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State Supreme Court Hears Arguments In Rocky Hill Nursing Home Case



Rocky Hill residents Marlene O'Leary, Beverly Quinn and Linda Cerati participate in a rally at the capitol in opposition to the state's plan to reopen a private nursing home in a residential neighborhood to care for prison inmates and state mental

patients. (Mark Mirko / Hartford Courant)

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Special to The Courant

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Case involving Rocky Hill's nursing home for parolees and mental patients reaches state Supreme Court

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The State Supreme Court heard arguments Tuesday challenging the legality of a privately owned nursing home in Rocky Hill that provides long-term care to state prison parolees and mental patients.

At issue is whether the owners of the facility – iCare Management LLC and its two subsidiaries SecureCare Realty LLC and SecureCare Options LLC – have a right to sovereign immunity, essentially freeing them from local zoning restrictions and the payment of property taxes.

The court agreed to hear an appeal from the town of Rocky Hill of the dismissal of the lawsuit, filed in December 2012, which sought to prevent the nursing home at 60 West St. from opening.

"Their entire claim rises and falls on sovereign immunity," attorney Proloy K. Das of the Hartford firm of Rome McGuigan, who argued the appeal before a panel of six justices headed by Chief Justice Chase T. Rogers

The case is being watched closely by Connecticut municipal officials: The Connecticut

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Das opened his presentation by noting that several people listed on the Connecticut Sex Offender Registry for serious sex crimes receive treatment at the 95-bed facility, which is surrounded by single-family residences, apartments and condominiums.

Neighbors "have the right to have the zoning laws protect them," Das told the justices. "This is precisely the site the legislature did not want this type of facility in."

The nursing home is the first of its kind in the state. A 2011 state law directed the commissioners of correction, social services and mental health and addiction services to contract for chronic or convalescent nursing care services, enabling the state to recoup 50 percent of those costs through federal Medicaid reimbursement. Long-term care provided within state institutions is not Medicaid-eligible.

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Upon being selected as the contractor, Manchester-based iCare Management used SecureCare Realty to purchase the Rocky Hill property, a 1960s-era nursing home left vacant by bankruptcy. A

services contract between the state and SecureCare Options was signed in January 2013.

The first patients were admitted in May 2013 after Superior Court Judge Antonio C. Robaina rejected the town's request for an injunction and dismissed the lawsuit. The Supreme Court opted to take the town's appeal directly, bypassing the Appellate Court.

Das challenged Robaina's reliance on a particular case, *Gordon v. H.N.S. Management Co.* In that 2004 case, the Supreme Court held that a private company managing a public bus system for the Connecticut Department of Transportation was entitled to sovereign immunity and could not be sued for damages. The ruling established criteria to use in making future determinations and Robaina held that five of the eight criteria were met in the nursing home case.

Das disagreed whether any of the criteria were met, and questioned if the case was even applicable. In the Gordon case, the buses, all the facilities, even the fares collected, were state property. By contrast, all the assets in the nursing home case are privately owned, and no court has ever ruled that a private company was exempt from local zoning.

The request for proposals, the transcript of the bidder's conference and language in the SecureCare Options contract all state clearly that the contractor will abide by local zoning, Das said.

Jonathan Starble, attorney for iCare and its subsidiaries, rejected arguments Das raised about conditions at the nursing home — the type of patients there, the level of security — as outside the scope of the original hearing.

"This was a case brought to prevent the opening of a facility," he said. "We disagree with the characterization of what's happening at the nursing home now. But that is not in the record."

When Justice Christine S. Vertefeuille pressed him on whether the state had greater control over the bus operation in the Gordon case, than in this case, Starble replied: "I agree it's a different type of control."

The state law directing the state agencies to contract for the nursing home services effectively frees his clients from complying with local zoning laws, Starble said.

Rocky Hill Town Attorney Morris Borea, a partner with Das at Rome McGuigan, said afterwards he was encouraged by the questions posed by the justices. Still, "you can't predict what will happen," he said.

The town continues to assess taxes on the property. According to tax collector records, SecureCare Realty owes \$151,301.74 in past due taxes, interest and penalties. SecurCare Options owes personal property taxes totaling \$1,987.89.

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