SUPREME COURT OF GEORGIA

Southern Healthcare System, Inc. v. Health Care Capital Consolidated, Inc.

275 Ga. 247 (Ga. 2002) · Decided May 13, 2002

SUMMARY

The Supreme Court of Georgia held that the law of the case did not give Bank One veto power over the selection of an independent manager for Southern Healthcare System's facilities. Because the trial court's potential appointment of a receiver was contingent on a future failure to agree on a manager, issues concerning receivership were hypothetical and not presently reviewable.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Justice; All other Justices
JURISDICTION	Georgia
DECIDED	May 13, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Southern Healthcare System appealed from a trial court order entered after a contempt hearing concerning compliance with an injunction requiring selection of an independent manager for its health care facilities. The order required the parties to agree on a manager and made appointment of a receiver contingent on their failure to agree.
PRECEDENTIAL VALUE	binding
PARTIES	Southern Healthcare System, Inc. v. Health Care Capital Consolidated, Inc.

TOPICS

contempt · appellate procedure · remedies · civil procedure · health law

PRACTICE AREAS

Civil procedure · Appellate procedure · Remedies · Health law

QUESTIONS PRESENTED

1. Whether the law-of-the-case doctrine prevented the trial court from excluding Bank One from continued participation in selecting an independent manager.
2. Whether the Supreme Court could review the trial court's conditional provision for appointment of a receiver when no receiver had yet been appointed.

HOLDINGS

1. The prior decision did not give Bank One veto power over selection of the independent manager. It required Health Care Capital Consolidated to act in conjunction with the senior lender by seeking its input, but did not make selection contingent on the senior lender's approval. Because Bank One declined to participate, the trial court correctly treated Southern Healthcare System as the only remaining participant in the selection process.
2. The conditional appointment of a receiver was hypothetical and was not reviewable because the trial court had not actually appointed a receiver. Any challenge to a receiver appointment could be brought after an actual appointment and timely appeal from that order.

KEY QUOTATIONS

> *"This court will not consider . . . hypothetical questions."* (249)

FACTUAL BACKGROUND

Health Care Capital Consolidated was a junior lender to Southern Healthcare System, while Bank One was among the senior lenders. An earlier injunction required Southern to obtain approval of a third-party manager, with senior lenders permitted to participate in the selection process. Bank One declined to participate, and the trial court ordered Southern and Health Care Capital Consolidated to agree on an independent manager, making appointment of a receiver contingent on failure to reach agreement.

PROCEDURAL HISTORY

In prior proceedings, the Supreme Court of Georgia affirmed an injunction barring Southern Healthcare System from managing its facilities and requiring approval of a third-party manager in conjunction with the senior lenders. After Southern continued managing the facilities, Health Care Capital Consolidated sought contempt relief. The trial court found that Bank One had declined to participate in the selection process, ruled that only Southern remained a participant, and conditionally threatened appointment of a receiver. The Supreme Court affirmed the order and vacated the stay issued to preserve appellate jurisdiction.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

No remand was ordered. Issues concerning appointment of a receiver were left for review only if the trial court later appointed one and a timely appeal was filed. The stay issued to preserve appellate jurisdiction was vacated.

CASES CITED

- Southern Healthcare Sys. v. Health Care Capital Consolidated, 273 Ga. 834, 545 S.E.2d 882 (2001)
- Jebco Ventures v. City of Smyrna, 259 Ga. 599, 385 S.E.2d 397 (1989)
- Jackson v. Bibb County School Dist., 271 Ga. 18, 515 S.E.2d 151 (1999)
- Dasher v. State, 149 Ga. App. 740, 256 S.E.2d 106 (1979)
- Goodyear v. Trust Co. Bank, 247 Ga. 281, 276 S.E.2d 30 (1981)

OPINION

Southern Healthcare System, Inc. v. Health Care Capital Consolidated, Inc.
275 Ga. 247
CARLEY, J.
Carley, Justice. In Southern Healthcare Sys. v. Health Care Capital Consolidated, 273 Ga. 834 (545 SE2d 882) (2001), this Court affirmed the trial court's order enjoining Southern Healthcare Systems (SHS) from managing its own health care facilities and requiring it to obtain HCCC's approval of a third-party manager of the facilities. Because HCCC are the junior lenders, the note evidencing the indebtedness owed to HCCC by SHS was subordinate to that held by the senior lenders, including Bank One. Bank One is not a party to the lawsuit, but the trial court gave it "a role in the approval process by requiring [HCCC] to approve a manager of the facilities in conjunction with the senior lenders." Southern Healthcare Sys., supra at 835-836 (5). Notwithstanding our affirmance of the trial court's order, SHS continued to manage the facilities, at the apparent insistence of Bank One. Accordingly, HCCC filed a motion for contempt. After conducting a hearing, the trial court concluded that Bank One was a "stumbling block" to SHS's compliance and that, by refusing to participate in the selection of an independent manager, the senior lender *248had "effectively written itself out of the management selection process." Citing OCGA §§ 9-8-1 and 23-4-31, the trial court ordered SHS and HCCC to reach an agreement on naming an independent manager or, in the event they did not, a receiver would be appointed to manage SHS's assets. SHS filed this appeal from that order. Subsequently, the trial court, noting that there was no supersedeas of its ruling, entered an order compelling SHS to negotiate a management contract with Magnolia Management Corporation (MMC) within a few weeks and to execute an agreement with that third-party manager by then if mutually agreeable terms could be reached. SHS then moved this Court for supersedeas, and we granted a stay in order to prevent the issues from becoming moot. See Jackson v. Bibb County School Dist, 271 Ga. 18 (515 SE2d 151) (1999).
1. SHS urges that the "law of the case" precludes the trial court from ousting Bank One from any participation in the selection of the independent manager. Under that principle, the ruling in Southern Healthcare Sys., supra, is binding in all subsequent proceedings in this case, both in the trial court and in this Court. Jebco Ventures v. City of Smyrna, 259 Ga. 599, 601-602 (1) (385 SE2d 397) (1989).

As noted, the original order did provide that Bank One would have a role in the naming of the third-party manager. However, that participation was authorized solely in recognition of Bank One's status as a senior lender. "The senior lenders are not indispensable parties to this lawsuit. They are not necessary for a just adjudication of the merits of this action, and their presence is not required for complete relief." Southern Healthcare Sys., supra at 835 (5). The senior lenders were allowed only to participate in the selection process, and the grant of an injunction against SHS's management of its own facilities was not made contingent upon their approval of the third-party manager. Thus, the "law of the case" clearly establishes that Bank One does not have veto power over the selection of the independent manager of SHS's facilities and that HCCC need only name a new manager by acting "in conjunction with" the senior lender. Southern Healthcare Sys., supra at 836 (5). HCCC, as the party-plaintiffs, have fully complied with that mandate by seeking the senior lenders' input in the naming of the third-party manager. However, after conducting the contempt hearing, the trial court found that Bank One declined to participate in the selection process. The validity of that finding is not disputed. Under these circumstances, the trial court correctly found that only SHS remained a participant in the process.

2. Several enumerations relate to the receivership issue. However, the trial court's order does not actually name a receiver, but makes any such appointment entirely contingent upon a subsequent *249failure of HCCC and SHS to come to agree on the selection of a third-party manager. Should those parties not agree on the naming of MMC or another manager, the trial court presumably will conduct a hearing at that time and appoint a receiver. Either party can appeal from the order that is entered then. OCGA § 5-6-34 (a) (4). At the present time, however, the appointment of a receiver is completely hypothetical. See Dasher v. State, 149 Ga. App. 740, 741 (2) (256 SE2d 106) (1979). "This court will not consider . . . hypothetical questions." Goodyear v. Trust Co. Bank, 247 Ga. 281, 284 (1) (276 SE2d 30) (1981).

Decided May 13, 2002 Reconsideration denied June 7, 2002. Morris, Manning & Martin, John P. MacNaughton, Gregory O. Shenton, Robert C. Threlkeld, for appellant. Heyman & Sizemore, William B. Brown, Owens, Clary & Aiken, Leighton Aiken, for appellees. Accordingly, all issues dealing with the appointment of a receiver will be addressed only in the event that one is eventually named if a timely appeal is filed from the order which does so. Our decision today is necessarily limited to a consideration of the final order discussed in Division 1. Because we have affirmed that order, the stay which was issued to preserve our jurisdiction is vacated. Judgment affirmed. All the Justices concur.