

**IN THE COURT OF APPEALS OF IOWA**

No. 0-322 / 09-1561  
Filed May 26, 2010

**JANICE SIMINGTON,**  
Plaintiff-Appellant,

**vs.**

**DR. PATRICIA BANWART,**  
**Palo Alto County Medical Examiner,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Palo Alto County, David A. Lester,  
Judge.

Janice Simington appeals from a district court ruling denying her request for an order compelling the county medical examiner to release the autopsy report of her son's death, after her son's estranged spouse refused to make the entire report available. **AFFIRMED.**

Daniel J. Millea of Zelle, Hofmann, Voelbel & Mason, L.L.P., Minneapolis,  
Minnesota, for appellant.

Peter C. Hart, County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Mansfield, JJ.

**MANSFIELD, J.****I. Introduction.**

This case presents the question of whether a court should order the county medical examiner to make an autopsy report available to the mother of the decedent, when she is unable to obtain that report from the decedent's "immediate next of kin," a spouse who had filed for dissolution. For the reasons set forth herein, we ultimately conclude Iowa Code section 22.7 (2009) does not contemplate disclosure in these circumstances, and therefore affirm the judgment of the district court.

**II. Facts and Procedural Background.**

The plaintiff, Janice Simington, is the mother of Randy Simington.<sup>1</sup> On February 29, 2008, Randy committed suicide. Randy was forty-eight years old at the time. The Palo Alto County Medical Examiner performed an autopsy and prepared a written report thereof.

In January 2008, Randy's wife of twenty-three years, Kristyn Simington, had filed for divorce. According to Kristyn, they had separated a year before that and she had told Randy she wanted to date someone else. It was Kristyn's intent in January to go through with the divorce and make the parties' separation final.

Randy and Kristyn had two adult children aged twenty-four and twenty-two (Jeremy and Adam) and two minor children at the time of Randy's death. Randy also had a thirty-year-old son (Chance) who was Kristyn's stepson.

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<sup>1</sup> For the sake of clarity, we will use first names in this opinion.

As Randy's next of kin, Kristyn received a copy of the Palo Alto County Medical Examiner's four-page autopsy report.<sup>2</sup> Kristyn declined to make that copy available to Randy's mother or siblings. In a letter to them, Kristyn stated that she was making available a redacted version of the report that contained information regarding Randy's heart condition at the time of his death.<sup>3</sup> However, she also explained,

The reason that the rest of the information is blocked out is that the adult children have been notified of this information and prefer for it not to be released. As Randy's legal surviving spouse, and the mother of the children involved, I have honored this request.

On or about December 10, 2008, Janice sought a full copy of the autopsy report from the Palo Alto County Medical Examiner, who declined the request. On January 30, 2009, Janice filed a petition for declaratory relief and writ of mandamus. In her petition, Janice asked the court to exercise its authority under Iowa Code section 22.7 ("unless otherwise ordered by a court") to direct that the

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<sup>2</sup> Iowa Code section 22.7 ("Confidential Records") provides in part:

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

. . . .  
 (41) Medical examiner records and reports, including . . . autopsy reports. However, . . . autopsy reports shall be released to the decedent's immediate next of kin upon the request of the decedent's immediate next of kin unless disclosure to the decedent's immediate next of kin would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual. Information regarding the cause and manner of death shall not be kept confidential under this subsection unless disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

<sup>3</sup> Randy's father died of a heart attack in 1982. Randy's mother was interested in the autopsy report partly because of information it might provide regarding family-related heart issues that would be of concern to her children and grandchildren.

autopsy report be released to her. She avowed that she has no intent to release its contents to the general public.

A hearing on Janice's petition was held on September 11, 2009. The medical examiner, Janice, and Kristyn were the only witnesses.

The medical examiner, Dr. Patricia Banwart, testified that she had declined to release the autopsy report to anyone other than Kristyn, based on her understanding that autopsies are confidential with the sole exception of next of kin.

Janice testified that she had never had access to the full autopsy report, although she had "glanced at it" once at the police station. "So we didn't really get to comprehend what was in it." She also testified that she had not reviewed the redacted copy provided by Kristyn, although one of her other sons had taken it to his doctor. Janice stated that she was still grieving over Randy's death, that she was taking prescription medication to deal with that grief, and that she believed obtaining a copy of the full report would help her deal with her grief.

Kristyn, who actually works at the hospital that is the custodian of the autopsy report, testified that she discussed the potential release of the autopsy report with Chance, Jeremy, and Adam (the adult children of Randy). After the court overruled Janice's hearsay objection because the proceeding was in equity, she explained:

Jeremy and Adam felt like it was something we needed to make the choice on together, and they didn't feel that it was something that needed to be made completely available to the family, the rest of the family.

. . . .

I had that discussion by email with Chance and he also agreed that it's not something that should have to be passed on to the extended family.

Kristyn also testified that she herself did not feel it was in the best interests of Randy's children for the autopsy report to be made available to Randy's mother or siblings:

I think there is some things in there that need to be kept within Randy's immediate family, which is us. I was married to him for 23 years. I was with him for 28 years, which is longer than he was actually living with his birth family. I loved him too. I wouldn't have stayed with him for 28 years had I not loved him very much. . . . Randy suffered from depression, and I hope someday that his family can understand that somebody does not kill themselves because of what other people do to them.

Nonetheless, Kristyn claimed that she would have released the full report had the adult children wanted her to do so.

At the conclusion of the hearing, the district court requested that a copy of the full autopsy report be received *in camera*.<sup>4</sup> Subsequently, in a September 18, 2009 ruling, the court denied Janice's petition. The court emphasized that release of the report "would not promote the purpose of Iowa Code section 22.2(1) as determined by the Iowa Supreme Court in the *City of Des Moines* case;<sup>[5]</sup> that being to prevent state government from keeping its decision-making activities hidden from the public." The court also concluded,

[B]y declaring autopsy reports as confidential, and then carefully circumscribing the entities and individuals to whom the reports could be released by the medical examiner preparing the report, the legislature spelled out its intent to significantly limit public access to the very personal and sometimes sensitive information contained in such reports.

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<sup>4</sup> That report is also part of our record on appeal.

<sup>5</sup> *Iowa Civil Rights Comm'n v. City of Des Moines*, 313 N.W.2d 491, 495 (Iowa 1981).

Janice now appeals.

### **III. Standard of Review.**

We review this matter, which was tried in equity, de novo. See Iowa R. App. P. 6.907; see also *DeLaMater v. Marion Civil Serv. Comm'n*, 554 N.W.2d 875, 878 (Iowa 1996) (“Our review of the district court’s application of section 22.7 to the undisputed facts shown in the record before it is de novo.”).

### **IV. Merits.**

This case requires us to decide whether a court should order the release of an autopsy report to a close relative of the decedent when the decedent’s immediate next of kin is an estranged spouse. Janice argues on appeal that release of the report to her will serve two purposes: First, it will provide the entire family with a “vital medical record that may be of use to her and her family members,” and, second, it will “aid her in gaining closure and acceptance following the tragic loss of her beloved son.” We agree with the district court that the redacted copy of the report achieves her first goal, and therefore our analysis will focus on the second goal.

Iowa’s open records law, chapter 22, generally makes public records available upon request except for certain categories of “confidential records” set forth in section 22.7. These “confidential records” include autopsy reports. See Iowa Code § 22.7(41). Autopsy reports, however, shall be released upon request to the decedent’s “immediate next of kin.” *Id.* Furthermore, even “confidential records” are to be released when “otherwise ordered by a court.” *Id.* § 22.7. The question here is the scope of the “otherwise ordered by a court” exception. Should it be utilized in the present circumstances?

Janice argues that this is a compelling case for the court to order release of the autopsy report. She urges that there is a “liberal policy of access [to public records] from which departures are to be made only under discrete circumstances.” *Northeast Council on Substance Abuse, Inc. v. Iowa Dep’t of Pub. Health*, 513 N.W.2d 757, 759 (Iowa 1994) (quoting *City of Dubuque v. Telegraph Herald, Inc.*, 297 N.W.2d 523, 526 (Iowa 1980)). Iowa law recognizes “a presumption in favor of disclosure.” *Id.* (citing *City of Dubuque*, 297 N.W.2d at 527). “[T]he specific exemptions in section 22.7 are to be construed narrowly.” *Id.*

More specifically, Janice contends that the point of section 22.7(41) is to keep autopsy reports confidential from the public, not from other family members. Finally, Janice argues that this case presents a rather unique situation, in that the “immediate next of kin” had filed for dissolution at the time of death and thus was not on friendly terms with other members of Randy’s family.

While we acknowledge the force of these arguments, they ultimately do not carry the day for us, just as they did not for the district court. To begin with, the supreme court has cautioned against “overutilization” of the principle that exemptions to the open records law are to be construed narrowly. *Northeast Council*, 513 N.W.2d at 759. “Legislative intent” remains the touchstone. *Id.*

That being said, we agree with the district court that the underlying purpose of the open records law is “to open the doors of government to public scrutiny—to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act.” *Iowa Civil Rights Comm’n*,

313 N.W.2d at 495. This case simply does not implicate those concerns. In our view, that factor speaks in favor of judicial restraint in this case.<sup>6</sup>

Furthermore, while this case presents a special circumstance, in that the only family member with an automatic right of access to the autopsy report is an estranged spouse, Janice is *not* the next person in line. The next most “immediate next of kin” are Randy’s children. See Iowa Code § 633.219 (listing the order for intestate succession); see also 26B C.J.S. *Descent & Distribution* § 23, at 320 (2001) (defining “next of kin” as “one who is entitled to take by intestate succession”). In this case, depending on the weight one attaches to Kristyn’s hearsay testimony, his adult children are either opposing release of the report or, at a minimum, not supporting it.

In other words, we could see a good argument for a court to use its “unless otherwise ordered” authority to bypass the person who is technically the “immediate next of kin” where that person is a separated spouse who had filed for and was intending to proceed with a dissolution of marriage. We have more difficulty seeing why a court should take a further step and bypass the adult children who are the next “immediate next of kin.” Section 22.7(41) clearly does not provide for a general right of access by family members, but limits access expressly to the “immediate next of kin.”<sup>7</sup>

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<sup>6</sup> We recognize that Janice has the opposite view. She argues that the autopsy report would not be released to the general public, but only to family members; hence, the confidentiality concerns that underlie the section 22.7(41) exemption are not relevant. However, we think the proper context for analyzing this question is the open records law as a whole. Since Janice is relying on the open records law as a basis for obtaining a report that she would otherwise not be able to obtain, it seems to us that her policy argument needs to find support in the overall policies behind the statute.

<sup>7</sup> We reiterate: If this case were brought by Chance, Jeremy, and Adam, we would likely view it differently. In that case, we could see an argument that the court



Like the district court, we do not view the “unless otherwise ordered by a court” language in section 22.7 as authority for a court to order release of an otherwise confidential public record whenever it thinks that would be fair or appropriate. Rather, we believe this language is meant to provide an escape valve when strict application of the literal language of the exemption would undermine either the exemption itself (see above) or some other provision of law. An example of this is *Mediacom Iowa, L.L.C. v. Incorporated City of Spencer*, 682 N.W.2d 62 (Iowa 2004). There the court ruled that the section 22.7(3) exemption for “trade secrets” cannot be used to shield documents from the regular discovery process in litigation. *Mediacom*, 682 N.W.2d at 69. As the supreme court explained:

We agree with Mediacom that there is nothing in section 22.7 that suggests the legislature intended to limit the discovery rights of litigants in cases involving governmental entities. To the contrary, section 22.7 indicates the opposite because it allows disclosure upon a court order. We conclude, contrary to the district court, that section 22.7 does not trump our discovery rules.

*Id.* Similarly, in *Poole v. Hawkeye Area Community Action Program, Inc.*, 666 N.W.2d 560, 565 (Iowa 2003), the court held that student records that were otherwise relevant could be subpoenaed in litigation notwithstanding their exempt status under section 22.7(1). We consider *Brown v. Iowa Legislative Council*, 490 N.W.2d 551 (Iowa 1992), also consistent with this line of thought. There, the supreme court upheld a district court’s refusal to order disclosure of computerized redistricting data bases on the ground that they were “trade

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should exercise its “otherwise ordered” authority because the sons are the de facto “immediate next of kin,” given the dissolution proceeding that was impending at the time of death. See, e.g., *In re Estate of Quinn*, 243 Iowa 1266, 1269-70, 55 N.W.2d 172, 173-74 (1952).

secrets.” *Brown*, 490 N.W.2d at 553-54. However, the supreme court did observe that the “fundamental right” of voting was involved, and that a trial court could use its “otherwise ordered” authority to “allow an exploration of the materials while protecting the trade secret.” *Id.* at 554. In short, the supreme court indicated that the “otherwise ordered” language, which it described as “an escape clause,” could be used where a fundamental right was at issue so long as the substance of the exemption was preserved. *Id.*

What the supreme court has not allowed is the use of the “otherwise ordered by a court” language to revise the scope of a particular exemption. Notably, in *Gabrilson v. Flynn*, 554 N.W.2d 267, 273 (Iowa 1996), the supreme court held that a district court should apply the section 22.7(19) exemption for “examinations” as it was written, without weighing the public’s “right to know” against the school district’s interest in secrecy. As the supreme court put it, “There is no indication that the legislature sought a balancing of policy interests when construing section 22.7(19), as plaintiff proposes.” *Gabrilson*, 554 N.W.2d at 273.

Here, the General Assembly has written sixty-four separate exemptions into the public records law with considerable care and detail. Section 22.7(41) is one of those exemptions. Its language is specific and clear that autopsy reports are exempt from disclosure except to “the decedent’s immediate next of kin.” That was the legislature’s policy decision; it did not opt for “the decedent’s family members” or some other phrase. While we have great sympathy for Janice’s loss and her desire for closure, we believe that we are not at liberty to choose a different “balancing of policy interests.” *Gabrilson*, 554 N.W.2d at 273.

For the foregoing reasons, we affirm the judgment of the district court.

**AFFIRMED.**