

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY

S.C. SUPREME COURT

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2023-001491

John Doe,.....Petitioner,

v.

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

**RESPONDENTS' RETURN TO PETITIONER'S
PETITION FOR WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENTS

STATEMENT OF THE CASE

Petitioner filed this action against the Diocese of Charleston and “the Bishop of the Diocese of Charleston, in his official capacity”¹ in August 2018, alleging he was the victim of abuse by two teachers at Sacred Heart School, a ministry of the Roman Catholic Diocese of Charleston, in 1970. Respondents responded with a motion to dismiss based on charitable immunity as well as other defenses. The Circuit Court denied that motion on March 4, 2019. Respondents then filed a timely Answer and engaged in discovery.²

After the discovery period established in the Circuit Court’s scheduling order closed, Respondents filed a set of summary judgment motions that included one asserting the defense of charitable immunity as that doctrine existed in 1970, when the alleged wrongful conduct occurred. The motions also included arguments that Petitioner’s claims were barred by the statute of limitations, as well as the *res judicata* effect of Respondent’s 2007 class action settlement of claims of sexual abuse. Respondent further argued that all of the specific claims set forth in Petitioner’s pleading failed as a matter of law for various reasons. Respondent filed numerous affidavits in support of the summary judgment motions. Petitioner did not submit any evidence to the Circuit Court in opposition to the motions.

After the Circuit Court held a hearing, it granted the Respondents’ motion for summary judgement based on charitable immunity as that doctrine existed in South Carolina in 1970, the

¹ The only proper legal entity is Bishop of Charleston, a Corporation Sole, which is an entity that the General Assembly chartered in 1880.

² Respondents filed a motion for partial summary judgment regarding the named party “the Bishop of the Diocese of Charleston, in his official capacity” that is not relevant to the current appeal, but that motion was denied.

time of the alleged abuse. Petitioner filed a Rule 59(e) motion, which the Circuit Court denied, and then commenced an appeal.

The Court of Appeals conducted oral arguments on June 15, 2023, and filed an opinion affirming the Circuit Court’s decision on August 2, 2023. *Doe v. Bishop of Charleston*, 440 S.C. 640, 891 S.E.2d 522 (Ct. App. 2023). Petitioner filed a rehearing petition, which the Court of Appeals denied in an Order filed on September 1, 2023. Thereafter, Petitioner filed a Petition for Writ of Certiorari with this Court.

ARGUMENT

This Court should deny the current Petition for Writ of Certiorari, because it does not present any special or important reason for which the Court grants certiorari petitions. Additionally, when the merits of the petition are considered, there is no basis for this Court to grant further review. The Court of Appeals correctly analyzed and applied South Carolina’s law of charitable immunity as it existed when the alleged wrongful actions occurred. The Court of Appeals’ thorough and well-reasoned analysis of this issue warrants no additional scrutiny, and this Court should allow the Court of Appeals’ opinion to stand.

I. The Court of Appeals’ decision does not warrant review by this Court under the standards set forth in Rule 242, SCACR.

According to the South Carolina Appellate Court Rules, “[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR (emphasis added). The rule goes on to list five situations in which the granting of a writ of certiorari usually occurs. Those situations include cases when: (1) there are novel questions of law; (2) there is a dissent in the decision of the Court of Appeals; (3) the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) substantial constitutional issues are directly involved; and (5) a federal question is

included, and the Court of Appeals' decision conflicts with a decision of the United States Supreme Court. Rule 242(b), SCACR. *See also* Toal, et al., *Appellate Practice in South Carolina* (2nd Ed.) at 276. The present case does not fall into any of those categories, and no "special and important" reason exists for the Court to review the Court of Appeals' decision. Therefore, the Court should deny the petition.

This case certainly does not involve a "novel" question of law. To the contrary, it concerns a legal doctrine (charitable immunity) that was abrogated prospectively more than four decades ago.³ Furthermore, as the Court of Appeals correctly noted, the specific question at issue in the appeal was well settled by this Court in cases that arose during the time when charitable immunity was the law. Accordingly, there is nothing new or novel about the issue in this appeal.

The second factor as to whether there is a dissent in the Court of Appeal's opinion is facially inapplicable, as there was no dissent in the Court of Appeals opinion. Judges Geathers and Verdin concurred completely with Chief Judge Williams' opinion, with no written concurrence opinion by either judge. For this reason, the second factor also fails to support the petition.

To the extent the Petitioner relies on any of the factors listed in Rule 242(b) to argue that the petition for certiorari should be granted, it would presumably be the third – i.e. a claim that the Court of Appeals' opinion conflicts with this Court's decision in *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E.2d 258 (1973). Any such argument is misplaced, however, because the Court of Appeals' decision is not in conflict with *Jeffcoat*. In fact, the Court of Appeals' decision has nothing to do with *Jeffcoat*. The Court of Appeals determined that the circuit court correctly applied the law of charitable immunity as it existed in 1970, three years before *Jeffcoat*. Thus, *Jeffcoat* had no impact

³ *See Fitzer v. Greater Greenville South Carolina Young Men's Christian Ass'n*, 282 S.E.2d 230, 232 (S.C. 1981).

on, and certainly does not conflict with, the Court of Appeals' opinion. Therefore, the third factor of Rule 242(b) does not apply.

The fourth and fifth factors set forth in Rule 242(b) are also inapplicable. There are no constitutional or federal issues involved in the case, and the Petitioner does not claim otherwise. Thus, none of the factors identified in Rule 242(b) support granting the current petition.

While the elements listed in Rule 242(b) are not the exclusive basis for granting a writ of certiorari, no other special or compelling reasons exist for this Court to review the Court of Appeals' decision. The Court of Appeals did not change or make any new law when it decided this case. To the contrary, the Court of Appeals merely applied the well-settled law as it existed in 1970. Nothing in the Court of Appeals' decision warrants this Court's additional review.

II. The petition does not demonstrate any error by the Court of Appeals.

In his claim the charitable immunity did not apply to an intentional tort in 1970, Petitioner relies primarily on a case from another jurisdiction that he neither discussed in his previous appellate briefs to the Court of Appeals nor referenced during oral arguments at the Court of Appeals. Moreover, the Maine Supreme Court's decision in *Picher v. Roman Catholic Bishop*⁴ has no bearing on the law in South Carolina – even less so on the law as it existed in 1970. In *Picher*, the Maine Supreme Court affirmed the dismissal of claims against the Bishop of Portland for negligent supervision, breach of fiduciary duty, and canonical agency, and reversed only as to the claim that the Bishop 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.⁵

⁴ *Picher v. Roman Catholic Bishop*, 974 A.2d 286, 295 (Me. 2009).

⁵ *Picher v. Roman Catholic Bishop*, 82 A.3d 101 (Me. 2013).

As Petitioner notes, the *Picher* Court discussed the evolution of charitable immunity in South Carolina. However, the court did not state, or even imply, that the doctrine did not apply to intentional torts in South Carolina prior to this Court's decision in *Jeffcoat v. Caine* in 1973.⁶ 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* actually supports the Court of Appeals' decision in this case, as the *Picher* Court agrees that *Jeffcoat* announced a new limitation on charitable immunity.

Petitioner 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 accurate. The *Picher* Court did not attempt an exhaustive review of the entire history of charitable immunity throughout all jurisdictions that once followed that doctrine. Rather, the purpose of its survey was to determine the nationwide scope of that doctrine as it existed in 2009 when *Picher* was decided. Thus, although it is reasonable to cite *Picher* as support for the proposition that as of 2009 no other jurisdictions appeared to apply charitable immunity to intentional torts, it is neither reasonable nor accurate to cite *Picher* for that same proposition as of 1970. The *Picher* Court never discussed or analyzed the scope or application of the doctrine as it existed in 1970. Therefore, the *Picher* opinion has no bearing on the Court of Appeals' decision, and it provides no support for the current petition.

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

⁶ *Jeffcoat*, 261 S.C. 75, 198 S.E.2d 258 (1973).

- *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.”⁷
- *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.”⁸
- 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 that did not qualify for charitable immunity could be held liable for both the negligent and willful or intentional acts of an employee done in the course of his employment.⁹ However charitable immunity was a blanket exception to that *respondeat superior* liability. *Vermillion* went on to state that “this rule does not put such charities above the law, for their conduct is subject to the supervision of the Court of equity.”¹⁰ The clear implication of these statements are that the Court held that charities could not be held liable for torts committed by their employees. Charities enjoyed “full immunity from tort liability.”¹¹

⁷ 98 S.C. 25, 27, 81 S.E. 512 (1914) (emphasis added) (internal citation omitted).

⁸ 104 S.C. 197, 202, 88 S.E. 649, 650 (1916)

⁹ 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).

¹⁰ *Id.*, 104 S.C. at 201, 88 S.E. at 649.

¹¹ *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).

- *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.”¹² Here, as noted in the Court of Appeals’ opinion, Petitioner conceded during oral arguments that Respondents were charitable entities in 1970.
- In 1970, when the alleged acts occurred, *Lindler* and *Vermillion* were the controlling authorities for the doctrine of charitable immunity. Those cases 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.¹³
- In *Jeffcoat v. Caine*,¹⁴ the case on which Petitioner principally relies upon, is not applicable here. The *Jeffcoat* Court’s discussion and apparent criticism of *Lindler* and *Vermillion* are merely *dicta*, as the Court steadfastly refused to overturn charitable immunity.¹⁵ Further, *Jeffcoat* was decided three years after the alleged abuse took place in this matter, and thus was not the law of South Carolina in the years relevant to the present case.
- In addition, *Jeffcoat v. Caine* involved an allegation that South Carolina Baptist Hospital could be liable for false imprisonment. Thus, *Jeffcoat* was not a *respondeat liability* case at

¹² *Id.*, 235 S.C. at 312, 111 S.E.2d at 572.

¹³ *Vermillion*, 104 S.C. at 201, 88 S.E. at 650.

¹⁴ *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E.2d 258 (1973).

¹⁵ At best, *Jeffcoat* may be considered a change in prior precedent regarding charitable immunity and, as such, its effect is solely prospective.

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.¹⁶

- Petitioner’s reliance on *Peden v. Furman*¹⁷ is entirely 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. 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 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 1970, when the alleged abuse occurred in this matter, the, *Jeffcoat* decision was still three years in the future. *Jeffcoat* altered the common law in a manner that created limited liability when a charitable organization itself committed false imprisonment. Accordingly, *Jeffcoat* only affected future claims after 1973, and it is irrelevant to this appeal as the Court of Appeals correctly concluded.

¹⁷ 155 S.C. 1, 151 S.E.2d 907 (1930).

As the above summary demonstrates, the Respondents had full and complete immunity from liability for the torts of its employees and agents during the time period relevant to this appeal. This Court might have altered the doctrine of charitable immunity in *Jeffcoat*, but that did not occur until several years after the alleged abuse in this case. Therefore, the Court of Appeals' analysis and conclusion are correct and should stand.

CONCLUSION

The Court of Appeals thoroughly considered the issues raised in this appeal, and it properly concluded that the doctrine of charitable immunity – as it existed in 1970, the time of the alleged conduct giving rise to Petitioner's claims – entitled Respondents to summary judgment. The 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 or impact the Court of Appeals' analysis. For the reasons provided above, this Court should deny the petition.

Respectfully submitted,

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