

1992-93

NATIONAL HEALTH LAW
MOOT COURT COMPETITION

TRANSCRIPT OF RECORD

Docket No. 91-1615

SUPREME COURT OF THE UNITED STATES

October Term, 1991

LAURA K. SAWYER, individually and
FAMILY PSYCHOLOGICAL SERVICES, P.C.

Petitioners,

v.

CADUCEUS HEALTHCARE CORP.,
a not-for-profit corporation, et al.

Respondents

SPONSORS:

Southern Illinois University School of Law

Southern Illinois University School of Medicine,
Department of Medical Humanities

**LAURA K. SAWYER, PH.D., individually, and
FAMILY PSYCHOLOGICAL SERVICES, P.C.**

Plaintiffs,

v.

**CADUCEUS HEALTHCARE CORP.,
a not-for-profit corporation, et al.,**

Defendants.

Civ. No. 91-3045

WELLS, District Judge.

Laura K. Sawyer, Ph.D. (Sawyer), for herself and her professional corporation, Family Psychological Services, P.C., filed this action on August 14, 1991 for damages and injunctive relief against Caduceus Healthcare Corp., (Caduceus), Caduceus-Hopewell County Hospital, Inc. (Caduceus-Hopewell), Robert L. Zucker, Chief Executive Officer of Caduceus-Hopewell, the individual members of the Board of Trustees of Caduceus-Hopewell (hereinafter all of these defendants are collectively referred to as the "Caduceus defendants"), the individual physicians who are members of the Medical Staff Credentials Committee and the Medical Executive Committee of the hospital, as well as against William Schroeder, M.D., John Reed, M.D., and Sheila Barr, M.D., individually each of whom is a member of the medical staff of Caduceus-Hopewell County Hospital. Sawyer alleged in her complaint that the defendants improperly denied her application for staff privileges at the hospital thereby engaging in a group boycott in violation of various state and federal laws, including Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

This case is now before this court on the motion of the Caduceus defendants for summary judgment under FRCP 56(b) on the grounds that they are immune from antitrust liability under the doctrine of intracorporate immunity, as well as under the "state action" doctrine and the Local Government Antitrust Act, 15 U.S.C. § 34 *et seq.* A separate motion by the remaining defendants is not currently before the court.

This court denies the defendants' motion on the theory of intracorporate immunity, but grants the motion on the basis of the "state action" doctrine and the Local Government Antitrust Act.

I. FACTS

While there may be some factual disputes between the parties, for purposes of this motion, the parties have agreed to stipulate to the following facts.

Sawyer is a licensed clinical psychologist doing business through a professional corporation under the name Family Psychological Services, P.C. in the city of Murphydale, the largest city (pop. 73,000) in and the county seat of Hopewell County, Franklin. Since she opened her offices in Murphydale in 1988, Sawyer has offered various psychological services with a particular emphasis on child and adolescent psychology.

Caduceus Healthcare Corp. is a not-for-profit corporation organized under the laws of the State of Franklin. Caduceus-Hopewell County Hospital, Inc. is a not-for-profit corporation formed by Caduceus to operate the Caduceus-Hopewell County Hospital under a Lease Agreement entered into in 1984 with the Board of Commissioners of Hopewell County, a public entity created by state law. Certain background information regarding this Lease Agreement is relevant to this case.

State law generally authorizes counties, "to cause to be erected or otherwise provided, suitable buildings for and maintain a county hospital" and "to provide, in the public interest, for the efficient and competitive operation and management of any such county hospital." See Frank. Rev. Stat. ch. 34, ¶ 5-103(c)(1). In 1973, the Board of Commissioners of Hopewell County constructed and began the operation of the 175 bed Hopewell County Hospital. Funding for the construction of the hospital was obtained through the issuance of statutorily authorized general revenue bonds. The hospital was and continues to be the only general, acute care hospital in Hopewell County. However, within a radius of 20 miles of Murphydale there are two adjoining counties with general hospitals.

In 1984, the Board of Commissioners entered into a Lease Agreement with Caduceus designed to have Caduceus "assume from the County the responsibility and expense of operating Hopewell County Hospital." Authority for such a lease is provided for in Frank. Rev. Stat. ch 34, ¶ 5-103(c)(3) which states that, "with respect to any hospital operated by a county, the County Board of Commissioners may transfer, sell, or lease such hospital to a responsible corporation, hospital, health care facility or institution of higher learning on such terms and under such conditions as the County Board deems appropriate and in the public interest."

Under the terms of the Lease Agreement, Caduceus leased the land and hospital facility at an annual rental of \$10 for an initial term of five years, subject to renewal indefinitely for additional five year terms unless one or the other parties declined to renew the Lease Agreement. In the Lease Agreement, Caduceus agreed among other things, (1) to operate the hospital as a not-for-profit institution through Caduceus-Hopewell County Hospital, Inc. under that name, and to furnish to the general public medical and surgical care; (2) to be responsible

for the day-to-day operations and maintenance of the hospital; (3) to make additions or improvements to the hospital only with the written consent of the Board of Commissioners and at its own expense; (4) to hold the County harmless from any liability incurred in operating the hospital and to maintain at its own expense all appropriate insurance; (5) to submit an annual financial report to the Board of Commissioners as well as an annual management and personnel report, together with such additional reports and information as the Board of Commissioners might reasonably request from time to time about the operations and financial condition of the hospital; and (6) to accept and care for indigent patients, as certified by the County at the County's expense. The Lease Agreement also required that Caduceus appoint the Chairperson of the Hopewell County Board of Commissioners, as well as the Director of the Hopewell County Department of Public Health, to the 11-person Board of Trustees of Caduceus-Hopewell. The hospital has been operated under the Lease Agreement by Caduceus since 1984. There is no evidence to suggest that the Board of Commissioners has been the least bit dissatisfied with how Caduceus has operated the hospital.

In 1989, shortly after Franklin repealed its certificate of need legislation, Caduceus decided to create within the hospital a psychiatric services unit with a particular emphasis on adolescent psychiatric care. With the permission of the County Board, Caduceus made the necessary facility improvements to establish the unit in compliance with Franklin law and granted privileges to defendant William Schroeder, M.D., a psychiatrist, who was designated as the Clinical Director of the Psychiatric Services Unit. Shortly thereafter two other psychiatrists in Hopewell County, defendants John Reed, M.D. and Sheila Barr, M.D. were granted privileges at the Hospital and began practice in the psychiatric unit.

On June 7, 1991, Dr. Sawyer submitted her completed application for membership on the Caduceus-Hopewell County Hospital medical staff to the hospital's Chief Executive Officer, defendant Robert L. Zucker pursuant to the hospital's medical staff by-laws. In her application, Dr. Sawyer requested specific clinical privileges in the psychiatric services unit.

The hospital's by-laws make no specific reference to staff membership or clinical privileges for psychologists. Further, Franklin statutes and regulations do not contain any provision as to granting psychologists staff privileges in hospitals. However, it appears that psychologists do in fact have staff privileges at a substantial number of hospitals in Franklin and that nationwide between 20 and 25 percent of clinical psychologists have some form of hospital staff privileges.

Pursuant to the hospital's medical staff by-laws, Dr. Sawyer's application was referred by Zucker, to the Medical Staff Credentials Committee composed of five members of the hospital's medical staff including Drs. Tone, Sebastian, Hastings, Marvin, and Lanier each of whom is a defendant in this action. As required by the by-laws, the Credentials Committee, at the next scheduled meeting of the medical staff informed the staff of Dr. Sawyer's application giving all members of the medical staff the opportunity to submit any written information relevant to Dr. Sawyer's professional qualifications for staff membership and clinical

privileges.

Dr. Schroeder, as Clinical Director of the Psychiatric Services Unit, forwarded a memo dated June 21, 1991, from himself and Drs. Reed and Barr to the Credentials Committee stating that they were not in favor of Dr. Sawyer's appointment to the medical staff or the granting of her requested clinical privileges in the psychiatric unit. This memo outlined several reasons for this negative viewpoint. Initially, the three physicians asserted that, "in order to provide proper care, it is critical that only trained and skilled physicians be permitted to admit and treat patients within the hospital's psychiatric unit," that it was "wholly inappropriate to allow someone not trained in medicine, including a psychologist such as Dr. Sawyer, to admit and treat patients in the unit," and that "to grant the requested privileges would threaten the quality of patient care in the hospital." Further, the memo stated that each of the physicians had reason to question the "competence and professional skill of Dr. Sawyer as a clinical psychologist."

The three physicians elaborated on these claims at a June 25 meeting with the Credentials Committee. Each alleged that one or more of their patients had complained to them about care received by them or a member of their family while they were previously patients of Dr. Sawyer. These complaints allegedly included at least two instances of what were described as "improper sexual relationships with young male patients." The Credentials Committee recommended that Sawyer's application be denied.

Dr. Sawyer appealed this recommendation to the Medical Staff Executive Committee consisting of the officers of the medical staff including the defendants, Drs. Dennison, Kemper, Murray and Duncan. This Committee met on July 11 with Dr. Sawyer who asserted that the allegations concerning her care for patients were wholly unfounded, that the individual members of the Credentials Committee were each aware of this, and that the real motive for their negative recommendation was to prevent her from effectively competing with the psychiatrists currently on the hospital's staff. The Executive Committee, however, sustained the Credentials Committee's recommendation.

Thereafter, Dr. Sawyer challenged this decision before the Board of Trustees of Caduceus-Hopewell. She appeared personally before the Board reiterating her position that the recommendations of both Committees were knowingly based on false and inaccurate information and were motivated by the anticompetitive desires of the staff psychiatrists and the other physicians on these Committees and not by any legitimate quality of care concerns. On July 28, 1991, the Board of Trustees voted unanimously to deny Dr. Sawyer's application. This suit by Dr. Sawyer seeking both damages and an injunction followed the Board's decision.

II. ISSUES

As previously noted, for purposes of the summary judgment motion of the Caduceus defendants in this action, the parties have stipulated to the facts as outlined above. The summary judgment motion presents three basic legal issues for resolution by this court. First, the Caduceus defendants assert that under the doctrine of intracorporate immunity, as a matter of law, a conspiracy between a hospital and members of its medical staff is impossible. Second, they argue that they are immune from any antitrust liability under the "state action" doctrine. Third, the Caduceus defendants claim that the provisions of the Local Government Antitrust Act, specifically 15 U.S.C. § 36 preclude any finding of liability for damages against them. This court rejects the first basis for summary judgment asserted by the Caduceus defendants, namely the doctrine of intracorporate immunity. However, on the basis of both the "state action" doctrine and the Local Government Antitrust Act, this court finds that the Caduceus defendants are immune from any antitrust liability in this case and therefore grants the motion. Each issue presented will be discussed in turn.

III. DISCUSSION

A. Intracorporate Immunity

Section 1 of the Sherman Act, 15 U.S.C. § 1 makes illegal, "every contract, combination, or conspiracy in restraint of trade or commerce among the several states." In order to successfully bring an action under Section 1, a plaintiff must initially establish the existence of a "contract, combination, or conspiracy" *i.e.* that two or more distinct parties agreed in some manner to act together against the plaintiff. Section 1 does not cover unilateral action.

Relying on decisions from several courts, the Caduceus defendants assert that, as a matter of law, a hospital is legally incapable of conspiring with members of its own medical staff for purposes of establishing liability under Section 1. *See, e.g. Oksanen v. Page Memorial Hospital*, 945 F.2d 696 (4th Cir. 1991); *Nurse Midwifery Associates v. Hibbett*, 918 F.2d 605 (6th Cir. 1990); and *Nanavati v. Burdette Tomlin Memorial Hospital*, 857 F.2d 96 (3rd Cir. 1988).

The basis for this argument is the concept of intracorporate immunity as set out in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984). Under this doctrine, a corporation and its employees and officers generally cannot conspire with one another because they are part of a single enterprise or entity with common economic interests in which the employees and officers act as agents of the corporation. In the cases cited above, the courts relied on this doctrine to hold that there is a "unity of interest" in the relationship of the hospital and the members of its medical staff such that they cannot conspire with one another.

In contrast, several courts have rejected application of the intracorporate immunity doctrine in the hospital-medical staff situation. *See, e.g. Bolt v. Halifax Hospital Medical*

Center, 891 F.2d 810 (11th Cir. 1990) and *Oltz v. St. Peter's Community Hospital*, 861 F.2d 1440 (9th Cir. 1988). The court in *Bolt* reasoned as followed:

[W]e perceive no basis for holding that a hospital is legally incapable of conspiring with the members of its medical staff . . . The rule for corporations is based on considerations unique to the corporate context. Theoretically, a "conspiracy" involving a corporation and one of its agents would occur every time an agent performed some act in the course of his agency, for such an act would be deemed an act of the corporation. Thus, the rule that a corporation is incapable of conspiring with its agents is necessary to prevent erosion of the principle that section 1 does not reach unilateral acts. A hospital and the members of its medical staff, in contrast, are legally separate entities, and consequently no similar danger exists that what is in fact unilateral activity will be boot-strapped into a "conspiracy." *Id.* at 819.

After carefully reviewing the conflicting cases in this area, this court is persuaded to adopt the view expressed in *Bolt* and *Oltz* that a hospital and its medical staff are in fact capable of conspiring with each other for purposes of liability under Section 1 of the Sherman Act. Whether in fact a conspiracy can be proven is of course another matter. Therefore, this court denies the summary judgment motion of the Caduceus defendants on this basis.

B. "State Action" Doctrine

The Caduceus defendants also argue that they are entitled to summary judgment on the grounds that they are immune from liability under the "state action" doctrine. This doctrine, announced in *Parker v. Brown*, 317 U.S. 341 (1943), recognizes that, under concepts of federalism, a state's acts as a sovereign, even if anticompetitive in nature, are nonetheless immune from challenge under federal antitrust law. As to private parties, the Supreme Court in *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980) elaborated on the "state action" doctrine in holding that apparently anticompetitive acts of private parties are exempt from antitrust attack if they are undertaken pursuant to a "clearly articulated and affirmatively expressed state policy" and are "actively supervised" by the state. It is on this basis that the Caduceus defendants seek summary judgment.

Initially, there was some uncertainty as to how municipalities and other local governmental entities such as Hopewell County would be regarded for purposes of the "state action" doctrine. With its decision in *Town of Hallie v. City of Eau Claire*, 471 U.S. 34 (1985), the Supreme Court held that when a municipality or other local governmental entity claims antitrust immunity under the "state action" doctrine, it need only show that its actions were undertaken in keeping with a "clearly articulated state policy." No showing of state supervision is required. Further, in *Hallie and Southern Motor Carriers Rate Conference v. United States*, 471 U.S. 48 (1985), the Court expressed the view that if the anticompetitive conduct is a foreseeable consequence of a legislative grant of power to a municipality, then it

could be concluded that the acts were pursuant to a clearly expressed state policy.

While Caduceus here suggests that it should appropriately be regarded as a public entity for "state action" purposes, this argument is clearly without merit. *See, Riverview Investments, Inc. v. Ottawa Community Improvement Corp.*, 899 F.2d 474 (6th Cir. 1990). Caduceus is properly regarded as a private entity.

When a private party is involved, even where it is acting in conjunction with a municipality or other such governmental entity, both the "clear articulation" and "active supervision" standards must be met. *Hallie* at 47. This is the situation the court is presented with here in terms of Caduceus, a private party, operating the County's hospital under the Lease Agreement.

As to the clear articulation standard, the question is whether the anticompetitive conduct at issue foreseeably results from the enabling legislation. In this regard, provisions of the Franklin Hospital Licensing Act, Frank. Rev. Stat. ch. 112, ¶ 1-1001 *et seq.*, which applies to all hospitals, both public and private, operated in Franklin, are particularly relevant. The Hospital Licensing Act provides in ¶ 2-1003(a) that, "each hospital shall have a governing authority, hereinafter called the Board, which shall be responsible for the hospital's organization, management, control and operation, including appointment of the medical staff." The act goes on to state in ¶ 2-1003(b) that, "the Board shall have the authority to grant or deny applications by licensed medical practitioners for appointment to the medical staff and to determine the scope of such applicants' clinical privileges within the hospital so as to achieve and maintain high standards of ethical and professional practice within the hospital consistent with the reasonable objectives and needs of the hospital." This section also makes it clear that, "nothing in this section shall be deemed to require a hospital to grant or deny to any applicant privileges to practice within the hospital." The Hospital Licensing Act specifies in ¶ 2-1004 that, while the Board has final authority to grant or deny staff membership, it "shall utilize the advice and recommendations of the medical staff in granting privileges and determining the scope thereof." To accomplish this, ¶ 2-1004 requires that procedures be established for a hospital's medical staff, "to evaluate the professional competence of applicants for staff privileges and to make recommendations to the Board based upon the applicants' education, training, experience, professional competence, and character."

These statutory provisions, in our review, reveal a policy "clearly articulated" by the Franklin General Assembly, to permit a hospital such as Caduceus-Hopewell County Hospital to deny an application for staff privileges. That a denial of staff privileges under these statutory provisions might have anticompetitive effects must have been clearly foreseen by the Franklin legislature when it enacted the Hospital Licensing Act. *See, Coastal Neuro-Psychiatric Associates, P.A. v. Onslow Memorial Hospital, Inc.*, 795 F.2d 340 (4th Cir. 1986).

As to the second facet of the state action exemption, namely the "active supervision"

requirement, we initially note that some courts have adopted the view that where a private party is acting in conjunction with a municipality, this requirement may be applied with less rigor. See, *Cine 42nd Street Theater v. Nederlander Organization*, 790 F.2d 1032 (2nd Cir. 1986). While this court finds itself in agreement with this view, we need not decide whether to apply it here or not because the court is convinced that the arrangements between the Board of Commissioners of Hopewell County and Caduceus reflect active supervision by the County. The presence of the County Board Chair and the Director of the County Public Health Department on the Caduceus-Hopewell Board of Trustees, the requirement for annual financial, management, and personnel reports, and other provisions of the Lease Agreement are all evidence of the County's "active supervision." We therefore conclude on the basis of the "state action" doctrine that the Caduceus defendants are immune from Dr. Sawyer's claims for both damages and injunctive relief under Section 1 of the Sherman Act.

C. *Local Government Antitrust Act*

The Caduceus defendants also argue that they are entitled to summary judgment on the grounds that they are immune from any liability for antitrust damages under the Local Government Antitrust Act, 15 U.S.C. § 34 *et seq.* Specifically, they rely on the provisions of § 36(a) of the Act which states that, "no damages, interest on damages, costs or attorneys fees may be recovered" in an antitrust action "against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity."

The Local Government Antitrust Act was enacted by Congress in 1984 in response to the growing number of antitrust suits filed against local governmental entities. The objective of Congress under the statute was to remove the threat of antitrust damage claims against local governments. Section 36 of the Act specifically provides immunity for private parties acting under the direction of a local governmental entity or official. The Caduceus defendants argue that this provision applies here. This court agrees.

In *Sandcrest Outpatient Services, P.A. v. Cumberland County Hospital System, Inc.*, 853 F.2d 1139 (4th Cir. 1988), the court dealt with a claim of immunity under Section 36 by a private corporation managing a county hospital and the hospital's director in an antitrust action. The court focused its attention on the words in Section 36 "directed by a local government or official or employee thereof" and observed that Congress intended this language to be interpreted in conformity with the "state action" doctrine applying the two facets of the *Midcal Aluminum* test as if the local governmental entity were the state. The court then ruled that both facets of the test were satisfied under the facts presented.

The same analysis applies here. The acts of the Caduceus defendants were clearly within the authority granted to them and, given the provisions of the Lease Agreement these acts were actively supervised by the County Board of Commissioners. As a result the Caduceus defendants are immune under the Local Government Antitrust Act from any antitrust damages claim.

IV. CONCLUSIONS

For the foregoing reasons this court denies the Caduceus defendants' summary judgment motion on the basis of intracorporate immunity, and grants such summary judgment motion on the basis of both the "state action" doctrine and Section 36 of the Local Government Antitrust Act.

Date: October 15, 1991

/s/
JUDGE R.J. WELLS

No. 91-832

**IN THE UNITED STATES COURT OF APPEALS FOR THE
TWELFTH CIRCUIT**

**LAURA K. SAWYER, individually, and
FAMILY PSYCHOLOGICAL SERVICES, P.C.,**

Appellants and Cross-Appellees,

v.

**CADUCEUS HEALTHCARE CORP.,
a not-for-profit corporation, et al.**

Appellees and Cross-Appellants.

MEMORANDUM OPINION

The opinion of the United States District Court for the District of Franklin is hereby affirmed in all respects.

IT IS SO ORDERED.

/s/

JUDGE ANNE BROOKS

March 23, 1992

91-1615

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

**LAURA K. SAWYER, individually, and
FAMILY PSYCHOLOGICAL SERVICES, P.C.,**

Petitioners,

v.

**CADUCEUS HEALTHCARE CORP.,
a not-for-profit corporation, et al.**

Respondents.

**On Writ of Certiorari To The United States
Court of Appeals for the Twelfth Circuit**

ORDER GRANTING CERTIORARI

Petition for Certiorari is hereby granted on the following issues:

1. Whether the doctrine of intracorporate immunity applies to a hospital and the physician members of its medical staff on the basis that such physicians act as the "agents" or "employees" of the hospital so as to preclude liability under § 1 of the Sherman Act for denial of staff privileges to a licensed clinical psychologist?
2. Whether a private, not-for-profit corporation, a subsidiary corporation, its board of trustees and its chief executive officer, operating a county hospital under a lease agreement are immune from antitrust liability under § 1 of the Sherman Act for denial of staff privileges to a licensed clinical psychologist on the basis of the "state action" doctrine and/or the Local Government Antitrust Act?

IT IS SO ORDERED.

Date: June 15, 1992