Tort Liability of Charitable Institutions - Two Recent Cases

John Woodcock Jr.

Follow this and additional works at: https://ideas.dickinsonlaw.psu.edu/dlra

Recommended Citation

Available at: https://ideas.dickinsonlaw.psu.edu/dlra/vol55/iss4/12

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.
TORT LIABILITY OF CHARITABLE INSTITUTIONS
—TWO RECENT CASES

The idea that a charitable institution is not liable for the torts of its employees arose years ago in England. The case which established the principle was overruled by the same court about ten years after it had announced the rule, but the evil of the case was not interred with its bones; it exists today in many jurisdictions. It has been rationalized by the courts today in various ways with various results. Some courts boldly state that the funds of a public charity are a trust fund created by donations for strictly charitable purposes and that if the charity would have to pay for the negligence of its employees, there would be a depletion of the funds and a frustration of the purposes of the donors. Under such a view, if it is strictly followed, no-one who is injured by the charity may recover. This seems to be the view taken by the courts of Pennsylvania. In the case of Siidekum, Admr., v. Animal Rescue League1 the supreme court of that state said,

"No distinction has been made in our courts, as it has been in other jurisdictions, between cases where the injured person was a beneficiary or employee of the charity and those where—he was a total stranger to its activities."

and

"The fact that a charitable organization charges for some of the work performed by it for persons able to pay does not militate against its status as a charity; many charities derive income from compensation for their services."

But even in Pennsylvania there is one exception to the rule. That exception exists where the charity is running a business which is not charitable in order to derive money for the charity, and in the prosecution of that business commits a tort. In this situation liability exists.2

The courts of most states have found the trust fund theory distasteful. And so in New Jersey, for instance, in the case of Jewell v. St. Peter's Parish3 the court stated,

"What we are dealing with here is a doctrine whose designed effect is the frustration, in certain cases, of claims for damages, notwithstanding the validity of the claims otherwise, and without reference to aught that touches the merits of either the claimant or the claim. Certainly a thing of that kind should not be loosely applied."

The courts of New Jersey have decided that the true basis of the immunity should be public policy. They therefore "deny the right of recovery on the part of those

---

who have a valid claim against a charitable institution based upon actionable negligence, but who are either the recipients of the benefactions, or the beneficiaries of the charitable institution sought to be held liable; but permit the right of recovery against charitable institutions, for their actionable negligence on the part of those unconcerned in and unrelated to that which the donor brought into being. This idea of public policy is then the rule in New Jersey. Therefore when I take my child to a charitable hospital as a paying patient, and as a result of the negligence of a nurse in failing to remove a hot water bottle, my child suffers second degree burns, I have no right to recovery against the hospital. However, once that happens and I hire a nurse or some person not connected with the hospital to come in and give my child extra care, this nurse may recover from the hospital if he is hurt in some way by the negligence of the employees.

All this is based on public policy! In this respect a recent case in New Jersey should be noted. In this case the plaintiff had paid admission in order to attend a church social. The plaintiff claimed that she was injured by a faulty stairway and, at trial, the defendant moved for a summary judgment as a matter of law relying on its immunity. The court, in refusing the motion, stated,

"There is nothing whatever in the facts before me to show a relation between the parties here beyond that resulting from plaintiff's payment of the required fee for the privilege of participating in a 'social activity' — What this gives to the plaintiff is not the status of defendant's beneficiary — but rather the status, if anything, of defendant's patron."

However, the court added,

"Needless to say, the result would be different were plaintiff's presence upon defendant's premises at the time of the claimed injury shown to bear relation to the church's primary function, not accidentally only."

It is rather difficult for one to read these cases and discover just what the public policy is which underlies them, but, at any rate, that is the basis upon which liability is predicated in New Jersey and some other states.

Another theory evolved by the courts in order to get away from the disastrous results brought about by the trust fund theory is the implied waiver theory. Under this view at least one New York court has come to conclude that a paying patient in a hospital may recover damages from the charity. The basic idea here is that upon accepting gratis the benefactions of the charity with knowledge that its assets are not available for tort claims the recipient waives his right to a tort claim. How this would apply to an infant is beyond comprehension, and it is difficult to see why a charity would only answer to those financially responsible

---

6 See note 4.
and cast the needy aside. Yet this is the basis in some states and is used as an extra reason in others.\textsuperscript{10}

Another reason which is often given for the isolation extended to charities is the statement that the doctrine of \textit{respondeat superior} does not apply in such a case. Under such a view it is plain that the only logical conclusion that could be reached by any court accepting this view would be one which excludes all liability for the torts of the employees. However, some courts seem to indicate that the inapplicability of the doctrine only applies to one benefited by the charity and a stranger to the charity could maintain the action;\textsuperscript{11} other courts apply it in all cases.\textsuperscript{12}

The reasons for the announcing of such a doctrine are worth examining. In one case it was stated,\textsuperscript{13}

"The immunity of the property of a charity from sale under execution rests on special grounds. The property of a corporation organized solely for charitable purposes is exclusively dedicated to public uses.—If the doctrine of \textit{respondeat superior} is applied to them (the trustee of the charity) it follows that along with their other powers they possess an implied power to destroy, by a willful violation of their duties, by collusion, or by negligence, the public interests that they are selected to preserve. The doctrine that the principle of \textit{respondeat superior} has no application to this class of cases when the trustees willfully abuse their authority, and that it does apply in a single species of negligence, would seem to be merely the result of another effort to find a compromise."

It must be noted here that in many states where the doctrine of immunity is applied, the charity may be held liable if the trustees were negligent in selecting the employees,\textsuperscript{14} or if they furnished materials which were faulty.\textsuperscript{16} However, the above language shows that a logical application of the doctrine of \textit{respondeat superior} cannot be found in such a case, or does it? At any rate there is much authority to be found stating that liability may be based on the above grounds. One thing is clear. If the policy is strictly one to protect the funds paid in to the charity, then there could be no logical recovery in such a case. Other courts have propounded other reasons for not applying \textit{respondeat superior}. One that is truly unique may be found in \textit{Southern Methodist Hospital and Sanatorium v. Wilson.}\textsuperscript{10}

There the court concluded that the doctrine of \textit{respondeat superior} was one con-


\textsuperscript{13} Fordyce \textit{v. Woman's Christian Nat'l. Library Ass'n.}, 79 Ark. 550, 96 S. W. 155 (1906).

\textsuperscript{14} See note 11 and the Gordon case in note 10.

\textsuperscript{15} Medical \& Surgical Memorial Hospital \textit{v. Coulthorn}, 229 S. W. 2d 932 (Tex., D. C. 1949); but compare S. M. U. \textit{v. Clayton}, 142 Tex. 179, 176 S. W. 2d 749 (1943).

\textsuperscript{16} 45 Ariz. 507, 46 P.2d 118 (1955).
ceived due to a sound public policy, that it was a special type of liability having proper public objectives as its end. On the other hand, the court continued, the non-liability of a charitable corporation is also founded upon a public policy—also sound. Therefore, when the two face one another, the doctrine of *respondeat superior* will not prevail.

The cases throughout the United States are neither uniform nor reconcilable. Each time a court is faced with the problem it either writes an extensive opinion discussing the rules and rationalizing the rule applied in its state or it economizes on space and merely quotes the rule of the state in which the tort took place. There has been a tendency on the part of the courts to get away from the rule and to impose liability upon charitable institutions. But like old soldiers rules of law seldom die; they merely fade away. Maryland has been faced with the problem and, although the court felt the rule was wrong, it stated,17

"The principle that charitable corporations are free from tort liability has long been a basic part of the law of this state.—There are special reasons why the doctrine of stare decisis should be adhered to in this case. To withdraw immunity from this type of corporation at this time would be an act of judicial legislation in the face of contrary policy declared by the legislature itself."

The court was referring here to a Maryland statute18 which provides that the insurer of a charitable corporation is estopped in a suit against it from asserting as a defense the immunity of the corporation. This gives rise to another curious result reached by many courts.

The fact that the charitable corporation carries insurance protecting it from loss in such a case is, as a general rule, of no effect on the doctrine of immunity.19 Under the trust fund theory one must do a lot of figuring to reach such a result. But one could say that since some of the fund was being diverted to pay the premiums, this is an impairment of the trust fund. Such an approach is unrealistic.

A realistic approach to this problem has been recently made in two decisions. The first was *Foster v. Roman Catholic Diocese of Vermont*.20 In this case the plaintiff fell on the ice and snow which had gathered on the defendant's walk. The defendant, in its answer, set up the immunity as its sole defense. The plaintiff demurred and the lower court overruled the demurrer. On appeal, the appellate court said,

"—we should decide this case upon the broad question, namely: Is or is not a privately conducted charitable institution liable for injury caused by negligence? We are satisfied if we should not do so, we would start

this Court along a highway that would soon be shrouded in a fog of doubt from which it would be difficult to emerge into the sunlight of legal certainty."

It was obvious from this that the court had studied the cases from other jurisdictions. In sustaining the demurrer the court added,

"There is no sufficient reason under a sound public policy requiring this Court to say that an individual be deprived of his right to recover from such an institution because its funds are derived from a charitable minded public.—A charity should not be permitted to inflict injury upon one without redress in order that it may do charity to others. The result would compel the injured person to contribute to the charity against his will.

. . . Private charities are much different now than when the liability question was first before the courts. Then they were largely small institutions—. Today they have become, in many instances, big businesses, handling large funds . . . It is idle to argue that donations for them will dry up."

Here is real concreteness for jurisdictions still allowing the immunity. Here are arguments which cannot be answered by a court looking to reality. The theories discussed above lack this vitality. It is time for courts to reexamine this doctrine of immunity.

And that is what was done in Haynes v. Presbyterian Hospital Ass'n.21 There the Supreme Court of Iowa was faced with the following situation. First, a line of cases which granted immunity to charities on the basis of public policy. Second, a man before the court who had been injured due to the negligence of employees of this charitable institution. The trial court, relying on the prior decisions, had dismissed his petition, and he had appealed to them. Were they to apply the doctrine of stare decisis and leave this injured man in suffering? Or would they re-examine their decisions in the light of present day conditions? The Supreme Court of Iowa chose the latter alternative. They first stated that all of the theories except public policy were mere fictions; public policy must be the basis for the immunity if there is to be any immunity. Then they stated,

"Public policy simply means that policy recognized by the state in determining what acts are unlawful or undesirable as being injurious to to the public or contrary to the public good. It is not quiescent but active. A policy adopted today as being in the public good, unlike the Ten Commandments, is not necessarily an ever enduring thing. As times and prospectives change, so changes the policy . . . . No doubt, at the outset of the theory, the need for charity was urgent and the general good of society demanded encouragement thereof . . .

Today, the situation is vastly different. The hospital of today has grown into an enormous business. They own and hold large assets,
much of it tax free by statute, and employ many persons . . . we take
judicial notice of the extensive use of the many types of hospital in-
surance, as well as liability insurance by the institutions . . . it is
evident that times have changed . . . (and) the basis for, and the need
for, such encouragement is no longer existent."

Here is clarity. The court is to be commended for their straightforwardness. They
did not hedge, but rather they faced the problem squarely. Why should my rights
be determined on the basis of who injured me? Why should a large institution
be allowed to hide behind an ancient, floundering doctrine even though protection
can be bought by them for a nominal sum? There is no answer to these questions
except that given by these courts. As the problem arises in jurisdictions where
immunity is still the rule, the courage of the Iowa Court should be seriously
considered before a decision is made; and when the problem arises in jurisdictions
where it has not yet been considered these decisions should be given the weight they
so rightly deserve in the present day world.

John Woodcock, Jr.