

No Gag Order Set In Nursing Home Case

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A judge on Thursday chose not to impose a gag order in a lawsuit that alleges neglect by ManorCare Sandia nursing home led to the death of 82-year-old Ray Overson.

The gag order was sought by ManorCare Inc. and other corporate defendants, which said pretrial publicity inhibits their right to a fair trial. They wanted to restrict comments trial participants make to the media.

The request was opposed by the Albuquerque Journal and the New Mexico Press Association.

As grounds for the order, the defendants cited front-page articles dealing with regulation of the state's nursing homes that appeared Dec. 8, 2002, in the Journal.

Overson's death in February 2001 was provided as an example of inadequate system oversight, and his family's attorneys were quoted in the articles.

The defendants also pointed to advertisements the family's attorney ran in the Journal soliciting witnesses against ManorCare.

In its motion, ManorCare attorneys also requested that the family's attorneys pay for a survey of Bernalillo, Chaves and Doña Ana counties to gauge "the effect ... the prejudicial

publicity had on Bernalillo County and other venues so that they may determine if a change of venue is necessary."

During Thursday's hearing before Judge Bill Lang, attorney Kip Purcell, representing the Journal and the New Mexico Press Association, said restricting publicity of the proceedings is contrary to the First Amendment.

Purcell said the articles in question fall far short of the level of publicity that would necessitate a gag order.

During Thursday's hearing, the defendants' attorney, R.E. Thompson, said the gag order was needed in light of "inflammatory and prejudicial" comments made by the family's attorneys in the Dec. 8 article.

The defense motion asked the judge to limit such statements.

Purcell argued that imposing this restriction would "chill" free speech.

Lang denied the defense motion to restrict publicity.

After the hearing, Thompson declined to comment on the ruling.

Overson suffered a fall in April 2001 and died two months later. His family says the nursing home failed to prevent the fall or to provide him with adequate care afterward.

The case is scheduled to go to trial Jan. 20.