

FILED
MAY 29 2012
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
May 29, 2012, 4:50 pm
BY RONALD R. CARPENTER
CLERK

RECEIVED BY E-MAIL

No. 86796-8

IN THE SUPREME COURT FOR THE
STATE OF WASHINGTON

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 304, dba
UNITED GENERAL HOSPITAL,

Respondent,

v.

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 1, dba
SKAGIT VALLEY HOSPITAL,

Appellant.

OPENING BRIEF OF APPELLANT

Phillip J. Buri, WSBA No. 17637
BURI FUNSTON MUMFORD, PLLC
1601 F. Street
Bellingham, Washington 98225
Tel. (360) 752-1500
Fax (360) 752-1502
ATTORNEY FOR APPELLANTS

ORIGINAL

TABLE OF CONTENTS

INTRODUCTION	1
I. ASSIGNMENTS OF ERROR	2
II. STATEMENT OF FACTS	4
A. Skagit Valley Purchases the Skagit Valley Medical Center.	5
B. United General Obtains A Writ Of Prohibition	8
ARGUMENT	10
III. STANDARD OF REVIEW.	10
IV. THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING A WRIT OF PROHIBITION	11
A. Public Hospital Districts May Freely Compete Against All Providers, Including in Other Districts. . .	11
B. The Availability of Relief, Not Its Likelihood, Matters	19
CONCLUSION	21

TABLE OF AUTHORITIES

Washington Supreme Court

<u>Alderwood Water Dist. v. Pope & Talbot, Inc.</u> , 62 Wn.2d 319, 382 P.2d 639 (1963).....	16, 17
<u>ATU Legislative Council of Washington State v. State</u> , 145 Wn.2d 544, 40 P.3d 656 (2002).....	14
<u>In re Estate of Blessing</u> , ___ Wn.2d ___, 273 P.3d 975, 976 (2012)	11
<u>Kreidler v. Eikenberry</u> , 111 Wn.2d 828, 766 P.2d 438 (1989).....	20
<u>Washington Federation of State Employees, Council 28, AFL- CIO v. Office of Financial Management</u> , 121 Wn.2d 152, 849 P.2d 1201 (1993).....	14

Washington State Court of Appeals

<u>Brower v. Charles</u> , 82 Wn. App. 53, 914 P.2d 1202 (1996).....	3
<u>Butts v. Heller</u> , 69 Wn. App. 263, 848 P.2d 213 (1993).....	10
<u>County of Spokane v. Local No. 1553, AFSCME</u> , 76 Wn. App. 765, 888 P.2d 735 (1995).....	4, 11, 20, 21
<u>In re King County Hearing Examiner</u> , 135 Wn. App. 312, 144 P.3d 345 (2006).....	10

Other Authorities

1992 Laws of Washington c. 161 § 1	18
Attorney General's Opinion 1988 No. 15.....	13, 14, 15

Codes and Regulations

RCW 43.72.300	2, 17
RCW 70.44.....	10

RCW 70.44.003.....	12
RCW 70.44.060.....	3, 12
RCW 70.44.450.....	18

INTRODUCTION

Does a public hospital district have the right to prevent a neighboring public hospital from competing in its taxing district? Snohomish County Superior Court Judge Ronald Castleberry concluded that Appellant Skagit County Public Hospital District No. 1 (Skagit Valley) could not compete in Respondent Skagit County Public Hospital District No. 304's (United General's) territory without permission.

The law is that one hospital district cannot invade another hospital district's geographic boundaries without first obtaining permission or consent and United has not granted such permission or consent.

(Conclusion of Law ¶ 2.9; Attached as Appendix A). Judge Castleberry issued a writ, "prohibiting Skagit Valley Hospital District from operating health care facilities or providing health care services within the geographic boundaries of the United General Hospital District." (Conclusion of Law ¶ 2.11, CP 724).

The writ of prohibition directly contradicts Washington law and public policy. As the Legislature has decreed, competition benefits the State's health care system.

The legislature recognizes that competition among health care providers, facilities, payers, and purchasers will yield the best allocation of health care resources, the lowest prices for health care services,

and the highest quality of health care when there exists a large number of buyers and sellers, easily comparable health plans and services, minimal barriers to entry and exit into the health care market, and adequate information for buyers and sellers to base purchasing and production decisions.

RCW 43.72.300(1). Because protecting public hospital districts from competition serves neither patients nor providers, Appellant Skagit Valley respectfully requests this Court to vacate the writ of prohibition, reverse the trial court's judgment and enter judgment in Skagit Valley's favor.

I. ASSIGNMENTS OF ERROR

The trial court erred as a matter of law by granting a writ of prohibition, preventing Skagit Valley from continuing to operate the Skagit Valley Medical Center. (11/21/11 Findings of Fact and Conclusions of Law; CP 720-753) (Attached as Appendix A).

Specific assignments of error are:

- A. Finding of Fact ¶ 1.5 is not supported by substantial evidence in the record. (CP 721).
- B. Conclusion of Law ¶ 2.2 is an error of law. (CP 722).
- C. Conclusion of Law ¶ 2.7 is an error of law. (CP 723).
- D. Conclusion of Law ¶ 2.8 is an error of law. (CP 723).
- E. Conclusion of Law ¶ 2.9 is an error of law. (CP 724).

F. Conclusion of Law ¶ 2.10 contains errors of law to the extent that the Court's oral opinion concluded that a writ of prohibition was appropriate. (CP 724).

G. Conclusion of Law ¶ 2.11 is an error of law. (CP 724).

H. The Court's Judgment in favor of United General and issuance of a writ of prohibition are errors of law. (CP 724).

Issues pertaining to these assignments of error are:

I. "Prohibition is a drastic remedy and may only be issued where (1) a state actor is about to act in excess of its jurisdiction and (2) the petitioner does not have a plain, speedy and adequate legal remedy." Brower v. Charles, 82 Wn. App. 53, 57, 914 P.2d 1202 (1996). Under RCW 70.44.060(3), a public hospital district has jurisdiction to "provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions." Did the trial court abuse its discretion by concluding that Skagit Valley did not have jurisdiction to compete in United General's district?

J. "[N]either the injunction statute nor the civil rules require a showing of irreparable harm to obtain an injunction where

the adverse party is given notice." County of Spokane v. Local No. 1553, AFSCME, 76 Wn. App. 765, 770, 888 P.2d 735 (1995). The trial court concluded that because United General Hospital could not prove harm from Skagit Valley's actions, it could not obtain an injunction. (9/12/2011 Transcript at 7). Did the trial court abuse its discretion by ruling that United General therefore did not have a plain, speedy and adequate legal remedy?

II. STATEMENT OF FACTS

This lawsuit involves two public hospital districts. Appellant Skagit Valley Public Hospital District No. 1 owns and operates Skagit Valley Hospital in Mount Vernon, Washington. District 1 encompasses most of Mount Vernon and areas southwest of the city of Burlington. (Finding of Fact ¶ 1.1; CP 721). Respondent Skagit County Public Hospital District No. 304 owns and operates United General Hospital in Sedro Woolley, Washington. District 304 includes Sedro Woolley, Burlington, areas west to and including the towns of Bayview, Samish Island, Bow and Alger; the eastern portion of Mount Vernon; and the communities of Lyman, Hamilton, Concrete, Marblemount, and Rockport. (Finding of Fact ¶ 1.2; CP 721).

A. Skagit Valley Purchases The Skagit Valley Medical Center

Skagit Valley and United General's dispute is over one office of the Skagit Valley Medical Center (Medical Center), a multi-specialty physician group with six offices throughout Skagit County. One office, in Sedro Woolley, is in United General's district and refers patients to both Skagit Valley and United General. (Exhibits A & B to Stone Dec.; CP 19-24). In 2006, the Medical Center decided to consolidate its operations in Sedro Woolley by opening an office for its patients there. As Dr. John Bond, President of the Medical Center, stated,

to provide adequate practice space for the seven physicians and subsequent recruits and to meet the anticipated future community need for medical services provided by these physicians, in 2006 SVMC made the decision to invest in a medical office condominium unit (hereinafter the "Pavilion") situated directly across from UGH [United General Hospital]. UGH was an active supporter of SVMC's efforts to bring these new specialists into the area. SVMC financed acquisition and build out of the Unit 2 of the Pavilion through a multi-million dollar loan.

(Bond Dec. ¶ 5; CP 619).

The Pavilion, a condominium medical office building, sits on land that United General owns, and in March 31, 2006, United General signed a 99-year lease with a developer who built the Pavilion. By purchasing Unit 2, the Medical Center provided

services within United General's boundaries, complementing its facilities within Skagit Valley's boundaries.

In 2009, the Medical Center began negotiations to sell its entire practice to Skagit Valley Hospital. (Bond Dec. ¶ 7; CP 620) In early 2010, the parties reached a two-step agreement to merge the Medical Center into the Hospital. Both Skagit Valley and the Medical Center told United General about the merger before it took place. First, beginning in 2009 and culminating on February 25, 2010, officials from Skagit Valley met with United General's staff and Board of Commissioners to explain the purchase and to assure that the Medical Clinic in Sedro Woolley will operate as usual. (Davidson Dec. ¶¶ 2, 4; CP 108-109). They confirmed both in person and in writing that referrals from the facility would not change. Skagit Valley officials answered all questions the Board had about the proposed merger.

Second, on June 14, 2010, the Medical Center offered United General the option to purchase Unit 2 of the Pavilion. As Dr. Bond stated,

on or about June 14, 2010, I on behalf of SVMC, offered UGH the option to match the price that SVH was willing to pay for condominium Unit 2 at the Pavilion. UGH declined to exercise that right, but did offer to purchase the facility for \$4.305 million, nearly

a million dollars less than the amount SVH had agreed to pay.

(Bond Dec. ¶ 8; CP 620).

Despite these opportunities, United General refused to cooperate with the merger or provide a reasonable alternative. On May 27, 2010, United General's Board formally opposed the merger by resolution, claiming that Skagit Valley must have the District's permission. (District 304 Resolution No. 2010-23; Exhibit C to Reed Dec; CP 611-615). Neither Skagit Valley nor the Medical Center had requested United General's permission because none was needed.

In July 2010, Skagit Valley purchased the assets of the Medical Center and took over its operations. (4/30/10 Integration Agreement; Exhibit A to Reed Dec.; CP 409-468). The Medical Center physicians became Hospital employees, and the Hospital leased all Medical Center clinics, including Unit 2 of the Pavilion. Final merger of the entities will occur in 2012. Although United General terminated the hospital privileges of all Skagit Valley employees in retaliation, the parties resolved the doctors' claims and reinstated the privileges. Only the dispute between the Hospitals remains.

B. United General Obtains A Writ Of Prohibition

On April 29, 2011, a year after the merger began, United General filed its complaint against Skagit Valley for declaratory judgment, writ of prohibition, and injunctive relief. United General then sought a show cause hearing, requesting the Superior Court to issue a writ of prohibition.

On September 12, 2011, visiting Snohomish Superior Court Judge Ronald Castleberry granted the writ. Judge Castleberry made two rulings that are central to this appeal. First, the court ruled that Skagit Valley could not own or operate a medical facility in United General's territory without permission.

To allow one district to operate in another district without an agreement would vitiate the entire purpose of the statute creating the districts...It would essentially mean that one district could openly compete with another district within its boundaries. And that might be very well and good if these were private corporations in which competition is encouraged. But in terms of public hospital districts, an entirely different approach has been taken by the legislature.

(9/12/11 VRP 12-13). In effect, Judge Castleberry concluded that Skagit Valley exceeded its "jurisdiction" by operating the Medical Center near United General.

Second, the court ruled that United General did not have an adequate remedy other than a writ. Because it could not prove harm from the merger, United General, in the trial court's opinion, could not obtain an Injunction.

In this case it may be argued that one should seek the remedy of injunctive relief. The problem with that approach is that the defendant, Skagit Valley, vehemently argues at this hearing and in its memorandum, that there is no harm, there is no detriment, and none can be established. And so if I were to deny the writ of prohibition and say, well, you have available to you the remedy of injunctive relief, it's a vicious circle because then when the injunctive relief is sought, the defendant turns around and says, well, there is no harm. That's what this hearing is all about. You can't establish harm. If you can't establish harm, you can't get an injunction. And if they can't get in the injunction, then there is no other plain, adequate remedy available to them.

(9/12/11 VRP 7).

On November 9, 2011, the court entered Findings of Facts and Conclusions of Law. (Findings and Conclusions; CP 720-753). Skagit Valley filed a timely notice of appeal and motion for direct review in the Supreme Court. It now respectfully requests the Court to accept review, vacate the writ of prohibition and remand for entry of judgment in Skagit Valley's favor.

ARGUMENT

III. STANDARD OF REVIEW

Although this Court has never ruled on the proper standard of review, the Court of Appeals reviews a writ of prohibition for an abuse of discretion.

Writs of prohibition are reviewed for abuse of discretion, and reviewing courts consider “the character and function of the writ of prohibition together with all the facts and circumstances shown by the record.” City of Olympia v. Bd. of Comm'rs, 131 Wn. App. 85, 91, 125 P.3d 997 (2005); see also County of Spokane v. AFSCE, 76 Wn. App. 765, 768, 888 P.2d 735 (1995). “A writ of prohibition is a drastic remedy that is proper only when: (1) it appears the body to whom it is directed is about to act in excess of its jurisdiction; and (2) the petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law.” City of Olympia, 131 Wn. App. at 91, 125 P.3d 997. It must be clear and inarguable that the body to which a writ of prohibition is directed entirely lacks jurisdiction. Barnes v. Thomas, 96 Wn.2d 316, 635 P.2d 135 (1981).

In re King County Hearing Examiner, 135 Wn. App. 312, 318-319, 144 P.3d 345 (2006); Butts v. Heller, 69 Wn. App. 263, 266, 848 P.2d 213 (1993) (“what constitutes a plain, speedy and adequate remedy depends on the facts of the case and rests within the sound discretion of the court in which the writ is sought”).

The Court construes the statutory authority of public hospital districts under RCW Ch. 70.44 *de novo*.

Statutory interpretation involves questions of law that we review de novo. Our objective in construing a statute is to determine the legislature's intent. If the statute's meaning is plain on its face, then we must give effect to that plain meaning as an expression of legislative intent. Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole.

In re Estate of Blessing, ___ Wn.2d ___, 273 P.3d 975, 976 (2012).

IV. THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING A WRIT OF PROHIBITION

A. Public Hospital Districts May Freely Compete Against All Providers, Including in Other Districts

"The first requirement for a statutory writ of prohibition is that the party to whom it is directed must be acting, or about to act, in excess of his jurisdiction." Spokane v. Local No. 1553, 76 Wn. App. 765, 769, 888 P.2d 735 (1995). Skagit Valley, like United General, has broad authority to provide health care services both inside and outside its taxing district. This includes the power

to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, *by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions*; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and

adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper.

RCW 70.44.060(3) (emphasis added).

The sole statutory limit on Skagit Valley's authority to compete is that "it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners." RCW 70.44.060(3). Because the merger with the Medical Center strongly benefits both residents and non-residents, Skagit Valley has fulfilled its statutory duty to "provide hospital services and other health care services for the residents of such districts and other persons." RCW 70.44.003.

The trial court imposed a second limit, however, not contained in any statute. "[O]ne rural hospital district may not invade the geographic limits of another hospital district, by providing hospital or other healthcare services inside the boundaries of the invaded district, without first obtaining the other district's permission and/or consent." (Conclusion of Law ¶ 2.7; CP 723). The court implied this limit as a matter of public policy.

To allow one district to operate in another district without such an agreement would vitiate the entire purpose of the statute creating public hospital districts, for the reasons that are stated in AGO 1988 No. 15, as well as Alderwood Water District v. Pope & Talbot, 62 Wn.2d 319, 382 P.2d 639 (1963).

(Conclusion of Law ¶ 2.8).

This reasoning has at least four flaws. First, it protects public hospital districts from only the weakest competitive threat – other districts. Large regional networks like PeaceHealth, Swedish Medical Center, Virginia Mason Medical Center, Group Health, and Valley Medical Center all compete in public hospital districts without this restriction. Given consolidation in health services, protecting one public hospital district from another merely ensures that regional providers will gain competitive advantage over their public counterparts. It does not guard districts from direct competition nor does it promote efficient delivery of health care services.

Second, the Attorney General's 1988 opinion is neither binding nor persuasive authority. This Court has made clear that on questions of statutory construction, these opinions are advisory.

[W]e give less deference to such opinions when they involve issues of statutory interpretation. See e.g., American Legion Post No. 32 v. Walla Walla, 116 Wn.2d 1, 9, 802 P.2d 784 (1991) (rejecting AGO interpretation of statutory term "primarily"); Davis v. Cy. of King, 77 Wn.2d 930, 934, 468 P.2d 679 (1970)

(rejecting AGO resolution of apparently conflicting statutes). This reduced deference results from our recognition that “[t]he court remains the final authority on the proper construction of a statute.” Davis, 77 Wn.2d at 934, 468 P.2d 679.

Washington Federation of State Employees, Council 28, AFL-CIO v. Office of Financial Management, 121 Wn.2d 152, 164-165, 849 P.2d 1201 (1993); ATU Legislative Council of Washington State v. State, 145 Wn.2d 544, 554, 40 P.3d 656 (2002) (“little deference to attorney general opinions on issues of statutory construction”).

Furthermore, the reasoning in AGO 1988 No. 15 is outdated. The primary concern in the opinion is that “there cannot be two municipal corporations exercising the same functions in the same territory at the same time.” AGO 1988 No. 15 at 3. When rural public hospital districts were the only health care providers in their areas, this rule made sense. Now, with multiple providers and overlapping medical centers in the districts, this implied rule of “good government” has outlived its usefulness.

The Court may appropriately retire the rule of construction. Contrary to United General’s arguments, the Legislature did not impose this restriction – the statute permits expansion. Instead, courts have implied the limit as a matter of statutory construction. This Court has discretion to revise or retire it.

Finally, the Opinion incorrectly assumes that "the construction and operations of health care facilities by one district within the boundaries of another district would be inconsistent with the statutory emphasis on district planning." AGO 1988 No. 15 at 4. Throughout its discussion, the Opinion presumes that a district is the sole or primary provider of health care services. It is not. Strategic and capital planning must now account for the multiple public and private health care providers in a district, not to mention the growing list of out-patient services.

In other words, every public hospital district has long since been "invaded".

One option a local district would have to retain local control in the face of a potential "invasion" by another district would be to try to fend off the invasion by constructing, purchasing, leasing, or otherwise acquiring its own facility. This could easily result in premature district action and unnecessary or unwise public investment in facilities and programs. *We do not see that the public good would be served by any rule promoting this result.*

(AGO 1988 No. 15 at 5) (emphasis added). Protecting public hospitals from competition is as ineffective as it is untimely. The Opinion, written some 24 years ago, describes a health care market of the past.

Third, this Court's opinion in Alderwood Water District v. Pope & Talbott, 62 Wn.2d 319, 382 P.2d 639 (1963) does not, and should not, apply to hospital districts. In Alderwood Water District, Justice Finley concluded that for water districts, overlapping service did not make sense.

In some Washington cases reference is made to a general rule that there cannot be two municipal corporations exercising the same functions in the same territory at the same time. Although this so-called general rule has been virtually emasculated by the case law of this state, it continues to serve as a touchstone in the sense that it expresses a public policy against duplication of public functions, and that such duplication is normally not permissible unless it is provided for in some manner by statute. In a sense, the 'general rule' should alert courts, in situations akin to that of the instant case, to the necessity of closely examining *in toto* statutory provisions conferring authority upon the potentially competing municipal corporations.

Alderwood Water District, 62 Wn.2d at 321.

Water customers need only one provider in a district, and for this reason, utilities like water suppliers have been regulated monopolies. On the other hand, most people no longer have one health care provider. Depending on the need, a patient could see multiple providers, often working for different practice groups. As this case illustrates, competing practice groups and hospitals, rather than creating wasteful duplication, decrease costs through

competition and specialization. RCW 43.72.300(1) (“competition among health care providers, facilities, payers, and purchasers will yield the best allocation of health care resources, the lowest prices for health care services, and the highest quality of health care”). Anti-competitive protection of public hospital districts contradicts this Legislative purpose.

No one, even in rural areas, would want only one health care provider to serve all patients and health care needs. Multiple clinics, hospitals, and providers improve the quality of health care rather than diminish it.

This Court’s opinion in Alderwood Water District, did not create a per se rule against competition between public districts. Instead, it abandoned the “so-called general rule” and replaced it with a rule of reason. If multiple public providers benefit no one, the lack of a statutory limit does not require an inappropriate result. Yet the opposite is also true – if multiple providers serve the public good, public districts do not have exclusive territories protected from competition. Hospital districts operate in a market of increasing competition. It makes no sense to limit their ability to expand and succeed.

Fourth, the Legislature did not intend to bar competition by allowing public hospital districts to enter interlocal agreements.

Under RCW 70.44.450,

in addition to other powers granted to public hospital districts by chapter 39.34 RCW, rural public hospital districts may enter into cooperative agreements and contracts with other rural public hospital districts in order to provide for the health care needs of the people served by the hospital districts.

RCW 70.44.450. This does not supplant competition but rather allows two rural hospitals to collaborate when neither has the capacity to provide all services alone.

The legislature also finds that most hospitals located in rural Washington are operated by public hospital districts authorized under chapter 70.44 RCW and declares that it is not cost-effective, practical, or desirable to provide quality health and hospital care services in rural areas on a competitive basis *because of limited patient volume and geographic isolation.*

1992 Laws of Washington c. 161 § 1 (emphasis added).

Here, Skagit County has significant patient volume and is not geographically isolated. Both Skagit Valley and United General have signed interlocal agreements with other public providers, as well as formed alliances with regional medical centers. (Exhibit A to Supplemental Hillman Dec.; CP 772-775) (United General alliance with PeaceHealth). The Legislature did not intend

interlocal agreements to prohibit competition in rural districts. Instead, for isolated districts with few patients, interlocal agreements permit rural hospitals to provide essential services where no alternative exists.

Rural healthcare benefits from more competition, not less. Washington's public hospital districts do not operate in isolation, immune from competition. Instead, they must survive in a market with high costs, large regional competitors, and increasing regulation. Although it is tempting to view rural hospitals as the only providers, they are not alone. And attempts to shield them from competition will ultimately make them obsolete. By granting a writ of prohibition, Judge Castleberry gave United General a temporary reprieve from one competitor. But no writ will protect United General from the competitive forces that continue to transform the market for health care.

Because Skagit Valley did not act beyond its jurisdiction when it purchased Skagit Valley Medical Center, the grant of a writ of prohibition was an abuse of discretion.

B. The Availability of Relief, Not its Likelihood, Matters

The second requirement for a writ of prohibition is "the absence of a plain, speedy, and adequate remedy in the course of

legal procedure.” Kreidler v. Eikenberry, 111 Wn.2d 828, 838, 766 P.2d 438 (1989). Here, United General requested injunctive relief as well as a writ of prohibition. (Complaint ¶ 3.3; CP 89-90) (“pursuant to RCW 7.40.020 *et seq.*, the Court should issue an injunction prohibiting SVH from operating within the jurisdictional boundaries of United General”). Because injunctive relief exists *if United General could prove its claims*, the trial court erred by granting extraordinary relief – a writ of prohibition.

Division III of the Court of Appeals in Spokane v. Local 1553, 76 Wn. App. 765, 888 P.3d 735 (1995) scrutinized injunctive relief as an adequate remedy for an allegedly illegal strike. The court concluded that a writ of prohibition is inappropriate when the wronged party could sue for an injunction.

The employees also argue the employers could have resorted to a temporary restraining order or injunction. In response, the employers assert an injunction would be unavailable until they had suffered irreparable harm. This is not so. Although a temporary restraining order, which is issued without notice to the adverse party, requires a showing of irreparable harm, CR 65(b), neither the injunction statute nor the civil rules require a showing of irreparable harm to obtain an injunction where the adverse party is given notice. RCW 7.40.020, .050; CR 65(a), (d); see Boeing Co. v. Sierracin Corp., 108 Wn.2d 38, 62–63, 738 P.2d 665 (1987). A party seeking an injunction must show

(1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in *or will result* in actual and substantial injury to him.

(Italics ours.) Port of Seattle v. International Longshoremen's & Warehousemen's Union, 52 Wn.2d 317, 319, 324 P.2d 1099 (1958).

Spokane v. Local 1553, 76 Wn. App. at 770-771. The trial court erred by concluding that an injunction was not available.

Furthermore, because United General can, and did, seek an injunction from the trial court, a writ of prohibition is unwarranted.

The harm need not be irreparable, nor must the injury already have occurred to get an injunction. The employers have not shown that injunctive relief would not have been speedy and adequate. Delay, expense, annoyance, or even some hardship does not always make a remedy inadequate.

Spokane v. Local 1553, 76 Wn. App. at 771. The trial court abused its discretion by granting a writ of prohibition rather than deciding this case based on the standard for injunctive relief.

United General did not qualify for an injunction for a different reason: it had no clear or equitable right to protection from competition. As detailed above, Washington law does not prohibit one public hospital district from competing in another's district. There are no exclusive territories for health care services.

Therefore, United General did not have a right to injunctive relief any more than a writ of prohibition. Like Skagit Valley, it must compete in the open marketplace against all providers.

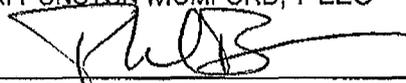
A writ of prohibition is an extraordinary remedy, appropriate only when all other remedies are unavailable. Here, United General had the ability to sue for injunctive relief. If it could have proven its case, United General had an adequate remedy.

CONCLUSION

The trial court abused its discretion by granting a writ of prohibition. Because the Legislature expressly authorized public hospital districts to own and operate facilities wherever expedient or necessary, Appellant Skagit Valley may own and operate a medical clinic within Respondent United General's taxing boundaries. Skagit Valley respectfully requests this Court to accept direct review, vacate the trial court's writ of prohibition and enter judgment in Skagit Valley's favor.

DATED this 29 day of May, 2012.

BURI FUNSTON MUMFORD, PLLC

By 

Philip J. Buri, WSBA #17637
1601 F. Street
Bellingham, WA 98225
360/752-1500

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of Opening Brief of Appellant to:

G. Douglas Ferguson
Christopher Knapp
Anderson Hunter Law Firm, P.S.
2707 Colby Ave., Ste. 1101
PO Box 5397
Everett, WA 98206

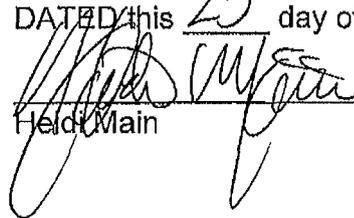
Geoff Bridgman
Ogden Murphy Wallace
1601 5th Ave., Ste. 2100
Seattle, WA 98101

Roger Hillman
Garvey Schubert Barer
1191 2nd Ave. 18th Floor
Seattle, WA 98101

Brad Furlong
Furlong Butler
825 Cleveland Avenue
Mount Vernon, Washington 98273

Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

DATED this 29th day of May, 2012.


Held Main

APPENDIX A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RECEIVED

NOV 21 2011

GARVEY SCHUBERT BARER

SUPERIOR COURT OF WASHINGTON FOR SKAGIT COUNTY

SKAGIT COUNTY PUBLIC HOSPITAL
DISTRICT NO. 304, dba United General
Hospital,

Plaintiff,

vs.

SKAGIT COUNTY PUBLIC HOSPITAL
DISTRICT NO. 1 and the BOARD OF
COMMISSIONERS THEREOF, dba Skagit
Valley Hospital,

Defendant.

No. 11-2-00816-1
(CONSOLIDATED)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
JUDGMENT AND STAY

Dr. TEACKLE W. MARTIN, et al.

Plaintiffs,

vs.

SKAGIT COUNTY PUBLIC HOSPITAL
DISTRICT NO. 304 dba UNITED
GENERAL HOSPITAL,

Defendant.

This matter having come on for hearing and the Court having considered the pleadings, memoranda and declarations on file, and having heard argument of counsel, the Court hereby makes the following Findings of Fact, Conclusions of Law and enters the following judgment and stay:

FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND STAY - 1

AH:Doc No. 628501

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 252-5161
FACSIMILE (425) 250-3345

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. FINDINGS OF FACT

1.1 Skagit County Public Hospital District No. 1, dba Skagit Valley Hospital ("SVH"), is a Washington municipal corporation and public hospital district organized under Chapter 70.44 RCW. The jurisdictional boundary of SVH encompasses the majority of the City of Mount Vernon and areas southwest of the City of Burlington.

1.2 Skagit County Public Hospital District No. 304, dba United General Hospital ("United General") is a Washington municipal corporation and public hospital district organized under Chapter 70.44 RCW. The jurisdictional boundary of United General encompasses the Cities of Sedro-Woolley, Burlington, areas west to and including the towns Bayview, Samish Island, Bow and Alger; and areas including an eastern portion of the City of Mount Vernon and extending east to include the townships of Lyman, Hamilton, Concrete, Marblemount, and Rockport.

1.3 United General owns certain real property, located within its jurisdictional boundaries, with a physical address of 1990 Hospital Drive, Sedro Woolley, WA 98284. Subject to a long-term ground lease, a commercial office building (the "Pavilion") has been constructed on that property. The Pavilion was developed as a condominium, and Skagit Valley Medical Center, Inc., P.S., a multi-specialty physician group acquired Unit 2 of the Pavilion in October 2007.

1.4 Pursuant to an "Integration Agreement" dated April 30, 2010 (the "Integration Agreement") SVH has entered into arrangements with Skagit Valley Medical Center to acquire all or substantially all of the medical group's assets and hire most of its employees, including physicians. The assets SVH acquired in the merger included Pavilion Condominium Unit 2.

1.5 On May 27, 2010, the Board of Commissioners of United General adopted Resolution No. 2010-23 which specifically denied SVH's request to provide healthcare

1 services inside United General's jurisdictional boundaries following the SVH/SVMC
2 merger.

3 1.6 On July 1, 2010 SVH entered into contracts of employment whereby it is
4 now employing four full time and three part time health care providers who were formerly
5 employed by Skagit Valley Medical Center at Pavilion Unit 2. In the scope and course of
6 their current employment by SVH, those health care providers have continued to provide
7 health care services at Pavilion Condominium Unit 2.

8 1.7 SVH has stated that it intends to appeal this Court's judgment, set forth
9 below.

10 1.8 Implementation of this Court's judgment prior to resolution of such an
11 appeal, if any, would disrupt the health care provided to patients by the health care
12 providers at Pavilion Unit 2.

13 II. CONCLUSIONS OF LAW

14 2.1 Two conditions must be met to grant the writ of prohibition; (1) the party to
15 whom the writ is directed must be acting without or in excess of its jurisdiction; and (2)
16 there must be an absence of plain, speedy, and adequate remedy in the course of legal
17 procedure. The writ may be issued where it appears the person to whom it is directed is
18 about to act in excess of his or her jurisdiction. See, *Brower v. Charles*, 82 Wn. App. 53,
19 914 P.2d 1202 (1996).

20 2.2 The Court concludes that the second prong of the requirements for a writ of
21 prohibition has been met, i.e., there is no plain, speedy and adequate remedy available in
22 the course of legal procedure.

23 2.3 The Pavilion is a health care facility within the definition of the statute. (Ch.
24 70.44 RCW).
25
26

1 2.4 The health care providers employed by SVH who work at the Pavilion,
2 either on a full-time or part-time basis, are providing health care services within the United
3 General hospital district boundaries and accordingly, SVH is providing health care services
4 with the United General district boundaries.

5 2.5 Both SVH and United are hospital districts that are established pursuant to
6 RCW 7.44. Each is a municipal corporation. Each are established as rural hospital districts
7 with defined geographic boundaries. Each has the power to maintain health care facilities.
8 Each has the power to provide health care services. And within their respective districts as
9 municipal corporations, they are able to levy taxes, exercise power of eminent domain,
10 they are managed by a board of commissioners that are elected by the residents of the
11 respective districts.
12

13 2.6 Public Hospital districts are in a different category than private corporations.
14 The law is universal that municipal corporations may exercise only those powers which are
15 expressly granted or implied in the enabling statutes.
16

17 2.7 Reviewing the statute creating public hospital districts in its entirety, this
18 Court concludes that one rural hospital district may not invade the geographic limits of
19 another hospital district, by providing hospital or other healthcare services inside the
20 boundaries of the invaded district, without first obtaining the other district's permission
21 and/or consent.
22

23 2.8 To allow one district to operate in another district without such an agreement
24 would vitiate the entire purpose of the statute creating public hospital district, for the
25
26

1 reasons that are stated in AGO 1988 No. 15, as well as in the *Alderwood Water District vs.*
2 *Pope & Talbot*, 62 Wn. 2d 319, 382 P. 2d 639 (1963).

3 2.9 The law is that one hospital district cannot invade another hospital district's
4 geographic boundaries without first obtaining permission or consent and United has not
5 granted such permission or consent.

6 2.10 The Court hereby adopts and incorporates by reference the analysis and
7 conclusions from the Oral Opinion of the Court, dated September 12, 2011, as set forth in
8 Reporter's Transcript of same attached hereto as Exhibit "A."

9 2.11 Based upon the foregoing Findings of Fact and Conclusions of Law, the
10 Court will grant the Writ of Prohibition prohibiting Skagit Valley Hospital District from
11 operating health care facilities or providing health care services within the geographic
12 boundaries of the United General Hospital District.
13

14 III. JUDGMENT

15 IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS: Judgment be
16 and is hereby entered in favor of United General and a Writ of Prohibition is to be issued
17 directed to Defendant, Skagit Valley Hospital and said Defendant Skagit Valley Hospital is
18 hereby ORDERED to cease, desist and refrain from operating health care facilities or
19 providing health care services within the legal boundaries of Plaintiff United General,
20 including but not limited to providing health care services through its employed health care
21 providers at the premises referenced to herein as the Pavilion (1990 Hospital Drive, Sedro-
22 Woolley, WA).
23

24 IV. STAY

25 IT IS FURTHER ORDERED that the effective date of this Writ shall be stayed until
26 such time as the Court of Appeals (or the Supreme Court should direct review be sought

FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND STAY - 5

AH:Doe No. 628501

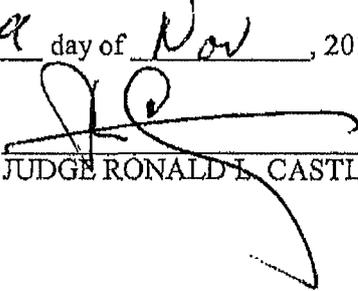
ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 6387
EVERETT, WASHINGTON 98208-5307
TELEPHONE (425) 258-5151
FACSIMILE (425) 258-3345

1 and granted) issues its decision and mandate (or until such other time as may be directed by
2 the Appellate Court), or until the expiration of the time for appeal, if no timely appeal is
3 taken.

4 IT IS FURTHER ORDERED that while the stay is in effect, there shall be no
5 further expansion of Defendant Skagit Valley Hospital's health care services or operations
6 -- either in terms of the number of health care providers, or the type, quantity or quality of
7 health care services provided -- within the boundaries of United General's hospital district.
8 Further, to the extent that any of Skagit Valley Hospital's health care health care providers
9 who are currently providing services within the boundaries of United General (set forth on
10 Exhibit "B") should cease to provide such services (through attrition, relocation or similar
11 change of practice), those health care personnel shall not be replaced (temporary coverage
12 for absences due to illness, bereavement, maternity/paternity leave, professional education
13 or vacation will be allowed).

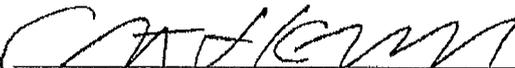
14 The above is a Final Judgment on all claims of United General as against SVH in
15 the within action pursuant to RAP 2.2 (a) (1).

16 DONE IN OPEN COURT this 9 day of Nov, 2011.

17
18 
19
20 JUDGE RONALD L. CASTLEBERRY

21 Presented by:

22 ANDERSON HUNTER LAW FIRM P.S.

23 By 

24 Christopher J. Knapp, WSBA #19954
25 Attorneys for Plaintiff, United General Hospital
26

FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND STAY - 6

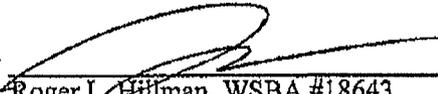
AH:Doc No. 628501

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 252-5161
FACSIMILE (425) 259-3045

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Approved as to form, notice of presentation waived:

GARVEY SCHUBERT BARER

By 
Roger L. Hillman, WSBA #18643
Attorneys for Defendant, Skagit Valley Hospital

FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND STAY - 7

AH:Doc No. 628501

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 252-5191
FACSIMILE (425) 258-3345

OFFICE RECEPTIONIST, CLERK

To: Philip Buri
Cc: Heidi Main
Subject: RE: Supreme Court No. 86796-8

Rec. 5-29-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Philip Buri [<mailto:Philip@burifunston.com>]
Sent: Tuesday, May 29, 2012 4:46 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Heidi Main; Philip Buri
Subject: Supreme Court No. 86796-8

To the Clerk:

Here for filing is Appellant Skagit County Public Hospital District No. 1's Opening Brief.

Philip Buri
Buri Funston Mumford, PLLC
1601 F. Street
Bellingham, WA 98225
360.752.1500
www.burifunston.com