Michigan Law Review

Volume 39 | Issue 1

1940

CHARITIES - TORTS - LIABILITY OF CHARITABLE CORPORATIONS FOR THEIR TORTS

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CHARITIES — TORTS — LIABILITY OF CHARITABLE CORPORATIONS FOR THEIR TORTS — Plaintiff was employed by defendant to assist in the work of redecorating defendant's building, and was injured because of defendant's alleged failure to provide a suitable place to work. To plaintiff's plea for damages defendant answered that since it was a charitable corporation it was, therefore, immune from such action. *Held,* charitable corporations are not immune

from liability for torts by reason of any exemption accorded them on the basis of the purposes for which they were incorporated. *Gable v. Salvation Army*, 186 Okla. 687, 100 P. (2d) 244 (1940).

The decisions in other jurisdictions are in sharp conflict as to whether charitable institutions [1] must respond in damages for the negligence of their servants. Courts disagree both as to how far any exemption from the normal liability of a principal for the acts of his agent should extend, and as to the grounds upon which such an exemption should rest.[2] In determining whether or not the institution will be held accountable, most courts differentiate between the case where the person injured is a beneficiary,[3] and that where he is not. If the charitable institution has used due care in the selection of its servants, most courts hold the corporation is not to be held responsible for injuries to beneficiaries,[4] but will be liable to all others injured through the negligence of the institution's servants.[5] A few courts refuse to distinguish the cases on the basis of the sort of person injured, some of these holding that charity is not liable,[6] and others holding that the institution must respond in damages whether the person injured through the servant's negligence is a beneficiary or not.[7] On its facts the principal case deals only with liability to employees, but the language of the opinion is broad enough to indicate that the Oklahoma court would hold the charity liable without regard to the injured person's status.[8] As the court points out, none of the grounds upon

[1] For definition of charity, see 2 L. R. A. (N. S.) 556 (1906); 11 C. J. 303 (1917).

[2] The reasons given by various courts for immunity are: (1) public policy; (2) the funds of the charity are a trust to be applied only to the purposes specified by donors and, therefore, cannot be diverted; (3) since the corporation does not operate for profit, the rule of respondeat superior does not apply; (4) waiver doctrine, by accepting benefits from the corporation the beneficiary waives any right to sue for damages; (5) theory that charities are governmental agencies and, therefore, have the governmental immunity from suit.

[3] A beneficiary is defined as a recipient of another's bounty or one who receives benefit or advantage. 5 WORDS AND PHRASES, perm. ed., 325 (1940). Many jurisdictions hold that where the institution is exempt from liability to beneficiaries it is not made liable by receiving pay from the recipient of the institution's services (the payment in these cases usually has not equalled the cost of the service rendered). 86 A. L. R. 491 at 497 (1932); 14 C. J. S. 549 (1939).

[4] 14 A. L. R. 572 at 585 (1921); 23 A. L. R. 923 (1923).

[5] 14 A. L. R. 572 at 575 (1921); 23 A. L. R. 923 (1923); 30 A. L. R. 455 (1924); 33 A. L. R. 1369 (1924); 42 A. L. R. 971 (1926); 86 A. L. R. 491 (1933); 109 A. L. R. 1199 (1937).

[6] Emery v. Jewish Hospital Assn., 193 Ky. 400, 236 S. W. 577 (1921); Farrigan v. Pevear, 193 Mass. 147, 78 N. E. 855 (1906).

[7] Mulliner v. Evangelischer Diakonniessenverein, 144 Minn. 392, 175 N. W. 699 (1920); Glavin v. Rhode Island Hospital, 12 R. I. 411 (1879) (overruled by statute); Hewett v. Woman's Hospital Aid Assn., 73 N. H. 556, 64 A. 190 (1906); Tucker v. Mobile Infirmary Assn., 191 Ala. 572, 68 So. 4 (1915).

[8] In the earlier case of City of Shawnee v. Roush, 101 Okla. 60, 223 P. 354 (1923), the Oklahoma court, in allowing recovery against a charitable institution, limited itself strictly to the situation involving a paying patient. The language of the principal case would seem to indicate that recovery in the future would not be so limited.

which exemptions for charitable institutions have been rested are tenable,[9] and it is generally agreed that they are merely rationales to further the policy of protecting charities. The principal argument for not holding charities liable was that recoveries in damages would deplete the charity's treasury, and prospective donors would refuse to contribute if the funds were allowed to be so diverted. While this may have been a valid argument in the past when charities were small and weak, it has lost much of its force because of the growth of many large and powerful charities which are amply able to satisfy tort claimants. Also, as is pointed out in the leading case of *Glavin v. Rhode Island Hospital*,[10] if the charity is to be so continuously negligent as to have its treasury depleted by a series of law suits, it is in the public interest to have it dissolved. Consequently it would seem that public interest would be best served by holding the charitable corporation to the same standards as a non-charitable corporation. Such a view would also be more consistent with general tort doctrines, which would not excuse an individual who failed to act with due care even though he acted from charitable motives.[11]

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[9] For criticisms of the various doctrines upon which non-liability has been based, see Zollman, "Damage Liability of Charitable Institutions," 19 MICH. L. REV. 395 (1921); Smith, "The Tort Liability of Charitable Institutions," 12 CONN. B. J. 214 (1938); 33 ILL. L. REV. 601 (1939); 12 ST. JOHNS L. REV. 99 (1937).

[10] 12 R. I. 411 (1879).

[11] 14 A. L. R. 572 at 573 (1921).