

October 30, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 06-10389
Summary Calendar

JASON NEEDLEMAN,
as trustees and beneficiaries of the 1998 Needleman Irrevocable
Trust,

JOSH NEEDLEMAN,
as trustees and beneficiaries of the 1998 Needleman Irrevocable
Trust,

Plaintiffs-Appellants,

versus

JOHN HANCOCK LIFE INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Texas

(3:03-CV-1955)

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:*

Plaintiffs Jason and Josh Needleman, acting as trustees of their late father's estate, appeal from a district court's order granting John Hancock's motion for summary judgment on the affirmative defense of suicide. We affirm.

Michael Needleman died in a bathtub, shot in the chest with a .357 Magnum revolver. His wife witnessed the suicide, having

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

discovered him in the bathroom, armed, redfaced, and crying. When she entered, he told her, "I wanted to do this before you got home." After 45 minutes, with his wife by his side, he pulled the trigger.

The district court ruled that John Hancock had proved the affirmative defense of suicide as a matter of law, pretermitted a scheduled bench trial. Plaintiffs speculate that Needleman might have slipped in the bathtub, accidentally discharging his weapon. In support, Needleman's son submits in an affidavit that the .357 Magnum has a hair trigger. There was a witness to the suicide, however. And Mrs. Needleman's deposition testimony does not support the plaintiff's account. Mrs. Needleman was asked, "And what facts do you have to suggest that his elbow slipped?" She responded, "I do not have any facts." When pressed further, she reiterated, "I know of no facts."

Plaintiffs next argue that it would have been irrational for Needleman, a man who was wildly successful in business and in life, to have committed suicide. They offer mountains of evidence that Needleman loved his family and that they loved him. This evidence makes the case much sadder, but not closer.

The judgment of the district court is AFFIRMED.