IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

YAMEIA TAYLOR	)	**CASE NO. CV 10 736337**
	)	
Plaintiff,	)	**JUDGE JOHN P. O'DONNELL**
	)	
vs.	)	
	)	
OFFICE OF THE CORONER	)	
CUYAHOGA COUNTY	)	
	)	**JOURNAL ENTRY**
Defendant.	)	

John P. O'Donnell, J.:

Yameia Taylor, the mother of decedent Yazmyn Taylor, filed this lawsuit under Section 313.19 of the Ohio Revised Code challenging the Cuyahoga County coroner's decision that her son's death was caused by homicide.[1] By a written discovery request, the plaintiff asked the coroner to produce his entire file pertaining to the autopsy of Yazmyn Taylor. The coroner resisted producing the file and has asked the court for a protective order on the basis that the file is statutorily exempt from disclosure.

In connection with the coroner's motion for a protective order the court requested that the coroner provide a copy of the file for *in camera* inspection by the court. That examination is done and this entry follows.

[1] The plaintiff filed the complaint as a declaratory judgment action. However, the Ohio Supreme Court has held that use of declaratory judgment to resolve a challenge to a coroner's verdict is inappropriate. *Perez v. Cleveland* (1997), 78 Ohio St.3d, 376, syllabus 1. Nevertheless, the plaintiff's complaint is authorized by statute and the reference to declaratory judgment, although erroneous, is harmless.

STATEMENT OF FACTS[2]

Yazmyn Taylor was eight years old when he was found sick in his Cleveland home on January 11, 2009. An ambulance took Yazmyn to South Pointe Hospital. He was admitted to the emergency room at 12:14 p.m. in full cardiopulmonary arrest. Treatment and drug therapy were unavailing, and Yazmyn was officially pronounced dead by Dr. Kelley of the South Pointe emergency department at 12:38 p.m.

Because the child died "suddenly when in apparent health, or in any suspicious or unusual manner,"[3] his body was taken to the Cuyahoga County coroner for an autopsy. Although it is not dated, the coroner's verdict appears to have been returned on June 26, 2009. The verdict notes that the investigation and autopsy revealed "medical neglect" and recites the cause of death, and other conditions, as follows:

> **Cause of Death:** Acute bronchopneumonia with acute bronchitis and
> Due To: acute bronchiolitis. Sequelae of hypoxic-ischemic
> encephalopathy of uncertain etiology. HOMICIDE.
>
> **Other Condition(s):** Supratherapeutic chlorpheniramine level.

LAW AND ANALYSIS

The coroner argues that his records are exempt from disclosure under R.C. § 149.43. The coroner does not offer reasons why particular provisions of that law apply in this case. Instead, the coroner broadly asserts that the autopsy records "fall within exceptions to disclosure and may not be produced."[4] However, the coroner has excerpted portions of the public records statute that exempt 1) confidential law enforcement investigatory records, 2) medical records, and 3)

[2] All of the facts are found in the June 26, 2009, one-page coroner's verdict, or are reasonable inferences from the verdict. The plaintiff has apparently already been given a copy of the verdict.
[3] R.C. 313.12.
[4] Defendant's motion for a protective order, p. 5.

trial preparation records from disclosure. The court will therefore limit its review to the applicability of those exceptions.

Section 149.43 of the Ohio Revised Code defines public records and mandates that they be made available for inspection and copying. Provisions of the statute pertinent to this case include the following:

> **149.43 Availability of public records** . . .
>
> (A) As used in this section:
>
> (1) "Public record" means records kept by any public office. . . "Public record" does not mean any of the following:
>
> (a) Medical records;
>
> ***
>
> (g) Trial preparation records;
>
> (h) Confidential law enforcement investigatory records;
>
> ***
>
> (2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal . . . nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:
>
> (a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;
>
> (b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;
>
> (c) Specific confidential investigatory techniques or procedures or specific investigatory work product;
>
> (d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

> (3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.
>
> (4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.
>
> ***

Section 149.43 applies to public records generally. But the coroner has ignored a separate statute, §313.10, that pertains to records of the coroner specifically. That section categorizes the coroner's records as public records subject to inspection and copying, but excepts from public records some of the same kinds of records exempt from disclosure in §149.43, including medical records. Yet the statute allows a decedent's next of kin almost unfettered access to the coroner's files. That portion of the statute provides:

> **313.10 Records to be public** . . .
>
> (C)(1) The coroner shall provide a copy of the full and complete records of the coroner with respect to a decedent to a person who makes a written request as the next of kin of the decedent.

The statute includes medical records and confidential law enforcement investigatory records as part of the "full and complete records" to be made available to a decedent's next of kin. Plaintiff Yameia Taylor is a next of kin of the decedent as defined at R.C. §313.10(C)(1)(c), *i.e.* a parent. Her discovery request, through counsel, constitutes a written request. She is therefore entitled to the coroner's complete file even if it contains medical records and confidential law enforcement investigatory records. The coroner's objections to production on those grounds is overruled.

That leaves as the only basis for a protective order an exemption from disclosure as trial preparation records under R.C. §149.43(A)(4). The coroner's objection to producing his file to the decedent's mother on that separate basis is overruled for the following reasons.

First, the coroner has not designated portions of the file he considers trial preparation materials. That suggests that he deems the entire file to be a "trial preparation record" not available to the public. But allowing that interpretation would gut the statute classifying coroner's records as public by ensuring that they could never be disclosed. R.C. § 313.19 allows any coroner's verdict to be contested in the court of common pleas. Because of that, the coroner could reasonably anticipate litigation with every autopsy and use that as justification to keep all of his files secret. That result cannot be what the legislature intended by enacting not only R.C. § 149.43 to make available the records of public offices generally, but also R.C. § 313.10 to make the coroner's records specifically available to a decedent's parents. If the exception is going to swallow the rule, why have the rule?

Second, the court has examined the complete file. The broad majority, if not all, of the documents in the file fall into categories that R.C. § 313.10(G) includes as part of the "full and complete records" the coroner is required to disclose to the next of kin. Some records categorized as part of the "full and complete records" that must be disclosed can also arguably be described as trial preparation records exempt from disclosure. In this event, public policy in favor of disclosure dictates that the documents should be classed in a way that would permit their disclosure.

Finally, the court is not persuaded that any of the documents actually are trial preparation materials because they appear to have been prepared pursuant to the statutory duties of the coroner and not "specifically compiled" in anticipation of litigation

CONCLUSION

R.C. § 313.10(C) requires the coroner to "provide a copy of the full and complete records of the coroner with respect to a decedent to a person who makes a written request as the next of kin of the decedent." The decedent's mother is entitled to the "full and complete records of the coroner" as produced to the court *in camera*. The coroner is ordered to provide those records to Yameia Taylor forthwith. To preserve the record on appeal, the copies submitted to the court will be sealed and made part of the record for appellate review.

IT IS SO ORDERED:

_____ Date: _____
JUDGE JOHN P. O'DONNELL

SERVICE

A copy of this journal entry was sent by e-mail, this 27th day of April, 2011, to the following:

Pamela E. Pantages, Esq.
ppantages@beckerlawlpa.com
Attorney for plaintiff

A copy has not been e-mailed to Paul J. Cristallo, Esq., attorney for defendant, since he has failed to comply with the requirement of Local Rule 8(A) that an attorney include an e-mail address on every filing.

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JUDGE JOHN P. O'DONNELL