In the Missouri Court of Appeals
Eastern District

DIVISION IV

ST. JOHN'S MERCY HEALTH SYSTEM,	)	No. ED95714
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	Honorable Richard C. Bresnahan
MISSOURI HEALTH FACILITIES	)	
REVIEW COMMITTEE, and	)	
JAMES K. TELLATIN,	)	
	)	
Respondents,	)	
	)	
PATIENTS FIRST COMMUNITY HOSPITAL,	)	
	)	
Intervenor/Respondent.	)	FILED: July 26, 2011

Introduction

St. John's Mercy Health System (St. John's) appeals the trial court's dismissal of its claim challenging a rule promulgated by the Missouri Health Facilities Review Committee (MHFRC) and applied to Intervenor Patients First Community Hospital (Patients First). St. John's challenges the validity of the MHFRC rule that exempts new hospitals costing less than $1 million from the statutory requirement of obtaining a certificate of need. We hold that St. John's has presented a ripe and justiciable controversy for review, and further hold that the MHFRC rule regarding new hospitals is valid.

Facts and Procedural History

In an effort to control increasing health care costs, the Missouri legislature enacted the Certificate of Need Law ("CON Law"), Sections 197.300-197.366, RSMo 2006.[1] The purpose of the CON Law is to decrease unneeded or duplicative health care facilities. Missouri Health Facilities Review Comm. v. Admin. Hearing Comm'n of Missouri, 700 S.W.2d 445, 445 (Mo. banc 1985). Under this statute, any increase in health care facilities in Missouri is conditioned upon the issuance of a certificate of need by the MHFRC. Persons proposing to build new health care facilities or existing health care facilities desiring to expand their services are required to obtain a certificate of need signifying that the community proposed to be served actually needs additional health care services. Section 197.315.

The CON Law established the MHFRC and authorized it to grant certificates of need. The enabling statute further empowered the MHFRC to promulgate reasonable rules and regulations to enforce the underlying statute. Section 197.310. Pursuant to its statutory authority, the MHFRC promulgated 19 CSR 60-50.400(6)(F)(1) (hereinafter the "New Hospital Rule"), which exempts new hospitals costing less than $1 million from the requirement of obtaining a certificate of need.

In April 2010, in accordance with the New Hospital Rule, Patients First filed a letter of intent with the MHFRC requesting a non-applicability certificate of need letter to construct a new three-bed facility at an estimated cost of $953,750. St. John's filed suit against the MHFRC seeking a declaratory judgment that the New Hospital Rule was invalid. St. John's further sought to enjoin the MHFRC from applying the rule and granting Patients First an exemption from the certificate of need requirement. The MHFRC filed a motion to dismiss and a motion for judgment on the pleadings. Patients First intervened and filed its own motion to dismiss the St. John's action. In its judgment, the trial court held St. John's had not presented a ripe and

[1] All statutory references are to RSMo 2006 unless otherwise indicated.

justiciable controversy. The trial court reasoned St. John's had not presented a justiciable controversy because, at the time of the circuit court's decision, the MHFRC had not applied the rules challenged by St. John's and had not yet decided whether Patients First would be exempt from obtaining a certificate of need. Despite its ruling that the case was not justiciable, the trial court proceeded to address the merits of St. John's claim and found that the MHFRC had not exceeded its authority in promulgating the New Hospital Rule.[2] The trial court dismissed the action without prejudice. St. John's now appeals.

Points on Appeal

St. John's raises two points on appeal. First, St. John's alleges that the trial court erred in dismissing the action because its claim was both ripe and justiciable. St. John's avers that any questions regarding the ripeness of its claim were rendered moot by the MHFRC's subsequent application of the challenged rule to the request made by Patients First. St. John's further claims to possess requisite standing to pursue its declaratory judgment action because it challenges only the validity of the New Hospital Rule and does not appeal the merits of the MHFRC's decision to award Patients First a non-applicability certificate of need letter.

In its second point on appeal, St. John's contends that the trial court erred in upholding the validity of the New Hospital Rule. St. John's suggests that the New Hospital Rule conflicts with the statutory authority for that rule because the CON Law requires any new hospital to obtain a certificate of need, whereas the New Hospital Rule exempts new hospitals costing less than $1 million from that requirement. St. John's argues that this conflict renders the New Hospital Rule invalid, and the trial court's judgment applying that rule erroneous.

[2] As discussed infra, there is some ambiguity in the trial court's order as to whether it purported to actually rule on the merits of St. John's claim given the procedural posture of the case at the time of the dismissal.

Standard of Review

We review a trial court's dismissal on grounds of justiciability *de novo*. Hindman Real Estate, Inc. v. City of Jennings, 283 S.W.3d 804, 806 (Mo. App. E.D. 2009). When reviewing administrative rules and regulations, we adhere to the well established principle that such rules and regulations must be sustained unless they are unreasonable and plainly inconsistent with the authorizing statute and should not be overruled except for weighty reasons. Foremost-McKesson, Inc. v. Davis, 488 S.W.2d 193, 197 (Mo. banc 1997) (internal citations omitted). We further recognize that "[t]he interpretation and construction of a statute by an agency charged with its administration is entitled to great weight." Id., quoting Federal Trade Comm'n v. Mandel Bros., Inc., 359 U.S. 385, 391 (1959).

Discussion

I. St. John's facial challenge to the New Hospital Rule is justiciable.

The first issue on appeal is whether St. John's facial challenge to the New Hospital Rule is justiciable. Justiciability requires that the plaintiff's claim is ripe and that the plaintiff has standing to bring the underlying claim. See Missouri Health Care Ass'n v. Attorney Gen. of the State of Missouri, 953 S.W.2d 617, 620 (Mo. banc 1997). When St. John's filed its petition for declaratory judgment, the MHFRC had not yet ruled on Patients First's request for a non-applicability certificate of need letter. On September 15, 2010, the MHFRC issued a letter stating that Patients First was exempt from the requirement of obtaining a certificate of need under the New Hospital Rule. St. John's posits that its claim is ripe because the MHFRC has subsequently applied the New Hospital Rule to Patients First. St John's further contends that it has standing to challenge the MHFRC under Sections 536.050 and 536.053. The MHFRC and Patients First counter that St. John's lacks standing to pursue its claim against the MHFRC

because Missouri does not recognize standing for economic competitors to challenge a regulation applied to a third party. We address each justiciability requirement in turn.

A. St. John's claim is ripe because the MHFRC has applied the New Hospital Rule.

A claim is not ripe when the question depends on a probability that an event will occur. Buechner v. Bond, 650 S.W.2d 611, 614 (Mo. banc 1983), citing Lake Carriers Ass'n v. McMillian, 406 U.S. 498, 506 (1972). At the time of the trial court's ruling, the MHFRC had not decided whether it would apply the New Hospital Rule or whether it would require Patients First to obtain a certificate of need. The trial court held that St. John's claim was not ripe because the MHFRC had not applied the New Hospital Rule. However, after the trial court's ruling, the MHFRC applied the New Hospital Rule and rendered a decision of non-applicability of the certificate of need requirement to Patients First.[3] Accordingly, the trial court's rationale no longer exists and we hold this action is ripe for our review.

B. St. John's has standing to challenge the New Hospital Rule because it is aggrieved by the rule as an economic competitor.

Despite our holding that St. John's claim is ripe for review, St. John's must also have standing in order for its claim to be justiciable. Missouri courts are empowered to render declaratory judgments respecting the validity of agency rules. Section 536.050. Any person who is or may be aggrieved by any rule promulgated by a state agency has standing to challenge that rule in a declaratory judgment action. Section 536.053.

In Missouri Bankers, the Missouri Supreme Court held that Section 536.053 grants standing to economic competitors to challenge the validity of agency rules. Missouri Bankers Ass'n v. Dir. of the Missouri Div. of Credit Unions, 126 S.W.3d 360, 365 (Mo. banc 2003). In that case, a banking association challenged the validity of a rule governing the expansion of

[3] The MHFRC's award of a non-applicability letter to Patients First was not a part of the record before the trial court because it occurred after the trial court dismissed St. John's claim. Therefore we grant St. John's Renewed Motion to Supplement the Record in order to consider the MHFRC's subsequent non-applicability decision as it relates to the issue of ripeness.

credit unions. Id. at 362. The agency that promulgated the rule argued that Section 536.053 only grants standing to parties who are or would be directly aggrieved by a rule, and denied standing to parties who are only indirectly aggrieved as mere economic competitors. Id. at 365. Rejecting this argument, the court held the "broad and unrestricted" language of Section 536.053 demonstrates the legislature's "intent to grant standing to challenge the validity of a rule to any person who is aggrieved to *any extent*." Id. (emphasis added). Therefore, the court held that the banking association, as an economic competitor to credit unions, had standing under Section 536.053 to challenge the validity of a rule governing the geographic expansion of credit unions in Missouri. Id.

St. John's is an economic competitor to any party in geographic proximity that receives a certificate of need exemption under the New Hospital Rule. St. John's operates a health care facility whose financial futures are affected by the number of patients it serves and the number of health care facilities with whom it competes. The New Hospital Rule allows the MHFRC to authorize health care facilities costing less than $1 million without requiring such facilities to obtain a certificate of need. 19 CSR 60-50.400(6)(F)(1). St. John's is adversely affected because the rule allows competing providers to enter its marketplace without demonstrating the community's need for additional health care services. Because St. John's is aggrieved by the New Hospital Rule within the meaning of Section 536.053, it has standing to challenge the validity of the rule.

The MHFRC and Patients First argue that St. John's lacks standing because under Section 197.335 only applicants, not economic competitors, have standing to appeal a decision by the MHFRC granting or denying a certificate of need. However, this argument misstates the actual issue on appeal. St. John's does not appeal the MHFRC's decision to grant Patients First an exemption. Rather, St. John's challenges the validity of the New Hospital Rule itself. This

distinction is significant because Section 536.053 governs standing for parties challenging *rules*, including those promulgated by the MHFRC, whereas Section 197.335 governs standing for parties challenging MHFRC *decisions*. Because St. John's challenges a rule and does not appeal an MHFRC decision, standing here is controlled by Section 536.053, which grants standing to economic competitors like St. John's.

The MHFRC and Patients First also argue that St. John's challenge to the New Hospital Rule is a disguised attempt by St. John's to appeal the merits of the MHFRC's decision to exempt Patients First from the certificate of need requirement. They argue that St. John's motivation behind the current action is to prevent Patients First from receiving a certificate of need exemption, which, they claim, is tantamount to an appeal from the MHFRC's exemption decision. The MHFRC and Patients First argue that because economic competitors lack standing under Section 197.335 to appeal the MHFRC's certificate of need decisions directly, they similarly lack standing to challenge regulations authorizing those decisions when the appellant's actual motivation is to reverse an unfavorable agency decision.

Neither the MHFRC nor Patients First provides, nor do we find, any authority to support this tenuous argument. We acknowledge that St. John's actions to prevent the MHFRC from granting Patients First a certificate of need exemption indeed may stem from St. John's desire to protect its personal economic interests, but further recognize that it is precisely this economic interest that confers St. John's standing to challenge the rule under Section 536.053. Missouri Bankers, 126 S.W.3d at 365. Accordingly, because St. John's is challenging the validity of the New Hospital Rule, and not the merits of the MHFRC's decision to grant Patients First an exemption, St. John's has standing under Section 536.053 to bring this action because it is economically aggrieved by the New Hospital Rule.

III. This Court may address the underlying merits of the trial court's ruling.

Having found St. John's claims to be justiciable, this Court would normally remand the case to the trial court for further proceedings on the merits. However, remand is not always required, or desirable. When a trial court dismisses a case on justiciability grounds, but proceeds to analyze the merits of the underlying claim, it may be appropriate for the appellate court to dispense with remand and rule on the merits of the underlying claims. Clifford Hindman Real Estate, Inc. v. City of Jennings, 283 S.W.3d 804, 808 (Mo. App. E.D. 2009). Such action is particularly appropriate when the trial court's conclusions with regard to the substance and merits of the parties' claims is ascertainable and well known from the record, making a remand to the trial court futile. Id. We find the circumstances of this action distinctly appropriate for us to decline the opportunity to remand this case to the trial court, and instead exercise our power to now address the merits of the underlying claims. Rule 84.14.

Although the exact parameters of the trial court's ruling on the motions to dismiss and for judgment on the pleadings are somewhat unclear, the record before us reveals a thorough analysis of the substantive claims by the trial court. The trial court began its order with an initial finding that St. John's had failed to present a ripe and justiciable controversy. The court also concluded that St. John's was unlikely to succeed on the merits of its claim, presumably for the purpose of denying St. John's request for a preliminary injunction. Notably, the trial court's judgment did not end with these rulings. Instead, the trial court engaged in a lengthy and detailed analysis explaining its finding why the New Hospital Rule did not conflict with the CON Law. However, despite having addressed the merits in detail, the trial court paradoxically dismissed the case without prejudice.

The trial court's precise holding regarding the merits is somewhat puzzling given the procedural posture of the claim, the trial court's lengthy discussion of the merits, and subsequent

dismissal without prejudice. Despite these seemingly inconsistent actions, the trial court's detailed and thoughtful assessment of the New Hospital Rule and the CON Law leaves no doubt in our mind that it would render the same ruling directly on the merits should we remand. Accordingly, in the interest of judicial economy and at the request of the parties, we will determine the merits of the parties' claims on appeal. [4] Rule 84.14.

IV. The New Hospital Rule is valid and does not conflict with the statutory scheme enacted by the legislature.

We finally reach the substantive issue on appeal, whether the New Hospital rule is valid or whether it conflicts with the CON Law passed by the legislature. In particular, we are asked to determine whether the legislature intended new hospitals to trigger the certificate of need requirement regardless of their cost when it enacted and amended Sections 197.305(9) and 197.336. The resolution of this question turns on whether new hospitals are subject to categorization as a new institutional health service requiring a certificate of need only under Section 197.305(9)(a), or whether they may also be found to meet the definition of a new institutional health service under Sections 197.305(9)(b)-(g).

This Court's analysis is guided by the language of the statutes. United Pharmacal Co. of Missouri, Inc. v. Missouri Bd. of Pharmacy, 208 S.W.3d 907, 909 (Mo. banc 2006). We first apply the plain meaning of the statute, and turn to rules of statutory construction only to resolve ambiguity and determine legislative intent. Id. at 910, quoting Bosworth v. Sewell, 918 S.W.2d 773, 777 (Mo. banc 1996). The goal of statutory construction is to ascertain the legislature's intent in enacting the statute. Id. at 909. To determine legislative intent, we review earlier versions of the law, examine the entire act to determine its purpose, or consider the problem the statute was enacted to remedy. United Pharmacal, 208 S.W.3d at 912, citing In re M.D.R., 124 S.W.3d 469, 472 (Mo. banc 2004). Statutory construction is not hyper-technical but rather

[4] In their briefs, all parties requested this Court to forego remand and address the underlying substantive issues on appeal.

should be reasonable, logical, and give meaning to individual statutes. United Pharmacal, 208 S.W.3d at 912, citing In re Boland, 155 S.W.3d 65, 67 (Mo. banc 2005).

The CON Law requires that new institutional health services must obtain a certificate of need. Section 197.315.1. Section 197.305(9) defines "new institutional health service" as:

> (a) The development of a new health care facility costing in excess of the applicable expenditure minimum;
>
> (b) The acquisition, including acquisition by lease, of any health care facility, or major medical equipment costing in excess of the expenditure minimum;
>
> (c) Any capital expenditure by or on behalf of a health care facility in excess of the expenditure minimum;
>
> (d) Predevelopment activities as defined in subdivision (12) hereof costing in excess of one hundred fifty thousand dollars;
>
> (e) Any change in licensed bed capacity of a health care facility which increases the total number of beds by more than ten or more than ten percent of total bed capacity, whichever is less, over a two-year period;
>
> (f) Health services, excluding home health services, which are offered in a health care facility and which were not offered on a regular basis in such health care facility within the twelve-month period prior to the time such services would be offered;
>
> (g) A reallocation by an existing health care facility of licensed beds among major types of service or reallocation of licensed beds from one physical facility or site to another by more than ten beds or more than ten percent of total licensed bed capacity, whichever is less, over a two-year period.

Each subsection of Section 197.305(9) uses the phrase "health care facility," which is defined in Section 197.366 as:

> (1) Facilities licensed under chapter 198, RSMo;
>
> (2) Long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, RSMo;
>
> (3) Long-term care hospitals or beds in a long-term care hospital meeting the requirements described in 42 CFR, section 412.23(e); and
>
> (4) Construction of a *new hospital* as defined in chapter 197.

Section 197.366 (emphasis added).

St. John's argues that new hospitals are subject to each of the seven subsections of Section 197.305(9) because each of the seven subsections apply to "health care facilities" and, under Section 197.366(4), every new hospital is a health care facility. St. John's alleges a new hospital triggers the certificate of need requirement if the new hospital qualifies as a "new institutional health service" under any subsection of Section 197.305(9), even though the new hospital fails to trigger the requirement under Section 197.305(9)(a). St. John's further posits that all new hospitals qualify as new institutional health services because a new hospital necessitates the statutory increases in bed capacity and health services under Sections 197.305(9)(e)-(f). Therefore, St. John's argues, the New Hospital Rule conflicts with the statute because the rule allows the MHFRC to exempt certain new hospitals from the statutory certificate of need requirement whereas the CON Law requires all new hospitals obtain a certificate of need, and provides no exemption. We are not persuaded by St. John's argument.

As we review Sections 197.305(9) and 197.366, it is clear that these two statutes cannot be read in complete harmony. We acknowledge that Section 197.366 defines "health care facility" to include the construction of new hospitals. Section 197.366(4). However, several subsections of Section 197.305(9) take on unexpected meanings which the legislature could not have intended if new hospitals are treated as health care facilities under each subsection of 197.305(9). Subsections (e), (f), and (g) in particular make little sense read in this light because each subsection triggers the certificate of need requirement under conditions that logically could only affect existing hospitals, not new hospitals. For example, Section 197.305(9)(e) requires a health care facility to obtain a certificate of need when it *changes* its number of beds. Section 197.305(9)(f) requires a health care facility to obtain a certificate of need when it adds services not provided the *previous* year. Section 197.305(9)(g) requires a certificate of need upon the

reallocation of beds by an *existing* health care facility to a new location. Contrary to St. John's construction of the Con Law, giving the words of the statute their plain meaning, new hospitals cannot "change" their number of beds and cannot add new services relative to those provided the year before they existed. It further defies any logical analysis that a "new hospital" under the statute also can be "an existing facility" able to reallocate beds to a new location. We must construe statutes beyond their simple text when the direct application of the plain language would create an absurd result. See United Pharmacal, 208 S.W.3d at 912. Having carefully reviewed each statute and the available legislative history of both sections, we hold that certificate of need requirements of Section 197.315.1 apply to new hospitals as "new institutional health services" only under subsection (a) of Section 197.305(9).

This conclusion is amply supported by the available legislative history of both sections. In 1996, the legislature amended Section 197.366 by adding new hospitals to the types of facilities that qualified as "health care facilities." But in 1997, the legislature amended Section 197.305(9)(a). Prior to the 1997 amendment, what is now Section 197.305(9)(a) defined new institutional health services as "[t]he development of a new health care facility." Section 197.305(11)(a), RSMo 1994. The 1997 amendment changed the definition to "[t]he development of a new health care facility *costing in excess of the applicable expenditure minimum*." Section 197.305(9)(a) (emphasis added).

St. John's construction of the CON Law would render meaningless the 1997 amendment to Section 197.305(9)(a). Under St. John's approach, all new hospitals would require a certificate of need because a new hospital necessarily would increase its number of beds by more than 10 percent and would provide services beyond what it had provided the previous year, either of which trigger the requirement of a certificate of need. See Sections 197.305(9)(e), (f). Yet, logically we can only conclude that had the legislature intended for all new hospitals to require a

certificate of need, there would have been no reason for the 1997 amendment to Section 197.305(9)(a). We do not presume the legislature to enact meaningless provisions. E & B Granite, Inc. v. Dir. of Revenue, 331 S.W.3d 314, 317 (Mo. banc 2011), quoting Kilbane v. Dir. of Revenue, 544 S.W.2d 9, 11 (Mo. banc 1976). To give the 1997 amendment effect, the legislature must have intended for new hospitals to qualify as new institutional health services only under Section 197.305(a) and for subsections (b) through (g) to apply only to existing health care facilities. Under this construction, the New Hospital Rule implements the legislative intent of Section 197.305(9) without conflicting with the CON Law. Accordingly, we hold that the New Hospital Rule is consistent with the CON Law and the MHFRC was within its authority to promulgate the rule. Point denied.

Conclusion

The judgment of the trial court is reversed on the issues of ripeness and justiciability. Further, we hold that the New Hospital Rule is valid because it is consistent with its statutory authority. Pursuant to our authority under Rule 84.14, we reverse the judgment of the trial court and dismiss with prejudice St. John's First Amended Petition for Declaratory Judgment, Injunctive Relief, and Writ of Prohibition.

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Kurt S. Odenwald, Chief Judge

Robert G. Dowd, Jr., J., Concurs
Keith M. Sutherland, Sp. J., Concurs