

CHARTER LAKESIDE BEHAVIORAL)
HEALTH SYSTEM,)

Davidson Chancery
No. 95-3903-III

Plaintiff/Appellant,)

VS.)

TENNESSEE HEALTH FACILITIES)
COMMISSION,)

Appeal No.
01A01-9611-CH-00530

Defendant/Appellee,)

and)

COMPASS INTERVENTION CENTER,)

Intervening Defendant/Appellee.)

FILED

August 29, 1997

Cecil W. Crowson
Appellate Court Clerk

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM CHANCERY COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

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REMANDED.

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE
BEN H. CANTRELL, JUDGE

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OPINION

The captioned plaintiff has appealed from a non-jury judgment of the Trial Court dismissing said plaintiff’s suit for a declaratory judgment.

THE PARTIES

The plaintiff describes itself as a “provider of mental health, psychiatric, and alcohol and drug abuse services.”

Tennessee Health Care Facilities Commission (the Commission) is an administrative agency created by T.C.A. § 68-11-104 whose powers and duties are defined in T.C.A. § 68-11-105, including:

(1) Receive and consider applications for certificates of need, to review recommendations thereon, and to grant or deny certificates of need on the basis of the merits of such applications within the context of the local, regional and state health needs and plans, including, but not limited to, the state health plan developed pursuant to § 68-11-125, in accordance with the provisions of this part:

(2) Promulgate rules for the following purposes:

(A) Establishing specific, uniform guidelines and procedures to be used by all agencies and

contractors in reviewing applications for a certificate of need;

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(D) Establishing procedures to permit a review by competing health care facilities of an application for a certificate of need, including notice of intent and application forms;
(Emphasis supplied)

T.C.A. § 68-11-106 provides in pertinent part as follows:

68-11-106. Certificates of need. - (a) On or after April 12, 1993, no person may perform the following actions in the state except after applying for and receiving a certificate of need for the same:

(1) The construction, development, or other establishment of any type of health care institution;

- - - -

(3) In the case of a health care institution, any change in the bed complement, regardless of cost, which:

(A) Increases by one (1) or more the total number of licensed beds;

(B) Redistributes beds from acute to long-term care categories;

(C) Redistributes beds from any category to rehabilitation, child and adolescent psychiatric, or adult psychiatric; or

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(4) Initiation of any of the following health care services: hospice, outpatient surgery, psychiatric, rehabilitation or hospital-based alcohol and drug treatment for adolescents provided under a systematic program of care longer than twenty-eight (28) days methadone treatment provided through a facility licensed as a non-residential methadone treatment facility. (Emphasis supplied)

T.C.A. § 68-11-108 provides in pertinent part as follows:

(c) A certificate of need is valid for a period not to exceed three (3) years (for hospital projects) and two (2) years (for all other projects) from the date of its issuance and after such time shall expire; provided, that the commission may, in granting the certificate of need, allow longer periods of validity for certificates of need for good cause shown.

On November 14, 1995, the Commission dismissed Charter's application for a declaratory order that intervenor must apply for and obtain a certificate of need.

On December 14, 1995, Charter filed the present "Complaint for Declaratory Judgment."

On February 15, 1996, Compass intervened and answered denying that the complaint stated a cause for relief, denying violation of law and asserting that Compass and its predecessors had "made substantial efforts toward opening such a facilities for a number of years," and that plaintiff had neglectfully and unreasonably delayed in seeking relief, and claiming waiver and estoppel.

On February 29, 1996, the Commission filed a "Motion to Dismiss and/or Motion for Summary Judgment" on the following grounds:

1. Lack of Standing
2. Failure to follow requisite procedure.
3. Failure to state a claim for relief

The Trial Judge filed a memorandum stating in part:

The General Assembly in 1993 changed the definition to include a "mental health residential treatment facility." An entity known as T. C. Company obtained a determination in 1993 that the new requirement did not apply to the Shelby County facility. According to the information supplied to the Commission, a substantial investment had been made by 1993, but the project had been delayed by land use considerations out of the control of the entities intending to build the facility. Compass now operates the facility under a license granted on

February 16, 1996 by (sic) from the Tennessee Department of Mental Health and Mental Retardation.

Pursuant to the UAPA, Tenn. Code Ann. § 4-5-223, Lakeside, the plaintiff, on September 19, 1995, petitioned the Commission for a declaratory ruling that a CON should have been required for the facility. The Commission declined to issue the declaratory ruling and ordered that the issue "be forwarded on to Chancery Court."

As noted, the question of whether the Shelby County facility was required to obtain a CON was first decided in

1987. Based upon that determination, and the one in 1993, the developers proceeded with their plans. Lakeside took no action in 1993 or 1994. It waited until September, 1995.

Lakeside simply waited too late to its (sic) seek its declaratory ruling. It could have requested the ruling back in 1993 when the law was changed, but it did not. Even in this Court, Lakeside has been dilatory. It filed this suit on December 14, 1995 and has done nothing since then to move the case. In the meantime, the facility has obtained its license and opened.

Moreover, Lakeside has neither alleged nor proven any facts that show that it has standing to maintain this suit. The only standing asserted is that Lakeside is a competitor of the Nonconnah facility. No other facts are alleged or proven. This is insufficient as a matter of law, *League Central Credit Union v. Mottern*, 660 S.W.2d 787 (Tenn. Ct. App. 1983).

Lakeside's declaratory suit is accordingly dismissed.

Appellant presents the following issues for review by this Court:

1. The Chancellor erred by finding that the appellant has been "dilatory" and "waited too late to seek its declaratory ruling" (T.R. 107-108).
2. The Chancellor erred below by finding at T.R. 108 that the appellant had no standing to maintain this declaratory judgment action.
3. The Chancellor erred below by failing to correct the error of the Health Facilities Commission in waiving the General Assembly's requirement of the issuance of a CON for the establishment of a particular type of a health care institution.

SECOND ISSUE

STANDING

A competitor has standing to resist an application for a certificate of need. T.C.A. § 68-11-106, *Humana of Tennessee v. Tennessee Health Facilities Commission*, Tenn. 1977, 551 S.W.2d 664, 661. We hold, therefore, that a competitor has standing to ask the Health Facilities Commission for a declaratory judgment that an entity building a treatment center must have a

certificate of need. See *Morristown Emergency and Rescue Squad v. Volunteer Development Co.*, 793 S.W.2d 262 (Tenn. App. 1990).

FIRST ISSUE

DELAY

This Court respectfully disagrees with the conclusion of the Chancellor that the facts evidenced by this record justify dismissal on grounds of delay in seeking relief. The particular type of facility which Compass and its predecessors had been trying to initiate was not required by statute to have a certificate of need until the enactment of T.C.A. § 68-11-106, quoted above on April 12, 1993. Plaintiff's application to the Commission for a declaratory order was filed on September 19, 1995. The answer of Compass admits the allegation of the complaint that the official opening date of its facility is "projected" to be January 11, 1996.

On the basis of the record before us, we cannot say as a matter of law that the plaintiff's delay in filing suit requires the dismissal of its complaint. We think the Chancellor should have addressed the merits of the action.

THIRD ISSUE

FAILURE TO CORRECT ERROR OF COMMISSION

Based upon our determination that the Chancellor should have addressed the merits of the action below, we pretermitt this issue.

The cause is remanded to the Trial Court for a trial on the merits. The Trial Court may see fit to reach its conclusions upon the present record, it may require the presentation of further

evidence to the Trial Court, or it may remand to the Commission for the production of a proper administrative record. Costs of this appeal are taxed against the appellant.

REMANDED.

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE