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Torts - Charitable Immunity

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RECENT DECISIONS

TORTS—Charitable Immunity—The long-settled doctrine of charitable immunity for hospitals was abolished by the Pennsylvania Supreme Court.

Flagiello v. The Pennsylvania Hospital, ... Pa. ....., ... A.2d ..... (1965).

The death knell for the charitable immunity doctrine in Pennsylvania has finally rung.[1] In a 5-2 decision, the Pennsylvania Supreme Court has decided that tort immunity shall no longer be accorded to hospitals as "charities" when the recipients of their "charity" are injured through the tortious behavior of hospital employees.

In *Flagiello,* a paying patient of the defendant hospital, alleging negligence on the part of two employees, instituted a trespass action against the hospital and the negligent employees. The hospital moved for a judgment on the pleadings which, because of the charitable immunity doctrine, was granted. The plaintiff then instituted an action in assumpsit, alleging that the hospital failed to provide fit and adequate care as promised. Again, a motion by the hospital for a judgment on the pleadings was granted and the plaintiff then appealed both causes of action to the supreme court.[2]

In a lengthy and well-considered opinion by Justice Michael A. Musmanno, the majority of the court cited four considerations for

1. See *The Charitable Immunity Doctrine in Pennsylvania: Death Knell,* 3 DUQUESNE U. L. REV. 65 (1964) where a discussion of the legal arguments raised in *Flagiello* was presented and where a prediction was made as to the future of charitable immunity in Pennsylvania, based upon the past voting records of the present Justices.

It was predicted that with the change in court personnel resulting from the losses of Chief Justice Calvin Jones and Justice Curtis Bok and the election of Justices Henry X. O'Brien and Samuel J. Roberts that the court, when again confronted with the doctrine, would abolish it by a vote of 5-2. In fact, it was predicted that the two dissenters would be Chief Justice John C. Bell and Justice Benjamin Jones who did in fact dissent in the present case.

2. It should be noted that the issue of actual negligence on the part of the defendants has not as yet been adjudicated, and the case has been remanded for such a determination. However, for purposes of the court's determination of the legal issues involved, all averments in the complaint were accepted as true.

abolishing the charitable imunity doctrine as to hospitals. These are: (1) that the ancient rule that charitable institutions are not required to recompense patients who have been injured through their employee's negligence is no longer applicable to modern life; (2) that the rule of stare decisis is not so stiff and unyielding as to require blind adherence to archaic rules of law; (3) that the doctrine must be overruled, not by the legislatures, but by the courts who sired and coddled it; and (4) that public policy no longer requires that the doctrine be maintained.

As to the first consideration, the court pointed out that "[i]f there was any justification for the charitable immunity doctrine when it was first announced, it has lost that justification today."[3] History has shown that only the indigent sought treatment in the small, poorly equipped hospitals of a century ago, the rich preferring the better facilities of their own homes. Secondly, hospitals were formerly supported solely by the beneficence of private donors. These points lead courts to protect these true charities who funneled aid from rich benefactors to the poor who could not afford medical care. The court explained, however, that modern hospitals are "big business" in the fullest sense of the term.[4] No longer are they havens for the poor and homeless where "[c]harity in the biblical sense prevailed."[5] Today, they are for rich and poor alike, both of whom pay substantial fees for hospital services. Hospitals as business establishments must shoulder the responsibilities placed upon other business establishments. The court said,

> And if a hospital functions as a business institution, by charging and receiving money for what it offers, it must be a business establishment also in meeting obligations it incurs in running that establishment. One of those inescapable obligations is that it must exercise a proper degree of care for its patients, and, to the extent that it fails in that care, it should be liable in damages as any other commercial firm would be liable.[6]

Finally, the court stated that it would no longer refuse to consider what was happening in the rest of the legal world, referring to the fact that charitable immunity is a dying concept with few courts clinging to this vestige of the past. In support of this the court

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3. Flagiello v. Pennsylvania Hospital, ... Pa. ....., ... A.2d ..... (1965).

4. See 38 Amer. Hosp. Ass'n. J. 492 (Aug. 1, 1964); 37 Amer. Hosp. Ass'n. J. 440 (Aug. 1, 1963), Source Book of Health Insurance Data, 1963 13 (Health Ins. Institute, N.Y. 1963).

5. Flagiello v. Pennsylvania Hospital, *supra* note 3 at .....

6. *Id.* at .....

cited case law,[7] the Restatements of Trusts and Torts,[8] and various legal scholars who had been advocating the end of the immunity doctrine for many years.[9]

The stare decisis argument was easily disposed of by the court which stated that this principle did not require it to adhere *ad infinitum* to a doctrine which was "manifestly out of accord with modern conditions of life."[10] To demonstrate this, the court cited several recent decisions[11] in which it broke precedent to prevent injustice and to pronounce a new rule of law more compatible with modern times.

In connection with the stare decisis argument the court pointed out that the charitable immunity doctrine, as established in Pennsylvania and in the United States, was based upon judicial error as the case relied upon to establish the doctrine was overruled in England twenty-two years before Pennsylvania adopted it.[12] This, then, justified the court in finding that ". . . the immunity doctrine began in error, lifted its head in fallacy, and climbed to its shaky heights only because few dared to question whether charity was really charity."[13]

The most persuasive reason for not overruling the doctrine was that the necessary change should have originated with the legislature, where its effect would have been prospective rather than retrospective and all the problems attendant to retroactive change would have been avoided. However, the court fashioned this doctrine and what it assembled, the court said, it could and should disassemble. As far as the problems involved in retroactive change, such as the flood of litigation resulting from past torts, the court appeared ready to accept them. After balancing the need for immediate change

7. Parker v. Port Huron Hospital, 361 Michigan 1 (1960); Bing v. Thunig, 2 N.Y.2d 656 (1957).

8. RESTATEMENT (SECOND), TRUSTS §402 (1959); RESTATEMENT, TORTS §887 (1939).

9. PROSSER, TORTS §127 (3rd. ed. 1964); 2 HARPER AND JAMES, THE LAW OF TORTS 1667 (1956).

10. Von Moschzisker, *Stare Decisis in Courts of Last Resort*, 37 Harv. L. R. 409, 414 (1924).

11. Griffith v. United Air Lines, 416 Pa. 1 (1964); Olin Mathieson Chemical Corporation v. White Cross Stores, Inc., 414 Pa. 95 (1964); Sinkler v. Kneale, 401 Pa. 267 (1960).

12. The courts of the various jurisdictions, including Pennsylvania, had generally relied upon the case of Feoffees of Heriots Hospital v. Ross, 12 C. & F. 506 (1846) as legal justification for the establishment of the doctrine in the United States. This case, however, had been previously overruled in England by the case of Mersey Docks Trustees v. Gibbs, L. R. 1, H. L. 93 (1866).

13. Flagiello v. Pennsylvania Hospital, *supra* note 3 at .....

against the problems just mentioned, the court decided in favor of the former. As it said ". . . what follows in the wake of a judgment cannot be determinative of the issue as to whether law and justice dictate *that* judgment."[14]

The final consideration as to public policy is, in reality, inclusive of all previous arguments. In addition, however, the court felt that the burden of liability would result in greater efficiency and safety in hospitals because of the increased care hospitals would demand of its personnel. The court found no credence to the proposition that the elimination of this doctrine would lead to an increase in the number of accidents in hospitals due to intentionally inflicted wounds by patients wishing to "cash-in" on the new non-immunity rule. "[N]o sane person would prefer money as to a sane and healthy body, free of pain, agony, and torment."[15] Nor would the new rule create financial havoc, as hospital administrators forewarned, because there was no evidence of any such financial catastrophe in states where the doctrine had been discarded. Neither was there evidence submitted that the abolition of the old rule would reduce donations to our great medical centers,[16] for ". . . why should they [philanthropists] refuse to contribute because of an expense which is as much a part of American civilization as providing assistance for those struck down by the cruel hand of Abject Poverty?"[17] Finally, the court felt that it is one of the basic characteristics of our advanced society that for every wrong inflicted there is a corresponding remedy.[18] Hospitals, the court declared, should adhere to this concept in the same manner as all other individuals.

Thus, the Pennsylvania Supreme Court removed hospitals from the circle of protected charities. With this decision, there can be no argument. The time was right and the court advanced in the proper direction. The only possible criticism that can be leveled at the tribunal is that the step taken was much too small. If it desired to finally abolish the charitable immunity doctrine, it should have done so *in toto*. As Justice Benjamin Jones stated in his dissenting

14. *Id.* at.....

15. *Id.* at .....

16. "There is not the slightest indication that donations are discouraged or charities crippled in states which deny immunity." 2 HARPER AND JAMES, THE LAW OF TORTS 1670 (1956).

17. Flagiello v. Pennsylvania Hospital, *supra* note 3 at .....

18. Chief Justice Bell, in his dissenting opinion, vociferously argued against this proposition stating that it was ". . . both factually and legally incorrect." In support, he cited the example of sovereign immunity, fair comment in the area of libel, and the state's inability to appeal the clearly erroneous decision of a trial judge in a criminal proceeding. Flagiello v. Pennsylvania Hospital, *supra* note 3 at .....

opinion, "If the doctrine is to be abolished, reason and common sense dictate that the doctrine should be abolished as to *all* charitable institutions. . . ."[19] Abolishing it only as to hospitals will require periodic pronouncements as to the liability of each class of charities. This piecemeal determination of such an important issue can only delay the inevitable—the total destruction of the doctrine. Therefore, though the court has rung the death knell for charitable immunity once, the incompleteness of its ruling will require that the bell be tolled again and again.

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CONFLICT OF LAWS—Torts should be governed by the local law of the state which has the most significant relationship with the occurrence and the parties.

Griffith v. United Airlines, 416 Pa. 1, 203 A.2d 796 (1964).

> For over 100 years the law of Pennsylvania has been clearly settled, namely, the substantive rights of the parties, as well as the damages recoverable *are governed by the law of the place of the wrong or as it is sometimes expressed, the law of the place where the injury occurred— lex loci delicti*: [citing cases].[1]

Thus begins the dissenting opinion of Chief Justice John C. Bell, Jr. in *Griffith v. United Airlines,*[2] in which the Pennsylvania Supreme Court abandons this choice of law rule established in Pennsylvania as early as 1830.[3] The majority of the court replaces this conflict of law with one which holds that ". . . torts should be governed by the local law of the state which has the most significant relationship with the occurrence and the parties. . . ."[4]

On July 11, 1961, after purchasing a round-trip ticket from United Airlines (United) in Philadelphia, George H. Hambrecht, a Penn-

19. See Jones' dissenting opinion in Flagiello v. Pennsylvania Hospital, *supra* note 3 at ....., & n. 1.

1. Griffith v. United Airlines, 416 Pa. 1, 26, 203 A.2d 796, 809 (1964). (dissenting opinion of Bell, C.J.).

2. Griffith v. United Airlines, 416 Pa. 1, 203 A.2d 796 (1964).

3. Barclay v. Thompson, 2 Pen. & W. 148 (1830).

4. RESTATEMENT, CONFLICT OF LAWS § 379 (1964).