

NORTH CAROLINA:

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08-CVS-7955**

WAKE COUNTY:

**HOPE-A WOMEN'S CANCER CENTER,
P.A. and RALEIGH ORTHOPAEDIC
CLINIC, P.A.**

Plaintiffs,

v.

STATE OF NORTH CAROLINA, et al.,

Defendants.

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BY: [unclear] OSC

**MEMORANDUM OF DECISION AND ORDER RE: MOTIONS FOR JUDGMENT
ON THE PLEADINGS PURSUANT TO RULE 12(c), NORTH CAROLINA
RULES OF CIVIL PROCEDURE**

THIS MATTER came on for hearing before the undersigned Judge of Superior Court at the February 27, 2009, civil session of the Wake County Superior Court upon cross Motions for Judgment on the Pleadings pursuant to Rule 12(c), North Carolina Rules of Civil Procedure.

Procedural Background

Plaintiffs filed this civil action on May 6, 2008 to challenge several aspects of the process by which the State Medical Facilities Plan ("SMFP") is prepared. Following the institution of this action, not less than 9 separate health care entities and or associations have sought to intervene as Defendant-Intervenors and each has filed a motion to dismiss.

This case was declared an exceptional case pursuant to Rule 2.1 of the General Rules of Practice by the Chief Justice on September 4, 2008 and this Court was assigned the case.

This Court **has not ruled** on the Defendant-Intervenors motions to intervene in this case as of this time. However, the Court permitted the Defendant-Intervenors to submit joint Memoranda in support of their position in opposition to the Plaintiffs' claims.

This Court has previously entered an Order denying the Defendants' motion to disqualify Robert Orr and Jason Kay from serving as counsel for the Plaintiffs.

There is no need to re-hash that issue further.

On December 31, 2008, Plaintiffs filed an Amended Complaint. The Defendants filed a Motion to Dismiss in January, 2009. At the instruction of the Court, the Defendants were directed to file answer. Both Plaintiffs and Defendants were to then to file cross Motions for Judgment on the Pleadings so as to have the record as fully developed as practicable. The Court did this because the parties essentially agreed that this case involved issues of law which could be decided by the Court when measured against the allegations contained in the Amended Complaint and Answer.

The cross Motions for Judgment on the Pleadings were heard on Friday, February 27, 2009. Prior to the hearing the Court was provided with memoranda from the parties and a memorandum from the Defendant-Intervenors. These combined memoranda contained in excess of 150 pages not counting to attachments and exhibits. The Court read all the memoranda prior to the hearing. At the conclusion of the hearing the Court took the matter under advisement. The Court has now taken time to consider the arguments made at the hearing, the memoranda and authorities cited therein. This matter is ripe for disposition.

Rule 12(c), North Carolina Rules of Civil Procedure -- Standard of Review

Rule 12(c), North Carolina Rules of Civil Procedure permits a trial court to dispose of claims and defenses when their lack of merit appears from the pleadings. Judgment on the pleadings is appropriate where there are no genuine issues of material fact – only issues of law. A party who moves for judgment on the pleadings admits the truth of the facts and reasonable inferences pled by the opposing party and the falsity of its own allegations to the extent they contradict the pleadings of the opposing party. *Gammon v. Clark*, 25 N.C. App. 670I, 671 (1975); *Jackson v. Ass'd Scaffolders & Equip. Co.* ; 152 N.C. App. 687, 689 (2002).

Decision:

The Court, having considered the cross Motions for Judgment on the Pleadings, the pleadings themselves and having applied the foregoing standard of review concludes the following as a matter of law:

1. The State Medical Facilities Plan ("SMFP") as it presently prepared and administered is not an unconstitutional delegation of legislative authority in that:
(a) the delegation of legislative authority from the General Assembly to the Executive Branch provides sufficient guidance relating to the development and creation of the SMFP; (b) the delegation of legislative authority provides sufficient procedural safeguards relating to the development and creation of the SMFP by the Executive Branch and (c) the State Health Coordinating Council ("SHCC")

does not exercise unconstitutional legislative authority on behalf of, and within, the Executive Branch in the development and creation of the SMFP.

2. The Certificate of Need ("CON") process under North Carolina Law, as applied, **does not violate** the Plaintiffs' Procedural and Substantive Due Process Rights.

3. The CON Law, as applied, **does not violate** the Plaintiffs' Constitutional right of access to the Court.

4. The SMFP, CON process and CON law, as applied, **do not violate** any of Plaintiff's constitutional rights.

The Court, having determined the foregoing as a matter of law, does not need to rule on Defendants' additional defenses that the Plaintiffs' claims are barred by the doctrines of estoppel and laches. Accordingly, the Court makes no determination as to estoppel and laches.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Defendants' Motion for Judgment on the Pleadings is granted.
2. The Plaintiffs' Motion for Judgment on the Pleadings is denied.
3. This Action is dismissed.
4. The Defendant-Intervenors' Motions to Intervene in this case are moot in view of the Court's decision.
5. The Court, in its discretion, directs that the parties bear their own costs.

This the 26th day of March, 2009.



Howard E. Manning, Jr.
Superior Court Judge

Certificate of Service

This is to certify that the foregoing Order Re: Motion for Judgment on the Pleadings in 08CVS 7955 Wake County Superior Court was served by facsimile transmission this the 26th day of March, 2009 as follows:

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Superior Court Judge