

SUPREME COURT OF NEBRASKA

Department of Health v. Omaha Associates, 232 Neb. 516

441 N.W.2d 579 (1989) · No. No. 87-715 · Decided June 16, 1989

SUMMARY

The Supreme Court of Nebraska reviewed the approval of a certificate of need for the purchase and lease of an existing nursing home facility. The court held that the proposed project satisfied the applicable criteria concerning cost increases, financial feasibility, quality of care, and competition, and affirmed the district court's judgment upholding the certificate of need.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Shanahan, Justice; Hastings, C.J.; Shanahan, J.; Fahrnbruch, J.; Norton, District Judge; Ronin, District Judge, Retired
JURISDICTION	Nebraska
DECIDED	June 16, 1989
DOCKET	No. 87-715
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Nebraska Department of Health appealed under the Administrative Procedure Act from a Lancaster County District Court judgment affirming a CON appeal panel's order granting Omaha Associates and Aksarben Nursing Centers a certificate of need for the purchase and lease of an existing nursing home.
STANDARD OF REVIEW	Under Neb. Rev. Stat. § 84-918, the Supreme Court reviews an administrative agency decision de novo on the record and reaches an independent conclusion, but may consider and give weight to the agency's assessment of conflicting credible evidence on material factual issues because the agency heard and observed the witnesses. In an appeal from the grant of a certificate of need, the appealing party bears the burden of proving that the application does not satisfy the applicable criteria.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Nebraska.

PARTIES

Department of Health, State of Nebraska v. Omaha Associates, a Limited Illinois Partnership, Aksarben Nursing Centers, Inc.

TOPICS

health law

administrative law

judicial review of agency action

standard of review

appellate procedure

PRACTICE AREAS

health law

administrative law

certificate of need

nursing home regulation

appellate procedure

QUESTIONS PRESENTED

1. Whether the CON appeal panel exceeded its statutory authority or jurisdiction in granting the certificate of need.
2. Whether the appeal panel's decision was unsupported by appropriate evidence, contrary to law, or arbitrary and capricious.
3. Whether the alternatives criterion in Neb. Admin. Code tit. 182, ch. 2, § 005.02A2 applied to the purchase of an existing nursing home.
4. Whether the appellees satisfied the applicable certificate-of-need criteria concerning cost increases, financial feasibility, continuity and quality of care, and competition.

HOLDINGS

1. When the need for an existing health-care facility is undisputed and a willing buyer and willing seller have agreed on a price, Neb. Admin. Code tit. 182, ch. 2, § 005.02A2 is not a relevant review criterion for the certificate-of-need application.
2. The Department, as the party appealing the grant of a certificate of need, bore the burden of proving that the appellees failed to satisfy the applicable criteria.
3. The appellees satisfied the applicable criteria concerning cost increases, financial feasibility, continuity and quality of care, and competition.

KEY QUOTATIONS

“In an appeal to the Supreme Court from an administrative agency's decision, the Supreme Court tries factual questions de novo on the record and reaches a conclusion independent of the conclusion reached by the administrative agency, provided, where credible evidence is in conflict on a material issue of fact, the Supreme Court considers and may give weight to the fact that the administrative agency heard and observed the witnesses and accepted one version of the facts rather than another.” (441 N.W.2d at 580-81)

“Therefore, in view of Columbia West, we will not concern ourselves with whether the proposed project is the least costly or most effective alternative.” (441 N.W.2d at 583)

FACTUAL BACKGROUND

Omaha Associates and Aksarben Nursing Centers sought approval to purchase and lease Hillhaven Corporation's existing 174-bed Omaha nursing home. Hillhaven had a history of deficiencies in resident care, sanitation, staffing, and management, as well as financial losses, while the proposed operators offered substantial nursing-home experience and planned new services, improved efficiency, and increased occupancy. The transaction was conditioned on issuance of a certificate of need, and the appellees presented financing, leasing, management, and quality-assurance evidence to support the application.

PROCEDURAL HISTORY

The Department of Health's CON review committee denied the appellees' application for approval of the purchase and lease of an existing 174-bed nursing home. The CON appeal panel reversed and granted the certificate of need. The Lancaster County District Court affirmed the panel's decision, and the Department appealed to the Nebraska Supreme Court, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Department of Health v. Grand Island Health Care, 223 Neb. 587, 391 N.W.2d 582 (1986)
- Department of Health v. Columbia West Corp., 227 Neb. 836, 420 N.W.2d 314 (1988)