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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-000804

John Doe,.....Appellant,

v.

Bishop of Charleston, a Corporation Sole, and
The Bishop of the Diocese of Charleston, in his
Official capacity.....Respondents.

RESPONDENTS' RETURN TO APPELLANT'S MOTION TO RECONSIDER

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ATTORNEYS FOR RESPONDENTS

Appellant's rehearing petition should be denied. This Court correctly analyzed South Carolina's law of charitable immunity and correctly applied that doctrine as it existed when the actions complained of took place. Appellant's petition does not present any basis or reason for the Court to change that decision.

In the petition, Appellant relies primarily on a case from another jurisdiction that he neither discussed in his appellate briefs, nor referenced during oral arguments. However, the Maine Supreme Court's decision in *Picher v. Roman Catholic Bishop* has no bearing on the law in South Carolina – even less so the law as it existed in 1970.[1] In *Picher*, the Maine Supreme Court affirmed the dismissal of claims against the Diocese for negligent supervision, breach of fiduciary duty, and canonical agency, and reversed only as to the claim that the Diocese fraudulently concealed its priest's known history of abusing minors. On remand, that claim was also dismissed on summary judgment based on a failure of proof.[2]

Although, as Appellant claims, the *Picher* Court discussed the evolution of charitable immunity in South Carolina, it did not state, or even imply, that the doctrine could not apply to intentional torts in South Carolina prior to our Supreme Court's decision in *Jeffcoat v. Caine* in 1973.[3] To the contrary, the *Picher* Court referenced *Jeffcoat* as an example of the historical trend in other jurisdictions to chip away at the doctrine of charitable immunity over time. In that sense, the discussion in *Picher* supports this Court's decision, as it agrees that *Jeffcoat* announced a new limitation on charitable immunity.

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[1] *Picher v. Roman Catholic Bishop*, 974 A.2d 286, 295 (Me. 2009).
[2] *Picher v. Roman Catholic Bishop*, 82 A.3d 101 (Me. 2013).
[3] 261 S.C. 75, 198 S.E.2d 258 (1973).

Appellant also implies that *Picher*'s survey of other states' laws is an indication that no other jurisdictions have ever applied charitable immunity to intentional torts. That is simply not the case. The *Picher* Court did not attempt an exhaustive review of the entire history of charitable immunity. Rather, the purpose of its survey was to determine the nationwide state and scope of that doctrine as it existed in 2009 when *Picher* was decided. Thus, it is reasonable and accurate to cite *Picher* as support for the proposition that as of 2009 no other jurisdictions appeared to apply charitable immunity to intentional torts committed by the charitable entity. But it is neither reasonable nor accurate to cite *Picher* for that same proposition as of 1970. The *Picher* Court never engaged in an analysis of the latter. Therefore, *Picher* has no bearing on this Court's decision.

Rather, as this Court recognized, and our Supreme Court has repeatedly held, the law of charitable immunity in South Carolina is:

- *Lindler v. Columbia Hosp.*, "[a] charitable corporation is not liable for injuries resulting from the negligent *or* tortious acts of a servant, in the course of his employment, where the corporation has exercised due care in his selection."[4]
- *Vermillion v. Women's College of Due West*, expanded the doctrine of charitable immunity, holding that charitable immunity rendered charitable entities exempt from liability "for the torts of their superior officers and agents as well as for those of their servants or employees, whether these be selected with or without due care."[5]
- The *Vermillion* decision makes clear that the doctrine of charitable immunity stood as an exception to *respondeat superior* based upon public policy. At the time *Lindler* and *Vermillion* were decided, the law in South Carolina was clear - an employer could be held

[4] 98 S.C. 25, 27, 81 S.E. 512 (1914) (emphasis added) (internal citation omitted).
[5] 104 S.C. 197, 202, 88 S.E. 649, 650 (1916).

liable for both the negligent and willful or intentional acts of an employee done in the course of his employment.[6] Charitable immunity was a blanket exception to *respondeat superior* liability.

- *Vermillion* went on to say "this rule does not put such charities above the law, for their conduct is subject to the supervision of the Court of equity."[7] The clear implication of this statement is that the Court held that charities could not be hauled into courts of law to answer for torts committed by their employees. Charities enjoyed "full immunity from tort liability."[8]
- *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina*, held that a charitable organization could be liable for injuries on its property – but only where the "activity out of which the alleged liability arose is primarily commercial in character and wholly unconnected with the charitable purpose for which the corporation was organized."[9] Here, Appellant conceded during oral arguments that Respondents are charitable entities.
- In 1970, when the acts complained of allegedly took place, the law of charitable immunity was controlled by *Lindler* and *Vermillion*, which clearly held that charitable organizations could not be held liable for the torts or negligence of their officers, agents, or employees. "[T]he injured person has his remedy against the actual wrongdoer," as opposed to the charitable organization itself.[10]

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[6] *See Jones v. Atl. C. L. R. Co.*, 108 S.C. 217, 94 S.E. 490 (1916); *Taber v. Seaboard A. L. Ry.*, 81 S.C. 317, 62 S.E. 311 (1908).
[7] *Id.*, 104 S.C. at 201; 88 S.E. at 649.
[8] *Bush v. Aiken Elec. Coop. Inc.*, 226 S.C. 442, 448, 85 S.E.2d 716, 719 (1955) (emphasis added) (electric cooperative was not entitled to charitable immunity solely based on its non-profit status).
[9] *Id.*, 235 S.C. at 312, 111 S.E.2d at 572.
[10] *Vermillion*, 104 S.C. at 201, 88 S.E. at 650.

- *Jeffcoat v. Caine*[11] is not applicable to this case. The *Jeffcoat* Court's discussion and apparent criticism of *Lindler* and *Vermillion* are nothing more than *dicta* as the Court steadfastly refused to overturn charitable immunity.[12] Further, *Jeffcoat* was not the law of South Carolina in the years relevant in this case.
- In addition, *Jeffcoat v. Caine*[13] involved an allegation that South Carolina Baptist Hospital could be liable for false imprisonment. Thus, *Jeffcoat was* not a *respondeat liability* case at all, and the hospital was not being called to answer for the torts of one of its agents. Accordingly, the Supreme Court had no reason to overrule – and did not overrule – its previous decisions in *Lindler*, *Vermillion,* and *Decker* regarding a charitable employer's liability for actions of its employees.
- Likewise, Appellant's reliance on *Peden v. Furman*[14] is misplaced. There, the Court noted that the dispute did not involve alleged tortious conduct by an employee of the charity and did not implicate *respondeat superior* in any respect.[15] Rather, the case involved Furman's lessee, Municipal Athletic Corporation, which constructed a baseball stadium on Furman's property. Peden owned neighboring property and suffered trespassers coming onto his property to retrieve baseballs, broken windows, his fences being torn down, shingles being torn from his roof, and a number of other issues. The Court held that the trespass and private nuisance amounted to an unconstitutional taking of Peden's property without just

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[11] *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E.2d 258 (1973).
[12] At best, *Jeffcoat* may be considered a change in prior precedent regarding charitable immunity and, as such, its effect is solely prospective.
[13] *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E.2d 258 (1973). Appellant relies exclusively *Jeffcoat*, thus effectively conceding summary judgment was proper as to all claims except outrage/intentional infliction of emotional distress.
[14] *Peden v. Furman University*, 155 S.C. 1, 151 S.E. 907 (1930).
[15] *Peden*, 155 S.C. 1, 151 S.E. at 911.

compensation. The Court further determined there was no public policy that exempted charitable organizations, or a county, or the State, from claims that the entity engaged in unconstitutionally taking of property without compensation.

- In 1971, *Jeffcoat* had not been decided, *Jeffcoat* altered the common law in a manner that created limited liability where a charitable organization itself committed false imprisonment. Accordingly, *Jeffcoat* could only affect future claims, and it is irrelevant to this appeal, as this Court correctly found.

CONCLUSION

This Court thoroughly considered the issues raised in this appeal, and it correctly concluded that the doctrine of charitable immunity – as it existed at the time of the conduct giving rise to Appellant's claims – entitled Respondents to summary judgment. The rehearing petition's citation of, and reliance on, a Maine case discussing the state of the law some forty years after that conduct, does not change the Court's analysis. Therefore, the Court should deny the petition.

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Proof of Service

The undersigned hereby certifies that a copy of the Respondents' Return to Appellant's Motion to Reconsider has been served upon the following via electronic mail on August 28, 2023:

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