

IN THE SUPREME COURT OF NORTH CAROLINA

No. 549A06

FILED: 9 MARCH 2007

BIO-MEDICAL APPLICATIONS OF NORTH CAROLINA, INC., Plaintiff

v.

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF FACILITY SERVICES, and NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF FACILITY SERVICES, MEDICAL FACILITIES PLANNING SECTION, Defendants,

and

TOTAL RENAL CARE OF NORTH CAROLINA, LLC and HEALTH SYSTEMS MANAGEMENT, INC., Defendant-Intervenors

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 179 N.C. App. ____, 634 S.E.2d 572 (2006), affirming an order entered 16 November 2004 by Judge Henry W. Hight, Jr. in Superior Court, Wake County, dismissing plaintiff's complaint and granting summary judgment for defendants and defendant-intervenors. Heard in the Supreme Court 13 February 2007.

Wyrick Robbins Yates & Ponton LLP, by K. Edward Greene, for plaintiff-appellant.

Roy Cooper, Attorney General, by Amy Y. Bason, Assistant Attorney General, for defendant-appellees.

Poyner & Spruill LLP, by Thomas R. West, Pamela A. Scott, and Chad W. Essick, for Total Renal Care of North Carolina, LLC; and Bode, Call & Stroupe, LLP, by S. Todd Hemphill and Diana E. Ricketts, for Health Systems Management, Inc., defendant-intervenor-appellees.

PER CURIAM.

The North Carolina Department of Health and Human Services (DHHS) issued a semi-annual dialysis report indicating a need for additional dialysis service stations in Wake County. Bio-Medical Applications of North Carolina, Inc. (Bio-Medical) brought an

action in Wake County Superior Court challenging the data on which the semi-annual report was based and requesting a declaratory judgment, as well as preliminary and permanent injunctions and a writ of mandamus. DHHS and defendant-intervenors moved for dismissal, and a Superior Court judge dismissed the action and granted summary judgment in their favor.

Bio-Medical appealed to the North Carolina Court of Appeals. While the appeal was pending, DHHS issued a Certificate of Need to defendant-intervenor Total Renal Care of North Carolina, LLC (Total Renal Care) to construct ten new dialysis service centers in Wake County. Bio-Medical contested the Certificate of Need issuance in an administrative hearing, but the final agency decision upheld the issuance. Bio-Medical did not appeal the agency decision. Thereafter, a divided panel of the Court of Appeals affirmed the trial court's ruling.

Bio-Medical filed an appeal with this Court based on the Court of Appeals' dissent, as well as a petition for a writ of supersedeas. DHHS and Total Renal Care filed separate motions to dismiss Bio-Medical's appeal based on mootness.

After hearing oral arguments and carefully reviewing the record, the parties' briefs, and all other documents submitted, the Court concludes that Bio-Medical's claim is moot. Accordingly, Bio-Medical's appeal is dismissed.

APPEAL DISMISSED AS MOOT.

Justice TIMMONS-GOODSON did not participate in the consideration or decision of this case.