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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

Case No. 2023-001491

On 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.

BRIEF OF PETITIONER

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QUESTION PRESENTED

Were charities 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

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 in separate motions on several grounds, including the defense of common law charitable immunity. The circuit court heard argument on all the motions but decided only one, granting summary judgment upon the ground of charitable immunity.

Petitioner appealed. The court of appeals affirmed. *John Doe v. Diocese of Charleston,* 446 S.C. 640, 891 S.E.2d 522 (2023), and denied petitioner's motion to reconsider.

This Court granted the petition for a writ of certiorari.

ARGUMENT

A charity has never been immune from the normal rules of liability for its commission of an intentional tort.

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

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

Picher v. Roman Catholic Bishop, 974 A.2d 286, 295 (Me. 2009).[1] The Maine court concluded 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."

This decision of the court of appeals places South Carolina before 1973 in what the Maine court called a class by itself.

* * * * *

When Justice (later Chief Justice) Woodrow Lewis spoke for the Court, the opinion was always clear and plain.[2] Justice Lewis began the Court's *Jeffcoat* opinion by identifying the limited 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]

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[1] The New Jersey Supreme Court reached much the same conclusion:

> [W]e 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 chief architect of the unified judicial system, which we take for granted today.

[3] Three Justices dissented in *Lindler*. Had the Court not been sitting *en banc*, South Carolina would have been among the many jurisdictions never to accept the immunity exception to normal rules of liability. 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. As Justice Fraser, a dissenter in *Lindler,*

(continued...)

> 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 majority in *Lindler* explicitly limited its holding to negligence cases, 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.

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 was never intended to — and could not — expand the *holdings*.[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 four 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

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[3](...continued)
remarked two years later in *Vermillion v. Women'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.

[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". (E.a.)

[5] The majority in *Lindler* 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.

> 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 has ever been granted immunity from liability for anything but simple negligence.

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 to 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 portion 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 quoted part of this Court's *Jeffcoat* opinion:

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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 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

> 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 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.

For some reason the court of appeals deleted from its quotation of the *Jeffcoat* opinion a vital sentence**:**

> [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.

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). *Peden* was the only occasion before *Jeffcoat* when the Court was asked to extend immunity to a case of intentional tort. The Court refused.

CONCLUSION

A charity was never immune from the normal rules of liability in South Carolina — or anywhere else — for its commission of an intentional tort.

There are many obstacles in the path of your petitioner's claim 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 this nationally respected decision.

Your petitioner urges the Court to vindicate its decision in *Jeffcoat v. Caine* by reversing the court of appeals.

Respectfully submitted,

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