

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2018-CP-10-3929

John Doe,

Plaintiff,

vs.

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

Defendants.

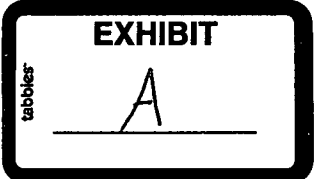
ORDER

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SC Court of Appeals

THIS MATTER came before the Court on separate motions for summary judgment on all causes of action: (1) Defendants' Motion for Summary Judgment based upon the common law Doctrine of Charitable Immunity; (2) Motion for Summary Judgment on the Statute of Limitations / lack of admissible evidence of repressed memory syndrome; and (3) Motion for Summary Judgment based upon the *res judicata* effect of a 2007 class action settlement. Having analyzed the briefing submitted by the Defendants (Plaintiff did not submit a brief in opposition) and the oral arguments heard on December 12, 2019, the Court orders that the Defendants' Motion for Summary Judgment based on Charitable Immunity is hereby **GRANTED**. Having reached this conclusion, the Court does not rule on the other two dispositive motions before it.

UNDISPUTED FACTS

Plaintiff John Doe alleges he was sexually abused by two teachers at Sacred Heart School, Chris Hartnett and Hal Brooks, during the school year he was in 7th grade – 1970 – 1971. Sacred Heart School is listed in the *Official Catholic Directory* as part of the Roman



Catholic Diocese of Charleston.¹ The record reflects that Hal Brooks taught at Sacred Heart for the Fall semester of 1970 only.² Brooks denies engaging in any sexual abuse of Plaintiff Doe.

The Bishop of Charleston, a Corporation Sole, (referred to alternately as “the Diocese”) is a charitable entity, and has been since Bishop of Charleston, a Corporation Sole was created by the General Assembly in 1880.³ Since 1946, the federal government has recognized the United States Conference of Catholic Bishops as having a group designation as a charitable organization and has determined that all agencies and instrumentalities, and the educational, charitable, and religious institutions listed in the *Official Catholic Directory* qualify for charitable status. The record contains the I.R.S. determination from 1970 establishing the charitable status of both the Diocese and Sacred Heart School. Additionally, the Diocese submitted the affidavit of John Barker, Chief Financial Officer of the Diocese, attesting that the Corporation Sole, from its inception until the present, has been a charitable entity.

STANDARD FOR SUMMARY JUDGMENT

Rule 56 of the South Carolina Rules of Civil Procedure provides that a party may move, with or without supporting affidavits, for summary judgment in his favor as to all or part of a claim.⁴ The trial court must grant the motion “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a

¹ The Diocese of Charleston’s *Official Catholic Directory* listing for 1970 – 1971 is in the record before this Court.

² See *Affidavit of Harold Brooks*.

³ See Affidavit of John Barker and Act of the General Assembly, December 13, 1880.

⁴ Rule 56(a), SCRPC.

judgment as a matter of law.”⁵ In situations where the plaintiff bears the burden of proof, a defendant may satisfy its initial burden by “showing”--that is, pointing out to the [trial] court--that there is an absence of evidence to support the plaintiff’s case.⁶ Once the defendant has carried its initial burden, plaintiff must come forward with admissible evidence to show that there is a genuine issue of fact remaining for trial.⁷ The plaintiff must “do more than show that there is some metaphysical doubt as to the material facts,” and must show that there is a genuine issue for trial.⁸ The plaintiff may not rest upon the mere allegations of his pleadings.⁹

1. There is no genuine issue of material fact that the Diocese of Charleston is, and was in 1970, a charitable entity.

It is clear from the record before this Court that the Roman Catholic Diocese of Charleston was and remains a charity. This includes Sacred Heart School, which is listed in the 1970 *Official Catholic Directory*. All of the officers, directors, employees, and agents of the Diocese or Sacred Heart would, therefore, have been personnel of a charitable organization. All of the school’s activities relevant to this case were within the scope of the school’s role as a charitable entity. There is no evidence in the record that the injuries in this case arise from any for-profit activities on the part of the Diocese or Sacred Heart School. Likewise, there is no evidence in the record establishing that the Diocese *is not* a charitable entity.¹⁰

⁵ *Id.* Rule 56(c).

⁶ *Id.* (alteration in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).

⁷ *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545.

⁸ *Id.*

⁹ *Id.*

¹⁰ It is worthy of note that 26 U.S.C. § 7611 contains specific restrictions on efforts to inquire into a church’s tax exempt charitable status – that inquiry may only be commenced by the Secretary of the Treasury or another appropriate high-level Treasury official; the inquiry must

Further, while not determinative of this case, several judges in this Circuit have recognized the Diocese's charitable status and have granted summary judgment based upon common law charitable immunity for claims arising before 1981. Notably, Judge Deadra Jefferson granted summary judgment to the Diocese in *Doe v. The Diocese of Charleston*, Civil Action No. 02-CP-10-0770, in which she held that Sacred Heart School and the Diocese were charitable entities and were immune from suit arising from allegations of sexual abuse that occurred in 1960. Likewise, Judge J.C. Nicholson granted the Diocese's summary judgment motions in several cases in 2017. Judge Jefferson's Order is part of the record before this Court, as is one of Judge Nicholson's Orders from 2017.

2. The Doctrine of Charitable Immunity.

For nearly all of the 20th Century, the law in South Carolina was that charities were immune from suit in tort. The Doctrine of Charitable Immunity was espoused in South Carolina in *Linder v. Columbia Hospital of Richmond County*, in which the Supreme Court held "a charitable corporation is not liable [for] injuries resulting from the negligent or tortious acts of a servant, in the course of his employment [if] such corporation has exercised due care in his selection."¹¹ In *Vermillion v. Williams College of Due West*, the Supreme Court went further:

[T]he exemption of public charities from liability and actions for damages for tort rests not upon the relation of the injured party to the charity, but upon grounds of public policy, which forbids the crippling or destruction of charities which are

begin within 3 years; and suit over the charitable status may only be brought by the government in the United States District Court for the District of Columbia.

¹¹ *Linder*, 98 S.C. 25, 81 S.E. 512, 512-14 (1914). Notably, the record contains the Affidavit of Dr. Monica Applewhite, the Diocese's expert witness, affirming that the Diocese complied with the standard of care in hiring the two teachers at the time they were hired in around 1970. She detailed the fact that the teachers were very recent college graduates who had no report of predilections toward sexually abusing minors prior to their being hired. Dr. Applewhite also discussed the very limited means available to a school to check the backgrounds of applicants at that time.

established for the benefit of the whole public to compensate one or more individual members of the public for injuries inflicted by the negligence of the corporation itself or of its superior officers, or agents, or of its servants or employees. The principle is that in a organized society, the rights of the individual must, in some instances, be subordinated to the public good . . . that being so, what difference can it make whether the tort is out of the corporation itself or its superior officers and agents or that of its servants, liability for the one would effectually embarrass or sweep away the charity as the other. It would therefore be illogical to admit liability for one and deny it for the other.¹²

The *Vermillion* Court held that charitable institutions were exempt from liability for the torts of their agents whether they were selected with or without due care.¹³

In 1959, the South Carolina Supreme Court reaffirmed the defense of charitable immunity in *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina*. As before, the Supreme Court held that charitable entities were immune from suit in tort for activities within the scope of the charity's charitable mission.¹⁴ As Judge Jefferson held, Catholic Schools are very much part of the charitable mission of the Roman Catholic Church.

In 1966, the Supreme Court again specifically reiterated the doctrine of absolute charitable immunity and applied it to a tort claim against the Diocese and declared the Church to be a true charity entitled to immunity from suit altogether.¹⁵ The Court further held that a charity's immunity from suit is unaffected by the fact that the charity procured liability insurance that would cover the loss.¹⁶ Rather, the Diocese was immune from suit in tort. The *Decker* Court affirmed the dismissal of a negligence suit on the Diocese's demurrer.

¹² *Vermillion v. Williams College of Due West*, 104 S.C. 197, 88 S.E. 649, 650 (1916); *Lindler v. Columbia Hospital*, 81 S.C. 25, 81 S.E. 512 (1914).

¹³ *Vermillion*, at *Id.*

¹⁴ *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina*, 235 S.C. 305, 111 S.E.2d 568 (1959) and again in *Decker v. Bishop of Charleston*, 247 S.C. 317, 147 S.E.2d 264, 268 (1966).

¹⁵ *Decker v. Bishop of Charleston*, at 268.

¹⁶ *Id.* at 269.

In 1981, the South Carolina Supreme Court abrogated the doctrine of charitable immunity.¹⁷ However, the Court only did away with charitable immunity going forward – the abrogation could not be applied retrospectively.¹⁸ Thus, a Court must apply charitable immunity as it existed at the time of the allegedly tortious activity.¹⁹

As late as 1979, in *Douglass v. Florence Gen'l. Hosp.*, the Supreme Court reaffirmed the doctrine of charitable immunity for torts that occurred while the doctrine remained effective.²⁰ The plaintiff in that case filed suit prior to the Supreme Court's decision in *Brown v. Anderson Cty. Hosp.*, although the case was pending when the *Brown* decision was issued. The trial court dismissed plaintiff's complaint based upon charitable immunity and determined that *Brown* applied only prospectively and could not give life to plaintiff's complaint. The Supreme Court affirmed that decision because *Brown* created liability where, before, there had been none. Florence General Hospital was immune from suit for its employees' negligence, even if heedless or reckless.²¹

There is no question based upon the record before this Court that the Doctrine of Charitable Immunity was in full force and effect during the entire time Hartnett and Brooks are alleged to have abused the Plaintiff. The events that gave rise to the injuries sustained by the Plaintiff occurred at the time the Doctrine of Charitable Immunity was the law in South

¹⁷ *Fitzer v. Greater Greenville South Carolina YMCA*, 277 S.C. 1, 282 S.E.2d 230 (1981).

¹⁸ See *Hupman v. Erskine College*, 281 S.C. 43, 44, 314 S.E.2d 314, 315 (1984), *Hasell v. Medical Society of S.C.* 288 S.C. 318, 342 S.E. 594, 595 (1986) see also *Brown v. Anderson Cty. Hosp.*, 234 S.E.2d 873 (S.C. 1977) (modifying charitable immunity as to hospitals only to render them liable for heedless and reckless acts and prospectively only).

¹⁹ See *Laughridge v. Parkinson*, 403 S.E.2d 120, 120 (1991) (holding that charitable immunity law in existence at the time of tortious conduct in 1979 must be applied).

²⁰ *Douglass v. Florence Gen'l. Hosp.*, 259 S.E.2d 117 (S.C. 1979),

²¹ *Douglass*, 259 S.E.2d at 118.

Carolina. It is an absolute defense to a claim which arose from the actions complained of by the Plaintiff against the Defendants.

3. Application of the Doctrine of Charitable Immunity.

Applying these principles, it is clear that Plaintiff's claims are barred by the Doctrine of Charitable Immunity. The record before the Court contains no evidence establishing that there is any factual issue that the Bishop of Charleston, a Corporation Sole is a charitable institution, and the now-shuttered Sacred Heart School, its officers, agents, and employees are all part of a charitable organization. There can be no dispute that the Corporation Sole and Sacred Heart School were "charities" under the law of South Carolina. The events in question happened some eleven years before the Supreme Court abrogated common law charitable immunity in 1981. Accordingly, at the time of the events in question, it was the law of this State that charities were immune from all tort liability.

The Diocese is, and has been, a charity entitled to common law charitable immunity as the law established at the time of any actions alleged in this case. It is without question that both South Carolina and federal authorities have long-determined the Diocese to be a charitable institution.²² South Carolina law does not permit the courts of this state to substitute its judgment for the judgment of an agency.²³ Unlike the legislatively created limitation on liability

²² In addition to the affidavit of John Barker establishing the Catholic Church's charitable status, the Court can take judicial notice of the *fact* that, since 1946, the federal government has recognized the United States Conference of Catholic Bishops as having a group designation as a charitable organization and has determined that all agencies and instrumentalities, and the educational, charitable, and religious institutions listed in the *Official Catholic Directory* qualify for charitable status. See *Internal Revenue Service Group Determination Letter*, attached as *Exhibit C* and *Exhibit D*, Official Catholic Directory, 1971.

²³ See e.g. S.C. Code Ann. § 1-23-380(6).

for charities, immunity from suit is *not* an issue to be applied after a jury verdict. Rather, pre-1981 charitable immunity shields charities from suit altogether.

It is important to note that charitable organizations are recognized as such by the federal government – whose rules, regulations, and enforcement govern whether an organization can be considered a charity and exempt for state and federal taxes. When the General Assembly codified the common law doctrine of charitable immunity, it specifically premised charitable status on the Internal Revenue Service's determination.²⁴ That is a determination of the federal government that the state is required to honor by the Supremacy Clause of the Constitution. In addition, the federal code contains a specific provision regarding the procedure to review and revoke a charity's status – that can only be done by the Department of the Treasury and for very specific reasons.²⁵ Federal law affords no private right of action to challenge a church's charitable status.

CONCLUSION

As the Courts of this State have consistently and repeatedly held, Plaintiff's claims are barred by the common law Doctrine of Charitable Immunity. The Corporation Sole, and all its ministries, schools, and affiliates listed in the *Official Catholic Directory* are in fact charities and no amount of pleading or argument can change that. Nor can it change the Internal Revenue Service's determination – not just for the Diocese of Charleston, but for the entirety of the American church – that the Church is a charitable institution. There is no genuine issue of

²⁴ See S.C. Code Ann. § 33-56-20.

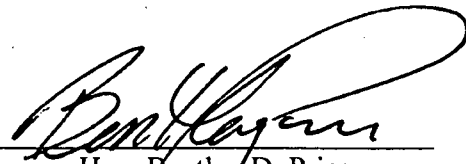
²⁵ 26 U.S.C. § 7611 contains specific restrictions on efforts to inquire into a church's tax exempt charitable status – that inquiry may only be commenced by the Secretary of the Treasury or another appropriate high-level Treasury official; the inquiry must begin within 3 years; and suit over the charitable status may only be brought by the government in the United States District Court for the District of Columbia.

material fact regarding the Church's status as a charitable organization and there is no admissible evidence to the contrary. The Court must apply charitable immunity as it existed in 1971, and, on that basis, Defendants' Motion for Summary Judgment is hereby **GRANTED** and all claims and causes of action of Plaintiff in this case are hereby **DISMISSED WITH PREJUDICE**.

Based upon the foregoing, the Court need not reach the separate motions regarding the statute of limitations or *res judicata*.

IT IS SO ORDERED.

8th day of January, 2019
Charleston, South Carolina



Hon. Bentley D. Price
Circuit Court Judge