



PHOTO BY MERRILL SHEA

THOMAS J. FRAIN

FRAIN & ASSOCIATES

When the Supreme Judicial Court ruled last May that a parcel of land in Templeton belonged to the Walter E. Fernald Corp., and not the state, it was more than the resolution of a garden-variety real estate dispute. The issue had turned on the question of whether Fernald, a nonprofit serving the developmentally disabled, had acquired the land in its private capacity or, as the commonwealth contended, as an agent or agency of the state. The latter would have meant the property was owned by the state.

Bolton attorney Thomas J. Frain initially thought he was simply helping the organization complete a deal in which it would sell the land to the state's Department of Conservation and Recreation, enabling the parcel to remain pristine while the proceeds would help assist those in need of mental health services.

But in the process of the sale it was discovered that, five years earlier, then-Gov. Jane M. Swift had signed a bill aimed at keeping the land from being developed. There was a lien on the property, and the Department of Developmental Services was claiming that it was the rightful owner of the land.

After several years of legal wrangling in Land Court, Fernald won a summary judgment ruling before Judge Keith C. Long in 2013. The state appealed, claiming the corporation's suit was barred by the doctrine of sovereign immunity.

In 2015, after the nonprofit had spent hundreds of thousands of dollars in legal fees, the SJC upheld Long's ruling and awarded the Fernald Corp. the declaration that it was the owner.

Proceeds from a likely sale of the Templeton land to a conservation outfit will help Fernald further its mission, Frain says.

All told, the battle over the 600 acres spanned eight years and consumed thousands of hours of time for Frain, the lead attorney, and his colleagues. Frain says he had a personal connection to the case: As the brother of a mentally challenged sibling, he has spent decades advocating on behalf of mental health causes and serves as vice president of Fernald's board of trustees.

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Q. How did you become involved with Fernald?

A. I'd been on the board of the Massachusetts Coalition of Families and Advocates [mental health advocacy group] since 1995, and I got to know the Fernald Corp. board and started to serve on it around 2000. I'd been involved in this dispute about who owns the land for many years. There is correspondence going back at least to the 1990s. The board had written a letter articulating the factual and legal basis for ownership and sent it to Gov. [Deval L.] Patrick, and he never responded. So it became clear that the only way to clarify the ownership was to sue. We were literally in the room with the DCR and found out the property was liened up. Despite our exhaustive effort to avoid litigation, it was clear Fernald wasn't going to be able to do anything with this property without judicial relief.

Q. Did it seem at the outset that this would be such an epic case?

A. No, I had no idea. It seemed to us that the corporation owned the property, but putting pen to paper and showing it to the court is a different matter. The Attorney General's Office was really aggressive, and the opposing counsel did a really good job. The nature of the case was just so confusing because it went back 160 years.

Q. You won a clear victory at Land Court, but were you concerned when the state decided to appeal?

A. By that point I felt it was really clear that Fernald owned the property. Judge Long was so patient and had delved so deeply into this very complicated and confusing and twisted fact pattern that I thought they'd leave it alone. His summary judgment ruling was beautiful — so respectful and decent toward people with intellectual disabilities. It was such a sweet opinion to read, but [the state] had this theory about sovereignty.

Q. Did this case tax the resources of your small law practice?

A. Sometimes. Having a record that goes back 160 years makes everything so complicated. At certain points the corporation and the school had exactly the same boards, so that made it even more confusing because it wasn't clear who they were acting for. At some points it was all hands on deck. It was doable, but everyone was working hard and there were so many boxes of documents. If not for [lawyers] Frank Bonanni and Alex Hahn, the outcome wouldn't have been the same.

Q. The Fernald Developmental Center in Waltham has been shuttered, and yet the corporation now has this land it can sell. What is the organization's future?

A. I think Fernald will attempt to sell the land to a land trust or DCR, someone who will promise to keep it as open space and keep it pristine. Now the emphasis is on serving mental health services in the community. The corporation will be looking at what its mission looks like. Will it take on a broader role and not link itself to the [former campus]? The corporation provides a lot of support to various groups — things like providing computer and communication equipment, and organizing holiday parties and gifts — because a lot of people with mental retardation are abandoned as their parents age and their family become less involved.

— NOAH SCHAFER