Court Weighs Commissioner's Authority in Free-standing Emergency Department

What You Need to Know

- Georgia Court of Appeals weighs authority debate over fate of proposed free-standing emergency department in central Georgia.
- Attorneys dispute whether Georgia Department of Community Health Commissioner held authority to overturn a hearing officer's decision.
- Alleged commissioner review statute violations countered with judicial estoppel argument, among others.

The Georgia Court of Appeals kicked off its August term weighing an authority debate over the fate of a proposed free-standing emergency department in central Georgia.

Unlike many oral arguments, the Aug. 3 session before the Fourth Division panel involved few questions from Presiding Judge Stephen Dillard and Judges Amanda Mercier and Todd Markle. Instead, attorneys received few interruptions as they debated whether Georgia Department of Community Health (DCH) Commissioner Caylee Noggle possessed the authority to overturn a hearing officer’s decision about the facility sought in Bonaire, about 20 miles south of Macon.

‘Cherry-picking Facts’

Considering five related cases at once, the intermediate appellate panel began by hearing oral arguments from Assistant Attorney General Cathelynn Tio on behalf of the DCH. Tio argued that, when Houston County Superior Court Judge Edward Lukemire overturned the agency’s decision to grant a certificate of need to Coliseum Medical Center to build the free-standing emergency department, the trial court erred.

“The general review considerations do not require the department to compare free-standing emergency department services against different types of services,” she said. “The hearing officer cannot limit the commissioner’s authority to interpret law and make policy by cherry-picking facts.”

Tio argued that the DCH is permitted to evaluate free-standing emergency departments in and of themselves and separate from hospitals. Her stance countered findings by the hearing officer that an urgent care center should be considered comparable. Tio pointed out that, because urgent cares are unregulated, the DCH does not track them like hospitals.

“The trial courts erred in this respect because they overlooked statutory context, specifically that free-standing emergency departments are regulated as a new type of health care facility.”

Representing Coliseum Medical Center, Kathlynn Butler Polvino of KBP Law requested the Georgia Court of Appeals also reverse a decision issued by Peach County Superior Court Judge Connie Williford challenging the commissioner's authority to overturn the hearing officer.

"The hearing officer made numerous material errors that the commissioner was statutorily authorized to correct under O.C.G.A. 31-6-44 (k)(1)," Polvino argued. "The hearing officer wrongly embedded legal conclusions and policy decisions within the section of his decision, titled, 'Findings of Fact.' The commissioner was not bound to accept these disguised legal conclusions under the competent substantial evidence standard of review. That standard of review is applicable to overturning actual facts."

Polvino requested the intermediate appellate panel reinstate the final DCH agency decision to grant a certificate of need Coliseum Medical Center to develop the free-standing emergency department in Bonaire.

'Completely Backward'

Across the aisle, appellee attorney Armando Luis Basarrate II made a different request of the panel. Representing Medical Center of Peach County, one of three opposing nearby hospitals, Basarrate sided with the Peach County trial court's determination that the commissioner didn't meet the standard to overturn the hearing officer's certificate-of-need decision. He argued the commissioner's review in a certificate-of-need context "is only as broad or as narrow as the statute prescribes."

"The [Georgia Department of Community Health] takes the position in its briefing that the commissioner has the power to fact find. That's wrong. In fact, that theory is completely backward," Basarrate argued. "The commissioner review statute does not give the hearing officer the power to reassess evidence, and particularly not to reject facts on the basis that he thinks they're inapplicable to the analysis of the general review considerations."

Instead, Basarrate argued that a "straightforward reading" of the plain language of the commissioner review statute made clear that the commissioner's duty is to "scour the record" for "competent evidence" capable of upholding the hearing officer's factual findings.

When Dillard questioned what "competent" meant, Basarrate replied, "we believe it means admissible."

On rebuttal, appellant attorney Polvino countered with additional definitions of "competent" including, "appropriate and needed to prove the issue of fact that the parties have presented" and "sufficient evidentiary support from the totality of the record which proves an issue of fact."

"Where the court needs to tread carefully here is there are issues of fact, and there are conclusions of law," she argued. "The fatal error of the hearing officer here in adopting an order prepared by the attorneys for the opposing hospitals was to just chalk these findings of fact full of legal conclusions."

Dillard thanked the attorneys for their "excellent presentations and excellent briefs," before concluding the oral argument. Minutes later, a related second oral argument began pitting AU Medical Center Inc. against the Georgia Department of Community Health and Doctors Hospital of Augusta.

'Judicial Estoppel'

After the DCH granted Doctors Hospital of Augusta a certificate of need to establish a free-standing emergency room about 20 minutes northwest in Evans, AU Medical Center sought a petition for judicial review. However, unlike the judges in Houston and Peach counties, Fulton County Superior Court Judge Jane Barwick denied the plaintiff's petition, prompting the intermediate appeal.

Representing AU Medical Center, appellant attorney Robert C. Threlkeld argued Noggle violated three components of the commissioner review standard. First, he highlighted that the commissioner couldn't reject nor modify findings of fact, unless they're "not supported by competent substantial evidence."

"[The] commissioner may not reject or modify conclusions of law and use that to form the basis for rejection findings of fact, and that's what happened here, as well, repeatedly," Threlkeld argued. "If the commissioner rejects or modifies the conclusion of law, it must then state with particularity the reason for modification or rejection and must make a finding that it's substituted conclusion of law is more reasonable."

Threlkeld argued any substituted conclusion of law suggesting hospital emergency services are not the same services as hospital emergency services offered in a free-standing location "is wrong as a matter of law."

But opposing counsel Josh Belinfante of the Robbins Firm countered that the commissioner had applied the appropriate standard of review.

Representing Doctors Hospital of Augusta, Belinfante argued the intermediate appellate panel should affirm the trial court before attacking AU Medical Center's arguments under the doctrine of judicial estoppel.

Belinfante homed in on AUMC's own application for a free-standing emergency department four miles away from Doctors Hospital in Columbia County that remained pending in an administrative appeal process. He noted the plaintiff submitted its application a year after Doctors Hospital.

"AUMC convinced the [Georgia Department of Community Health] that there was a need for its facility over [Doctors Hospital's and Piedmont Augusta's] objection, and it has not withdrawn that certificate of need," Belinfante argued. "As the court is aware, in 2020 AUMC secured a certificate of need to build a hospital in Columbia County, and successfully argued to this court that free-standing emergency departments and hospitals are not comparators or existing alternatives. So when counsel says as a matter of law the commissioner got it wrong, that is incorrect and irreconcilable with what this court said in that case."

Arguing judicial estoppel applies when a party makes a legal argument that is successful and then takes a contradictory position in a later legal proceeding, Belinfante further challenged plaintiff counsel's position.

"If you look at AUMC's application for its own free-standing emergency department, they said … 'it is clear there is need for the proposed project,'" Belinfante argued. "It can't claim there's a need for a free-standing emergency department when it has an AUMC label on it, and then say there's no need when it simply has a Doctor's Hospital label on it."

On rebuttal, Threlkeld said appellee counsel's judicial estoppel argument lacked substance.

"The court held in the Columbia County hospital case that denial of an application for a free-standing emergency department did not bar the denial of the construction of a new hospital when there was need for the new hospital under the department's service specific rule," Threlkeld argued. "The commissioner cannot create its own unilateral framework of analysis."

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