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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Bentley Price, Circuit Court Judge

Court of Appeals Opinion No. 6009

On Petition for a Writ of Certiorari
to the South Carolina Court of Appeals

John Doe, ... Petitioner,

v.

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

PETITION FOR A WRIT OF CERTIORARI

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF SOUTH CAROLINA:

John Doe respectfully petitions the Court to grant a writ of certiorari by which to review the decision of the South Carolina Court of Appeals in *John Doe v. Diocese of Charleston,* ___ S.C. ___, ___ S.E.2d ___ (Op. No. 6009, August 2, 2023).

CERTIFICATION OF COUNSEL

The undersigned certifies that petitioner's petition for rehearing was denied by the court of appeals on September 1, 2023.

QUESTION PRESENTED

Did the court of appeals err in holding that charities were immune from liability for intentional tort before the 1973 decision in *Jeffcoat v. Caine*, 261 S.C. 77, 198 S.E.2d 258?

STATEMENT OF THE CASE

Your petitioner filed this action against the Diocese of Charleston and its Bishop alleging that as a child in 1970, he was sexually molested by teachers at the defendants' parochial school. Among the causes of action alleged in the complaint were those sounding in intentional tort.

The defendants moved for summary judgment on several grounds, including the defense of common law charitable immunity. The circuit court granted summary judgment upon that ground, and your petitioner appealed.

The court of appeals affirmed. *John Doe v. Diocese of Charleston,* ___ S.C. ___, ___ S.E.2d ___ (Op. No. 6009, August 2, 2023), and denied petitioner's motion to reconsider.

Petitioner moves this Court to grant its writ of certiorari to review the decision of the court of appeals.

ARGUMENT

The court of appeals erred in holding that charities were immune from liability for intentional tort before the 1973 decision in *Jeffcoat v. Caine*.

Approving and following this Court's decision in *Jeffcoat v. Caine*, 261 S.C. 77, 198 S.E.2d 258 (1973), the Maine Supreme Court noted:

> Of the remaining states that retain some form of charitable immunity, no state has explicitly applied the doctrine to intentional torts.

Citing *Jeffcoat,* the Maine court noted that "applying charitable immunity to intentional torts would set Maine so far outside the mainstream that it would put this State in a class by itself." *Picher v. Roman Catholic Bishop*, 974 A.2d 286, 295 (Me. 2009). If the

Maine Supreme Court is right, this decision of the court of appeals places South Carolina in a class by itself.[1]

* * * * *

When Justice (later Chief Justice) Woodrow Lewis spoke for the Court, the Court's opinion was always clear and plain, as it was in *Jeffcoat*.[2]

Justice Lewis began the Court's opinion in *Jeffcoat* by finding the intended scope of the Court's holding in *Lindler v. Columbia Hospital*, 98 S.C. 81, 81 S.E. 512 (1914), the first case granting negligence immunity.[3]

> It is evident that the Court, in *Lindler*, did not intend to fashion a rule of complete exemption from tort liability; for it was careful to point out that the question of whether a charity "would be liable for negligence in the selection of its servants without due care [was] not before the court for consideration."

Jeffcoat, 261 S.C. at 78, 198 S.E.2d at 259. The Court in *Lindler* expressly identified the intended limitation to negligence, and even then to only one category of negligence:

> [I]t would be against public policy to hold a charitable institution responsible for the negligence of its servants, selected with due care.

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[1] The New Jersey Supreme Court reached much the same conclusion as did the Maine court:

> Our research discloses no case in this State prior to the enactment of the [Charitable Immunity Act] that, under the common law, relieved a charity from liability for any tort but negligence. Moreover, we have found no other jurisdiction that provides charitable immunity for intentional torts. . . . We are confident that if charitable immunity for intentional torts exists at all, it is rare . . . .

Hardwicke v. American Boychoir School, 902 A.2d 900, 918 (N.J. 2006).

[2] Chief Justice Lewis was among the last of the distinguished South Carolina lawyers and judges who read the law. He was the architect of the unified judicial system, which we take for granted today.

[3] The majority in *Lindler* consisted of two Justices and seven circuit judges, as the Court sat en banc.

Lindler v. Columbia Hospital, 98 S.C. 81, 81 S.E. 512, 513 (1914).[4]

Reviewing the Court's post-*Lindler* immunity decisions one by one, Justice Lewis identified all previous expressions of immunity from "tort liability" as obiter dictum, not holding. Use of the word "tort" in prior opinions could not and did not expand the *holdings*. The equation of negligence and tort was always obiter dictum.[5]

This Court has often explained the difference between holding and dictum by quoting the words of the Great Chief Justice, as it did most recently three years ago:

> *See Ex parte Goodyear Tire & Rubber Co*., 248 S.C. 412, 418, 150 S.E.2d 525, 527 (1966) ("It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision." (*quoting Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399, 5 L.Ed. 257 (1821))).

Preservation Society of Charleston v. S.C. Dept. of Health & Envtl. Control, 430 S.C. 200, 224, 845 S.E.2d 481, 494 (2020).

From 1914 until immunity was abolished in 1981, the Court was asked three times to extend the exemption past liability for simple negligence. Three times it refused. *Peden v. Furman University*, 155 S.C. 1, 151 S.E. 907 (1930); *Eiserhardt v. State A&M Soc.*, 235 S.C. 305, 111 S.E.2d 568 (1959); and *Jeffcoat v. Caine,* 261 S.C. 77, 198 S.E.2d 258 (1973). No South Carolina charity was granted immunity from liability for anything but simple negligence at any time in the sixty-seven year period of

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[4] The editors of West Publishing Company correctly assessed the holding in *Lindler* when they assigned it key numbers all in the category of "Charities . . . —Liability for Negligence of Servants".

[5] The *Lindler* court itself had warned against mistaking dictum for holding:

> Much confusion has arisen from the effort to apply language used in some of the . . . decisions to cases in which the facts were entirely different from those in which [the language] was used.

Lindler, 81 S.E. at 513.

that departure from normal rules of liability.

The court of appeals mistakenly applied the rule that "the abrogation of immunity defenses is to be applied prospectively only." This Court abrogated nothing in *Jeffcoat*. The whole point of the *Jeffcoat* opinion was that immunity had never been extended in a case of intentional tort, "and we refuse to so extend the immunity doctrine."

The court of appeals mistakenly thought that the Court in *Jeffcoat* "refused to overturn" its previous grant of immunity in negligence cases. The Court in *Jeffcoat* was asked to overturn nothing. Negligence immunity was not questioned or at issue in *Jeffcoat* in any way, shape, or form.[6]

In the paragraph of the *Jeffcoat* opinion quoted by the court of appeals, Justice Lewis summarized the Court's conclusion that all previous mentions of general tort liability had been obiter dictum. The court of appeals deleted from its quotation an essential portion:

> [I]n *Peden* [*v. Furman Univ.*, 155 S.C. 1, 151 S.E. 907 (1930)], liability was placed upon the charity for trespass and the creation of a nuisance.

Jeffcoat, 261 S.C. at 79, 198 S.E.2d at 260.[7] *Peden* was the only occasion before *Jeffcoat* when the Court was asked to extend immunity to a case of intentional tort. The Court refused. The unredacted conclusion of the Court's *Jeffcoat* opinion sums up the holding:

> The foregoing are the prior decisions of this Court which are relevant to the present inquiry. There can be no doubt that the decisions in *Lindler, Vermillion,* and *Decker* contain broad general expressions to the effect that charitable institutions are exempt from all tort liability. However, the

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[6] The briefs in *Jeffcoat* confirm that the plaintiff did not seek to abrogate negligence immunity, which was not at issue. The defendant charity in *Jeffcoat* did not contend that immunity had ever been granted in a case of intentional tort. The *Jeffcoat* briefs are available through the Reference Librarian at the Karesh Law Library. https://sc.edu/study/colleges_schools/law/law_library/services/bench_bar.php

[7] Trespass and nuisance are intentional torts. *Snow v. City of Columbia,* 205 S.C. 544, 409 S.E.2d 797 (Ct. App. 1991) (trespass); *Brading v. County of Georgetown,* 327 S.C. 107, 490 S.E.2d 4 (1997) (nuisance).

> broad statement of a rule of complete exemption from tort liability was unnecessary to a decision in those cases, and the rule of charitable immunity has never been extended by our decisions beyond the facts in *Lindler, Vermillion,* and *Decker.* In fact, in *Eiserhardt* the immunity doctrine did not exempt the charity from liability for the negligent operation of a commercial enterprise and in *Peden*, liability was placed upon the charity for trespass and the creation of a nuisance.
>
> These decisions point up the fact that this Court, while adhering in the past to the rule that charitable institutions are exempt from liability for mere negligence, has in every instance refused to further extend the rule. Therefore, the application of the immunity doctrine in a case of intentional tort is not required by precedent, nor, we conclude, by reason or justice.
>
> A long discussion of the charitable immunity doctrine is unnecessary. It is sufficient to point out that it has been subject to much criticism in recent years and considered by an increasing number of courts and writers as unsupportable under modern conditions. *See:* 7 S.C.L.Q. 443; 19 S.C.L.Q. 191; 20 S.C.L.Q. 2; Prosser, Law of Torts, 4th ed., Section 13, p. 992; Annotation 25 A.L.R.2d 29.
>
> Regardless of the public policy support, if there now be such, for a rule exempting a charity from liability for simple negligence, we know of no public policy, and none has been suggested, which would require the exemption of the charity from liability for an intentional tort; and we refuse to so extend the charitable immunity doctrine.

Jeffcoat v. Caine, 261 S.C. at 79-80, 198 S.E.2d at 251.

Negligence immunity in South Carolina hung by a slender threat throughout its 67-year existence. Only a proper respect for *stare decisis* kept it alive for so long.[8] At no time did it protect a charity from responsibility for its own intentional tort.

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[8] As Justice Fraser, a dissenter in *Lindler,* said two years later in *Vermillion v. Woman's College,* 104 S.C. 197, 88 S.E. 649 (1916)**:**

> I concur, under the authority of the Lindler Case. By that case I am as much bound as if I had signed the majority opinion.

CONCLUSION

There are many obstacles in the path of the claim of your petitioner for what happened to him so long ago. As for his claims of intentional tort, however, charitable immunity is not one of them, as this Court so plainly held in *Jeffcoat v. Caine.*

The court of appeals effectively overruled the holding of a respected decision of this Supreme Court. It will take but a moment to correct the error.

Your petitioner therefore urges the Court to grant the writ.

Respectfully submitted,

James B. Richardson, Jr.
1620 Gervais Street
Columbia, SC 29201
(803) 600-6375

Lawrence E. Richter, Jr.
The Richter Firm, LLC
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29644
(843) 649-6000

David K. Haller
604 Savannah Highway
Charleston, SC 29407
(843) 849-6000

by: s/ James B. Richardson, Jr.
Attorneys for Petitioner.

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