

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, June 7, 2018

No. 81 West Midtown Management Group, Inc. v State of New York, Department of Health, Office of the Medicaid Inspector General

West Midtown Management Group, Inc. operates two drug and alcohol treatment clinics in Manhattan, where many of its patients are covered by Medicaid. In 2010, the State Office of the Medicaid Inspector General (OMIG) issued a final audit report finding that, based on a sampling of claims, West Midtown had received an estimated \$1,857,401 in overpayments from 2003 through 2007. Based on the same sample, the report estimated that the "lower confidence limit," the probable lower limit of the overpayment, was \$1,469,914, and it said West Midtown could settle its repayment obligation for the lower limit if it agreed to a repayment plan within 20 days. If there was no settlement, the audit report said OMIG would begin withholding from claims "to recover payment and liquidate the lower confidence amount, interest, and/or penalty, not barring any other remedy at law." If West Midtown challenged the audit at a hearing, it said OMIG would seek to recover the full amount of \$1,857,401. West Midtown sought to challenge the findings, but failed to file a timely request for a hearing and none was held. After the 20-day settlement deadline passed, OMIG sent notice to West Midtown that it had begun withholding to recoup "the lower confidence limit," noting that "an overpayment totaling \$1,460,914.00 was identified," and saying the withholding "will continue until such time as the balance due is recovered." When OMIG informed West Midtown in 2013 that it would continue withholding Medicaid payments until it recouped the full \$1,857,401, the provider brought this proceeding to prohibit OMIG from recouping more than \$1,460,914. West Midtown said OMIG failed to provide adequate notice that it intended to recoup the higher estimate of \$1,857,401.

Supreme Court dismissed the suit. Due to West Midtown's failure to challenge the audit findings at a hearing, it said, "the amount of the overpayment ... became fixed at the higher \$1.8 million point estimate. This is consistent with the language of the [audit report] which advised that OMIG would establish a withhold to recover ... the lower confidence limit amount..., but that this withhold did not bar 'any other remedy allowed by law'...."

The Appellate Division, First Department reversed in a 3-2 decision, saying, "The plain meaning of the [withholding] notice is that withholding will cease once the identified overpayment figure of \$1,460,914, plus interest, has been recouped.... [T]he dissent ... fails to address the dispositive issue, whether or not OMIG delivered the statutorily required notice. A fair reading of both the [audit report] and OMIG's formal notice of withholding leads to the inescapable conclusion that OMIG informed petitioner that it was withholding to recoup the lower confidence amount of \$1,460,914, and failed to deliver written notice ... that it would continue withholding to liquidate the higher point estimate of \$1,857,401."

The dissenters said West Midtown "neither agreed to the proposed settlement of the lower confidence limit within the indicated time frame, nor properly requested a hearing to challenge OMIG's findings. Importantly, in the absence of either a settlement or a determination at a hearing of some other overpayment amount, the final audit report becomes a final, enforceable determination of the agency, and its filing with the County Clerks gives it the 'full force and effect of a judgment' (see Social Services Law § 145-a[2]).... The final audit report sufficiently informed petitioner that if it did not settle or obtain a different result at a hearing, the full assessed overpayment would be due and owing."

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For respondent West Midtown: Jonathan M. Goidel, Manhattan (212) 840-3737

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To be argued Thursday, June 7, 2018

No. 82 Matter of Waite v Town of Champion

This case arose under General Municipal Law article 17-a, "The New NY Government Reorganization and Citizen Empowerment Act," which was enacted in 2009 to provide a simpler means for citizens and local officials to dissolve or consolidate outdated and inefficient government entities. In August 2014, residents of the Champion Fire Protection District (CFPD) in the Town of Champion, Jefferson County, initiated a proceeding to dissolve the district by filing a petition to hold a referendum on the issue. Supporters apparently wanted to replace the "fire protection district," which is controlled by the Town Board and financed with taxes imposed by the Board, with a "fire district," which is a separate political subdivision governed by an independently elected fire commission. The referendum was held in December 2014 and a majority of residents voted for dissolution, triggering the Town's duty under the statute to prepare an "elector initiated dissolution plan."

Under the plan the Town Board adopted in August 2015, the CFPD would be dissolved and replaced with two newly created fire protection districts, which together covered the same geographic area as the CFPD. Five residents brought this proceeding to void the Town's plan, arguing that it had failed to dissolve the CFPD as required by the statute and instead merely divided the CFPD into two new fire protection districts, which the Town would continue to control. They also sought an order directing the Town to adopt a new dissolution plan that "does not involve the existence of a fire protection district."

Supreme Court dismissed the suit, saying the Town "followed the appropriate steps here. I won't say it's the appropriate action or not. Maybe the best way to provide fire protection is through a fire district, not a fire protection district, but that's the job of the elected officials to decide and that's what they did. And, obviously, the petitioners disagree with that, but the procedures that they had to follow were followed, so the court is going to dismiss the petition."

The Appellate Division, Fourth Department affirmed, saying the Town "complied with the statute.... The majority of electors voted for dissolution of the [CFPD], and [the Town] consequently fulfilled its duty of devising a dissolution plan.... Petitioners failed either to attain the requisite number of signatures to challenge the dissolution plan by referendum..., or to petition for the establishment of a fire district...."

The petitioners argue that "mere compliance with the process of dissolution cannot excuse an illegal and ineffective plan;" and they contend the Town's plan "is unlawful as it did not accomplish and complete the dissolution of the Fire Protection District." They say, "The Legislature did not intend to permit [the Town's] Elector Initiated Dissolution Plan to recreate the same type of local government entity that the residents just voted to dissolve.... A true dissolution would remove [the Town's] control over the fire protection district and form a different type of local government entity over which the town has no control, such as a fire district or joint fire district. A true dissolution would remove the town's liability for the negligence of the Department which provides fire protection within such area."

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For respondent Town: Robert J. Slye, Watertown (315) 786-0266

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To be argued Thursday, June 7, 2018
No. 83 People v William Harris

William Harris was arrested at his Brooklyn apartment after he fought with his girlfriend in 2013. Officers found two crack pipes in his pockets. He was tried on various misdemeanor charges at a bench trial in Criminal Court. At the close of proof, the trial judge announced that he would not hear closing arguments from the attorneys. Defense counsel did not object. The court immediately rendered a verdict finding Harris guilty of attempted criminal possession of a controlled substance in the seventh degree, not guilty of the remaining counts, and sentenced him to three months in jail.

On appeal, Harris argued that the trial court's refusal to allow summations violated his constitutional right to the assistance of counsel. He relied on Herring v New York (422 US 853 [1975]), which held that the "right of a defendant to be heard through counsel necessarily includes his right to have his counsel make a proper argument on the evidence and applicable law in his favor" and ruled that CPL 320.20, governing bench trials in superior court, was unconstitutional to the extent it provided that a court "may in its discretion" allow summations. The State Legislature responded by amending the statute to state that superior courts "must permit the parties to deliver summations." However, the Legislature did not adopt a similar amendment to CPL 350.10, which governs bench trials in local criminal courts such as this one, and it still provides that a court "may in its discretion permit the parties to deliver summations."

The Appellate Term for the 2nd, 11th and 13th Judicial Districts affirmed, ruling Harris's claim was unpreserved for appellate review because his attorney was present when the court refused to allow summations and did not object. "[T]o the extent that defendant's claim can be considered an implicit constitutional challenge to CPL 350.10..., that contention is likewise unpreserved," it said.

Harris argues that, under Herring, "Complete deprivation of the right to summation ... is a 'structural error' that requires reversal without any inquiry into whether the error was harmless." To the extent that CPL 350.10 "continues to grant discretion to deny the opportunity to present a closing argument in criminal trials, it is unconstitutional." As for preservation, he says, "The right to summation is a core component of the Sixth Amendment right to counsel, and it should not lightly be deemed waived. Where ... the court, contrary to its previous statements, unexpectedly declared it would not hear summations and then immediately rendered a verdict, the defense did not have a meaningful opportunity to object. Under the circumstances, preservation was neither realistic nor required."

The prosecution says, "Before rendering a verdict, the trial court stated that it had decided not to hear summations, and the court thereby afforded defense counsel a meaningful opportunity to object if she wanted to present a summation. Because counsel did not register a protest at that time, defendant's claim ... is unpreserved for appellate review and beyond the review of this Court. Moreover, under the circumstances, counsel's silence constituted an implicit waiver of the opportunity to give a summation."

For appellant Harris: Daniel P. Schumeister, Manhattan (212) 715-9100

For respondent: Brooklyn Assistant District Attorney Rebecca L. Visgaitis (718) 250-3260

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To be argued Thursday, June 7, 2018
No. 77 Matter of Anonymous v Molik

The anonymous petitioner operates a 12-bed intermediate care facility in St. Lawrence County, which is licensed by the state to provide services to people with cognitive and physical disabilities. In 2013, a staff aide briefly left a common living room where residents were gathered to tend to laundry in an adjacent room. When she returned, she found a male resident engaged in unwanted sexual contact with a female resident. After an investigation, the State Justice Center for the Protection of People with Special Needs found that a neglect allegation against the aide and her supervisor was unsubstantiated because the facility had no policies in place to prohibit staff from leaving residents unattended in the living room. However, because this was the third time in six months that the same male resident had engaged in improper sexual contact with other residents, the Justice Center substantiated a report of neglect against the facility for failing to provide clear protocols for staff supervision in the living room and failing to alter the male resident's care plan to increase supervision of him. An administrative law judge upheld the findings. The Justice Center's director of administrative hearings, David Molik, adopted the ALJ's conclusions and directed the facility to implement a remedial plan.

The facility brought this suit to annul the determination, saying the Center exceeded its statutory authority in making a finding of neglect against it. The Justice Center was created in 2012 to respond to allegations of abuse or neglect of vulnerable people receiving care from human service agencies. Under Social Services Law § 493(3)(a), an allegation is substantiated if the Justice Center finds "the incident occurred and the subject of the report was responsible or, if no subject can be identified..., that the facility or provider agency was responsible." Section 493(3)(b) provides that, "In conjunction with the possible findings" under section 493(3)(a), "a concurrent finding may be made that a systemic problem caused or contributed to the occurrence of the incident."

The Appellate Division, Third Department granted the facility's petition, annulled the determination, and directed the Justice Center to seal its report. Pursuant to section 493(3)(a), it said, "the only circumstance under which the Justice Center could substantiate a report of neglect against a facility ... is where an incident of neglect has occurred but the subject cannot be identified -- a situation that is plainly not present here." While section 493(3)(b) permits the Center to make a "concurrent finding," it does not authorize a finding of neglect against the facility. "By its terms, the only 'concurrent finding' that may be made is 'that a systemic problem caused or contributed to the occurrence of the incident'.... While the Legislature may not have contemplated a scenario where, as here, the Justice Center would find the subject of a report fully absolved from responsibility while determining that the facility engaged in conduct amounting to neglect, 'the plain language of a statute may not be overridden to avoid an undesirable result....'"

The Justice Center says section 493(3)(b) "specifically empowers [it] to make a 'concurrent finding' of neglect against a provider when a systemic problem 'caused or contributed to' an incident of neglect to a service recipient.... And having this power ensures the Justice Center's ability to order the provider to correct any systemic problems, as it is required to do. The Third Department's construction ... is not compelled by the statute's plain language, renders parts of the statute superfluous, and undermines the statute's purpose, as confirmed by its legislative history. By limiting the Justice Center's authority to those rare cases in which no perpetrator can be identified, the ... decision undermines the Justice Center's oversight authority and impedes its ability to require providers to remedy defective conditions that have caused an incident of neglect."

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