where the trial court determines that the necessary quantum of proof makes it clear that plaintiff will not prevail. *Fenley v. Athens Cty. Genealogical Chapter*, 4th Dist. No. 97CA36, 1998 WL 295496 (May 29, 1998), citing 3B Moore, Federal Practice (1990), Paragraph 41.13(4). If the judge finds the plaintiff has proven the relevant facts by the necessary quantum of proof, the motion must be denied and the defendant is required to put on evidence. *Central Motors Corp., supra.*

**{¶29}** A trial court's ruling on a Civil Rule 41(B)(2) motion will be set aside on appeal only if it is erroneous as a matter of law or against the manifest weight of the evidence. *Ogan v. Ogan*, 122 Ohio App.3d 580, 702 N.E.2d 472 (12th Dist. 1997). As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent, and credible evidence upon which the fact finder could base its judgment. *Cross Truck Equip. Co. v. The Joseph A. Jeffries Co.*, 5th Dist. No. CA5758, 1982 WL 2911 (Feb. 10, 1982). Accordingly, judgments supported by some competent, credible evidence going to all

the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978). At least one court has previously found that Civil Rule 41(B)(2) can be utilized by the trial court to dismiss a case challenging a coroner's suicide verdict. *Hirus v. Balraj*, 8th Dist. Cuyahoga No. 64488, 1994 WL 4173 (Jan. 6, 1994).

*Presumption Against Suicide or Criminal Assault*

**{¶30}** Appellant first argues the trial court erred as a matter of law by not requiring appellee to overcome Ohio's presumption against suicide. Appellant contends that since the trial court did not explicitly mention the presumption against suicide in its October 7, 2014 judgment entry, the trial court moved forward as though no such presumption existed. Appellant also argues that there was not competent and credible evidence presented to extinguish the presumption against suicide because there was no direct evidence to show suicide, such as a note, an eyewitness, fingerprints, or gunshot residue. Further, that the circumstantial evidence showed that decedent was employed, owned his home and vehicle, and was not depressed or upset.

**{¶31}** The Ohio Supreme Court has stated that:

> Where it is shown that death resulted from bodily injury caused by violent external means without a showing as to how the injury was in fact sustained, there is a presumption that death did not result from suicide, self-infliction of injury, criminal assault of another or voluntary employment as the means of causing death.

*Sheppard v. Midland Mutual Life Ins. Co.*, 152 Ohio St.6, 87 N.E.2d 156 (1949). This presumption is prima facie, is rebuttable, and disappears or is extinguished upon the

production of substantial evidence to the contrary sufficient to counterbalance it. *Evans v. Nat'l Life and Accident Ins. Co.*, 22 Ohio St.3d 87, 488 N.E.2d 1247 (1986). This presumption is not evidence and is not to be weighed as evidence. *Id.* It is not a burden of proof, but rather a burden of going forward. *Id.* The trial court determines, as a matter of law, whether there is sufficient evidence to rebut the presumption and, if the court so determines, the jury should be charged in the normal fashion with no instruction given concerning the presumption. *Id.*

**{¶32}** We first note that it is unclear as to whether the trial court in this case was required to consider the "presumption against suicide." The presumption is not only a presumption against suicide, but also a presumption against death by the criminal assault of another. It appears from appellant's testimony and evidence presented in the case that appellant's theory is that decedent was the victim of a homicide that Imler failed to properly investigate. There is no indication in the Ohio Supreme Court's description of the presumption that the presumption applies to differentiate between suicide and murder.

**{¶33}** However, even if the trial court were required to apply such presumption, we find the trial court did so in this case. In the trial court's oral decision at the end of the bench trial, the trial court stated "that there is sufficient evidence to overcome the presumption against suicide, the nature of the wound and the manner of death." (T. at 238). In addition, the trial court stated in its written judgment entry that it considered the legal arguments and authority provided by the parties in their trial briefs, which both contain legal arguments concerning the applicability of the presumption.

**{¶34}** Further, we find that substantial competent and credible evidence existed to extinguish the presumption. Decedent had a gunshot wound to his forehead. The gun was found on the scene with one round spent and bullets in the other chambers. Decedent's hand was bloody. Appellant stated that decedent owned many guns, knew how to use guns safely, and knew it was dangerous to point a loaded gun at himself. Imler stated that there was no evidence of struggle at the scene and no one reported any suspicious individuals in the area. Imler testified, without objection, that when she arrived at the scene, a Loudonville police officer told her decedent's wound was still smoking when he arrived at the scene.

**{¶35}** Additional evidence shows that on the date of his death, decedent planned and prepared for his own death. On the day of his death, decedent transferred all but $1.99 from his personal bank account to a joint bank account he held with appellant. Appellant testified that when decedent was awake, he wore glasses and a wristwatch. On the day of the incident, Imler found in decedent's car his glasses, cell phone, and driver's license (face-up) on the console of the car. She also found in the car, under a laptop bag, credit cards, cash, and his wristwatch. Unlike in *Estate of Holley v. American Family Life Assurance Co. of Columbus*, 4th Dist. Pickaway No. 04CA5, 2005-Ohio-2281, in which the decedent drowned in a creek which ran through the rear of his property and where the signs of preparation of planning would have also been consistent with the decedent going for a swim, the planning and preparation by decedent in this case is not consistent with an accident. Leaving his glasses, watch, identification, cash, credit cards, and transferring his funds to a joint account is not

typical preparation for a walk in the state park. The planning and preparation, in addition to the nature of the injury, is evidence of suicidal intent.

**{¶36}** In addition, the decedent in this case had financial problems from which suicidal intent can be inferred. See *Id.* Appellant testified that decedent had been experiencing declining sales commissions since 2008 and had trouble collecting money from some customers. Appellant believes decedent was facing some pressure from his employer. The financial records admitted at trial demonstrate that decedent had approximately $81,000 in individual credit card debt on which he was only making minimum payments in the months prior to his death. One minimum credit card payment was due the day before he died and one was due approximately a week after his death, but decedent did not have enough cash on hand to pay both of these bills. While appellant contends they had equity in their home and cars, appellant also testified that she and decedent never talked about selling or encumbering their house or vehicles to pay for the credit card debt. Further, decedent, without appellant's knowledge, withdrew approximately $78,000 from his pension funds from 2010 to 2012.

**{¶37}** Accordingly, we find there is substantial competent and credible evidence in favor of suicide to support the trial court's determination that the presumption against suicide or criminal assault was extinguished.

*Challenging the Coroner's Decision*

**{¶38}** Appellant contends the trial court erred in finding that sufficient, competent and credible evidence had not been presented to overcome the presumption of the validity of the coroner's decision pursuant to R.C. 313.19. Appellant argues she met her burden due to the lack of latent fingerprints on the gun, the downward trajectory of the

gun, the lack of gunshot powder residue, the fact that the gun was not registered to decedent, the lack of a note or any depression of decedent, and the lack of a proper investigation by Imler.

**{¶39}** R.C. 313.19 sets forth the presumptive value of a coroner's determination as evidence in civil and criminal cases in which the cause, manner, and mode of death are at issue. *TASER Int'l Inc. v. Chief Medical Examiner of Summit Co.*, 9th Dist Summit No. 24233, 2009-Ohio-1519. According to Revised Code 313.19:

> 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 the 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.

**{¶40}** As stated by the Ohio Supreme Court, "the coroner's factual determination concerning the manner, mode, and cause of decedent's death, as expressed in the coroner's report and death certificate, create a nonbinding, rebuttable presumption concerning such facts in the absence of competent, credible evidence to the contrary." *Vargo v. Travelers Ins. Co.*, 34 Ohio St.3d 27, 516 N.E.2d 226 (1987). This presumption exists because the coroner is a medical expert rendering an expert opinion on a medical question. *Id.* This evidentiary presumption affords "much weight" to the coroner's factual determinations. *Id.* However, the statute does not compel the fact-

finder to accept, as a matter of law, the coroner's factual findings concerning the manner, mode, and cause of decedent's death. *Id.*

**{¶41}** R.C. 313.19 also provides the means for judicial review of a coroner's decision. Pursuant to R.C. 313.19, a party seeking to change a cause of death determination bears the "burden of establishing, by a preponderance of competent, credible evidence to the contrary, that the coroner's opinion was inaccurate."

**{¶42}** As detailed above, when a motion to dismiss is made during a bench trial pursuant to Civil Rule 41(B)(2), the trial court may weigh the evidence and is not required to view the evidence in the light most favorable to the plaintiff. *Mennonite Mut. Ins. Co. v. Hoyt Plumbing, Inc.*, 5th Dist. No. 07CA0058, 2008-Ohio-22. In this case, it is clear from the judgment entry that the trial court did weigh the evidence in this case. Appellant argues that the trial court erred as a matter of law in dismissing the case because appellant presented sufficient evidence to establish her cause of action and thus we should review the dismissal, as a matter of law, de novo. However, in a Civil Rule 41(B)(2) motion in a bench trial, unlike a motion for directed verdict in a jury trial, a trial court is not limited to determining whether there is sufficient evidence, as a matter of law, to support appellant's claim. *Id.* Rather, the trial judge actually determines whether the plaintiff has proven the necessary facts by the appropriate evidentiary standard, in this case, by a preponderance of the evidence. *Id.* Accordingly, this court does not review such a determination de novo, but we review whether the trial court's judgment is against the manifest weight of the evidence. *Ogan v. Ogan*, 122 Ohio App.3d 580, 702 N.E.2d 472 (12th Dist. 1997).

**{¶43}** We find the judgment of the trial court is supported by some competent, credible evidence and thus is not against the manifest weight of the evidence. As detailed above, the nature of the wound, financial issues, and the planning and preparation by decedent supports the trial court's determination. Further, the other evidence submitted by appellant is not inconsistent with appellee's verdict of suicide.

**{¶44}** Appellant argues the downward trajectory of the bullet is inconsistent with a self-inflicted wound. However, though Coe testified that he was surprised by the location of the firearm, appellant did not present any testimony as to why the downward trajectory of the bullet would be inconsistent with suicide, especially in light of Imler's testimony that she thought decedent may have been leaning or bending over. Though appellant makes much of the fact that appellee did not testify, appellant did not present any expert testimony from a forensic pathologist or someone with experience or training in medical legal death investigation to offer an alternative theory or to testify that any of the evidence was inconsistent with suicide. Further, appellant did not call appellee to testify. As noted by the Ohio Supreme Court, the coroner is a medical expert rendering an expert opinion on a medical question, which is why a coroner's opinion is presumed to state the manner of death. *Vargo v. Travelers Ins. Co.*, 34 Ohio St.3d 27, 516 N.E.2d 226 (1987).

**{¶45}** Though appellant is correct that she testified decedent was not depressed and did not express any suicidal thoughts to her and Frank testified he was not aware of any depression or psychiatric issues of decedent, this does not automatically necessitate a finding that decedent had no suicidal intent at the time of his death. Frank last spoke to decedent a week prior to his death and had not seen him for

approximately a month. Appellant did not talk to decedent after he left the house the morning of this death. Further, although appellant knew that decedent had credit card debt, she testified that she did not know how much and that decedent handled all of their finances and did not discuss anything financial with her. Appellant did not know about the large sums that decedent took out of his pension account in the two years prior to his death. Appellant did know that decedent was having trouble collecting commissions and thought he might be facing pressure from his employer.

**{¶46}** Appellant also argues that evidence of an inaccurate coroner's verdict comes from the fact that somebody other than decedent was the registered gun owner and that the type of gun used was not the kind that decedent would have in his collection. However, Carroll testified that an ATF trace does not necessarily come back with the name of a current gun owner because of individual, private sales and simply because the ATF trace does not contain the name of the current gun owner does not mean the gun was illegally acquired. Frank testified that decedent did purchase guns at private gun sales and that not all decedent's guns were collector's items. In addition, Imler testified that when she contacted the original purchaser of the gun, though he was apprehensive when he found out the gun was involved in a death investigation, Imler had no reason to suspect that Lewis was involved in decedent's death.

**{¶47}** Appellant further argues that the gun did not have any fingerprints that could be matched to decedent. However, Imler testified that the report she received from BCI concluded that no fingerprints were found "with sufficient ridge detail for comparison purposes." Imler's understanding was that this did not mean there were no fingerprints found, just that there were not sufficient fingerprints for a match to be made.

Appellant did not call the forensic scientist who examined the weapon for prints to testify as to the meaning of the conclusion and whether the quality of the prints was too poor to match the decedent, which the language in the reports suggests, or whether the gun was completely devoid of fingerprints.

**{¶48}** Appellant argues the lack of gunshot powder residue on decedent's hands demonstrates decedent's death was not a suicide. Coe testified that, when a gunshot residue test is completed, one study by the FBI determined that 80% of suicide victims have gunshot residue on their hands. However, there is no evidence in the record that a gunshot residue test came back negative or was even performed. Imler testified that she did not see any residue on decedent's hands or face, but Coe testified that he had no experience in examining the hands and face of a suicide victim with substantial blood and did not know how this might affect any gunshot powder residue.

**{¶49}** Appellant's final argument is essentially that because Imler did not conduct an adequate investigation, appellee's verdict was inaccurate. However, Imler testified that appellee's office conducted its own investigation and spent time at the scene. In addition, Imler's investigation adduced that: nobody reported any unknown or suspicious individuals in the vicinity of the shooting; there was no evidence that decedent had enemies or was concerned about any individuals; there was no evidence of a struggle; decedent's valuables were left in his car; the gun was found at the scene with one round spent; decedent's hands were bloody; witnesses saw decedent in his car shortly before the incident; and the Loudonville officer who arrived first on the scene found the wound smoking when he got there. Simply questioning whether law enforcement has exhausted all avenues of investigation is not enough to prove, by a

preponderance of the evidence, that appellee's verdict is incorrect. Appellant made no showing that any additional investigation would have revealed evidence incompatible with the coroner's verdict and appellant's theories about what any additional investigation might find are not supported by anything by conjecture or speculation. See *Whitfield v. Bartek*, 11th Dist. Trumbull No. 2007-T-0078, 2008-Ohio-1026.

**{¶50}** Appellant argues this case is similar to *Estate of Severt v. Wood*, 107 Ohio App.3d 123, 667 N.E.2d 1250 (2nd Dist. 1995) and encourages this court to adopt the reasoning in *Severt* to reverse the trial court's decision in this case. However, we find *Severt* to be distinguishable from the instant case. In *Severt*, the trial court ordered the coroner to amend his verdict to list the cause of death as accidental, finding that the manner of death was a question of fact for the trial court to resolve. *Id.* In this case, unlike in *Severt,* the trial court, as the fact finder, weighed the evidence and found the manner of death as determined by appellee should remain unchanged. In addition, in *Severt*, decedent telephoned her daughter before her death and said somebody was outside her house banging on the windows. *Id.* In this case, there is no evidence of an unknown person at the scene. We find that competent and credible evidence existed for the trial court to determine that appellant did not overcome the presumption in favor of the coroner's verdict.

**{¶51}** Based upon the foregoing, appellant's assignment of error is overruled and the October 7, 2014 judgment entry of the Ashland County Court of Common Pleas is affirmed.

By: Gwin, P. J,

Wise, J., and

Baldwin, J., concur