THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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.

AMENDED FINAL BRIEF OF APPELLANT

Lawrence E. Richter, Jr. (SC Bar No. 4724)
Anna E. Richter (SC Bar No. 100787)
THE RICHTER FIRM, LLC
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 849-6000
LRichter@RichterFirm.com
Anna@RichterFirm.com

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases ***Page***

Rules

STATEMENT OF THE ISSUES ON APPEAL

I. Did the Circuit Court err in its order entered on January 9, 2020 in granting the Respondents' summary judgment motion based on the doctrine of charitable immunity when Doe's Complaint stated causes of action based on child sexual abuse for outrage, negligence/gross negligence, breach of fiduciary duty, intentional infliction of emotional distress, fraudulent concealment, civil conspiracy, negligent retention or supervision, breach of contract, and breach of contract accompanied by a fraudulent act?

II. Did the Circuit Court err in its order entered on May 11, 2020 in denying Doe's Rule 59(e) motion to alter or amend the Court's January 9, 2020 order?

STATEMENT OF THE CASE

Plaintiff-Appellant John Doe (Doe) filed an Amended Complaint in the Charleston County Circuit Court on August 29, 2018. (R. pp. 58-124). As alleged in his Amended Complaint, Doe was born in 1957 and as a child around the ages of 12 to 14 (*i.e.*, around 1969 to 1971) he was sexually molested by Chris Hartnett and Hal Brooks, two teachers at Sacred Heart Catholic School, a parochial school operated by the Defendants-Respondents (Church). Doe further alleged that the Church had encouraged him to trust, revere, obey, and confide in his teacher Hartnett and another Sacred Heart School teacher Brooks, both abusers of Doe, and that the Church not only knew or should have known of the sexual abuse but also tried to conceal it. Doe alleged further that his memory of these events had been repressed and he learned of the abuse and of the causal relationship between his injuries and the sexual abuse, the Church's knowledge of the abuse, and the Church's concealment of the abuse only within the past two years before filing. Based on these and other facts, Doe asserted claims for relief based on sexual abuse, and claimed outrage, negligence/gross negligence, breach of fiduciary duty, intentional infliction of emotional distress, fraudulent concealment, civil conspiracy, negligent retention or supervision, breach of contract, and breach of contract accompanied by a fraudulent act. (R. pp. 58-124)

In response to the Amended Complaint, the Church filed a series of motions, several of which resulted in orders adverse to the Church, and from which the Church has attempted to pursue interlocutory appeals. Among the motions filed by the Church are a motion to dismiss; a motion to strike portions of the Amended Complaint; a motion to stay discovery; a motion for protective order concerning discovery; a motion for partial summary judgment as to "The Bishop of the Diocese of Charleston, in his official capacity"; a motion to disqualify Doe's counsel; a motion for

summary judgment as to all claims based upon the common law doctrine of charitable immunity (R. pp. 789-842); a motion for summary judgment as to all claims based upon the statute of limitations/lack of admissible evidence of repressed memory (R. pp. 843-848); a motion for summary judgment based upon *res judicata* effect of a 2007 class action settlement (R. pp. 849-952); a motion for summary judgment regarding Doe's negligence, negligent retention, negligent supervision and outrage/intentional infliction of emotion distress claims; a motion for summary judgment regarding Doe's claim of conspiracy; a motion for summary judgment regarding Doe's fraud-based and contract claims; and a motion for summary judgment as to Doe's claim for breach of fiduciary duty.

After hearing three of the Church's summary judgment motions on December 12, 2019, the trial Court required counsel for both sides to submit proposed orders, which was done. (R. pp. 1179-1198) On January 9, 2020 the hearing judge issued the order proposed by Defendants-Respondents (Church) granting them summary judgment based solely upon the doctrine of charitable immunity.[1] (R. pp. 46-54)

1 **Transcript of Record from 2/18/20 hearing P8, L9-20 (R. p. 685, lines 9-20)**

THE COURT:	I read it, which I told you to submit an order solely on –
MR. DUKES:	On charitable immunity.
THE COURT:	Correct. I didn't care about anything about repressed memory. I didn't have anything to do with anything – I wasn't even considering that, even though I read them. But that's why I ordered the orders to be specific, solely to that issue, because you made a motion for summary judgment on, I think, about seven different –
MR. DUKES:	Seven or eight.
THE COURT:	Yeah, seven or eight different causes. And I said I wanted on just that one.

The Church filed no Rule 59(e) motion seeking additional rulings on its other motions for summary judgment based on the statute of limitations/lack of admissible evidence of repressed memory syndrome and on the *res judicata* effect of a 2007 class action settlement.

On January 16, 2020, Doe filed his Rule 59(e) motion, requesting the Circuit Court to alter or amend its January 9, 2020 order by vacating the aforesaid order and entering an order in the form which was attached as Exhibit A thereto. (R. pp. 1199-1213) Doe's motion was heard on February 18, 2020 and on April 6, 2020. (R. pp. 678-741)

On May 11, 2020, the Circuit Court entered its order denying Doe's Rule 59(e) motion to alter or amend the Court's January 9, 2020 order (R. pp. 55-57), from which denial Doe has also taken this appeal.

STATEMENT OF THE FACTS

The gravamen of Doe's claim is that as a young grammar school student at Sacred Heart School, of the Diocese of Charleston, he was molested by teachers in the fall of 1970.[2] Doe was visited at his home by his teacher Chris Hartnett who spoke with Doe and Doe's parents and received their parental permission to take Doe to an event in the Columbia area. Hartnett

2 **Transcript of John Doe's deposition**
P108, L13 – P109, L9
BY MR. DUKES: Chris Hartnett was your homeroom teacher when you were in the seventh grade, right?
DOE: Sixth. Pretty sure it's the sixth. Or at least the last half – the latter of the sixth. I don't have a vivid knowledge of been going there a whole year, whether it had been one year or the next year or for a year and then part of the next year. I can't remember that. You'd have to get school records for that one.
DUKES: Yes, I've got them, and I'll show you.
DOE: Okay.
DUKES: It jumps around on you but in 1969 and 1970 you had a lady who taught you in the sixth grade.
DOE: Okay.
DUKES: And then 1970, 1971, Chris Hartnett was your seventh grade teacher.
P118, L7-10
DUKES: What time of year did this party take place?
DOE: Somewhere in the fall. I'm sure of that.

subsequently transported Doe alone in his vehicle, not to any learning related event[3], but rather to a private residence where a party was being conducted and where a second teacher from Sacred Heart School was present. Doe was the only child at the gathering and was given alcohol and marijuana and was subsequently sodomized, anally raped, by the two teachers.

Doe had been taught to revere, respect, trust, confide in, and adhere to the directives of his teachers and clergy, priests, and also nuns of the Roman Catholic Diocese of Charleston. He was taught that persons of authority were to be obeyed, and their directives complied with.

Doe described the location of the party as being off Gervais Street in a private residence. After that event, Doe was taken by Hartnett and Brooks to what seems to have been a bar, perhaps catering to homosexuals, where he was given to a bar patron who displayed a desire for sexual favor by embracing and kissing young Doe.

Doe's seventh grade report card, academic year September 1970 – May 1971, was relied upon by the Church as establishing the fact of him being Hartnett's student and also the general time of the molestation. Doe's deposition testimony, relied upon in the motion hearing first by counsel for Defendants-Respondents and subsequently by counsel for Appellant, all without objection and all allowed by the circuit court judge presiding.

From the 12/12/19 Summary Judgment Hearing (R. pp. 594-677)

P18, L20-25 (R. p. 611, lines 20-25)

MR. DUKES: …In fact, the Plaintiff
testified about – because I asked him, "Do you think

3 **Transcript of John Doe's deposition**
P115, L3 – 7
DUKES: How did this trip to Columbia come about?
DOE: Well, he said we were going up there to see a museum or something and ended up at a friend of his house and Brooks was there.

anybody intended for Hartnett and Brooks to harm you?" And he said, "My heart says no. I've never known any bad, bad people in the church. But I would rather not had to remember this and sit here and talk about it like that."

P43, L17-21 (R. p. 636, lines 17-21)

MR. RICHTER: In any event, the idea that there are no issues of contested fact simply escapes me. And I represent to Your Honor we adopt all of the depositions, all of the written discovery, we rely on all of that as part of our – our argument here.

P50, L12-16 (R. p. 643, lines 12-16)

MR. RICHTER: I would like to incorporate all of the depositions that have been taken in these cases as part of – as part of our records in support of our argument that, again, all the authorities that you'll read talk about the use of those in all the pleadings in the matter.

From the 4/6/20 59(e) Hearing (R. pp. 691-741)

P11, L20-25 (R. p. 701, lines 20-25)

MR. RICHTER: …Mr. Dukes on multiple occasions quoted to you and argued… from the depositions of the plaintiffs' various witnesses, a couple of experts, plus the plaintiff himself. Now, that is what happened.

P12, L3-13; L16-20 (R. p. 702, lines 3-13; R. p. 702, lines 16-20)

MR. RICHTER: Mr. Dukes says to you, in fact, the plaintiff testified, because I asked him, do you think anybody intended for Hartman [Hartnett] and Brooks to harm you?

And he said, quote, my heart says no. I've never known any bad, bad people in the church, but I would rather not be here to remember this and sit here and talk about it like that.

Mr. Dukes goes on and says, but he said
he doesn't have any evidence that anybody intended
for him to be harmed.

But that happens later on as well as to
two other witnesses, Dr. Duffy, who is a
psychologist, and the lady Ms. Wayland [Whalen], who the
dioceses sent John Doe to for treatment –
diagnosis and treatment.

P12, L25 – P13, L11 (R. p. 702, line 25 – p. 703, line 11)

MR. RICHTER: …we
incorporate into the record and rely on – did it
twice actually in the hearing, and I would be glad
to quote from the transcript to show you where that
exists. But we did it twice and did so without
objection.

Now, I didn't object to Mr. Dukes
relying on deposition testimony because I thought
he might – that I might want to rely on deposition
testimony, and I did. And he did it; Your Honor
allowed him to do it. We incorporated it; he
didn't object in any way whatsoever.

P13, L19-22 (R. p. 703, lines 19-22)

MR. RICHTER: …you let it in for the defense and so
we took the very same tact and we're entitled to be
treated the very same way the defense was in that
regard.

P24, L20-P25, L4; P25, L6-13 (R. p. 714, line 20 – p. 715, line 4; R. p. 715, lines 6-13)

MR. RICHTER: …all of the depositions, and I'll show you
in the record where I specifically said that I
incorporate all of the discovery and depositions,
filings, whatever, in all of these cases, the three
subject cases specifically said that in the record
to you without any – without any objection.

On page 43, I represent to Your Honor
we adopt all of the depositions, all of the written

> discovery; we rely on all of that as part of our argument here.
>
> And then again at another page, page 50, I again state, I would like to incorporate all of the depositions that have been taken in these cases, these plural cases, as part of our record in support of our argument that this is at the actual argument of the motion itself, and all of the pleadings, as I say, specifically in these cases.

Ultimately, Doe was abandoned at the bar in Columbia, got away from it, and finally hitchhiked back to Charleston and his home.

Doe's is a case of repressed memory or dissociative amnesia, which doctrine is recognized in South Carolina. See *Moriarty v. Garden Sanctuary Church of God,* 334 S.C. 150, 511 S.E.2d 699 (Ct.App.1999) and *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000).

The Defendants-Respondents do not admit the facts upon which Doe relies (R. pp. 125-135); but most particularly they claim entitlement to absolute immunity under the doctrine of charitable immunity.

When the summary judgment motion was called for hearing, Doe, Appellant, asked that the matter not be heard on summary judgment yet since it was a dispositive motion and we had only been given heavily redacted documents by the Diocese. The judge insisted we go forward, so forward we went; and we asked for equal treatment. The Movant (the Church) relied upon the depositions of the Plaintiff and of two expert witnesses. When it was Doe's time to respond in opposition to the motion for summary judgment, Doe also relied upon and adopted in full Doe's deposition and those of the other deponents, as well as all of the documents that had been

produced, though heavily redacted, in the case, as well as the entire record theretofore made. There was no objection to any of such use and the following are the references from the hearing transcripts.

From the 4/6/20 59(e) Hearing (R. pp. 691-741)

P7, L22 – P8, L4; P8, L11- P9, L6 (R. p. 697, line 22-p. 698, line 4; R. p. 698, line 11-p. 699, line 6)

THE COURT: I just want you to argue the motion to reconsider based on the order that I signed as to charitable immunity. Okay?

MR. RICHTER: Yes, sir. Based on the order that you signed to charitable immunity, we could not receive a fair hearing in the matter because, in part, of the lack of discovery responses which Your Honor had ordered….

…you ordered that it come to us unredacted.

Now, why might that matter? Because the motion that you made us go forward in and defend, a motion for summary judgment is a dispositive motion. And to do that, fundamental fairness requires that we have the benefit of the fullest ability to defend against the dispositive motion.

Part of the way we do that is by developing the case. We learn who witnesses are. We learn what writings exist. We learn all of those kinds of things, and then we have those available to us to utilize.

But in this case, although this was not the first motion filed, Mr. Dukes was very anxious to get to a summary judgment motion, a dispositive motion, with the case in its current posture. That means with us in our current posture of ability to develop the case, including factual issues, and

with our ability to defend thereby such a motion.

P14, L18 – P15, L2 (R. p. 704, line 18-p. 705, line 2)

MR. RICHTER: So from September of '18 to May of '19, we were trying to get answers. Part of this came before you. Again, I don't mean to go over plowed ground. Then they supplemented in August of '19, and in September and in October of '19 they supplemented.

Now, when they did that, they ignored the rules. Rule 33 specifically requires that the person answering the interrogatories must do so under oath and sign them.

P16, L20-P17, L1 (R. p. 706, line 20-p. 707, line 1)

MR. RICHTER: Part of what he said is summary judgment would abate the need to rule on any of these motions if Your Honor were to grant any of them. That's the reason we were asking to be heard on all of the discovery matters so that we could have whatever we're going to have to have the ability to defend ourselves fully.

P17, L15-22 (R. p. 707, lines 15-22)

THE COURT: So what's your position as to that, Mr. Richter? That I didn't allow you to hear the discovery motions and therefore not be able to fully, I guess, uncover all of the discovery and summary judgment was too premature? Is that your argument.

MR. RICHTER: Yes. That's part of the argument, Your Honor, but it's more than that.

P23, L3-6; P23, L17-18; L20-24 (R. p. 713, lines 3-6; R. p. 713, lines 17-18; R. p. 713, lines 20-24)

MR. RICHTER: And in that letter, among other things she says, other pertinent information include… …that two other boys were abused by these same

teachers. Their names are blank and blank.

…Point being that
wasn't produced to us….

I'm arguing that we were entitled to these things
and we didn't get them.

I would have, of course, interviewed
those two people upon finding who they were, and I
will when I find out who they are.

P24, L6-8; L10-13 (R. p. 714, lines 6-8; R. p. 714, lines 10-13)

MR. RICHTER: …this is simply another example of why
going forward when we asked not to go forward was
prejudicial to us.
…It's a
diocese document that they didn't produce to us.
It's an important document that they didn't produce
to us.

The Louisa Storen email of June 15, 2016 contained, redacted, the names of two other young victims of the same rapist teachers. Defendants-Respondents hid this witness information from Plaintiff-Appellant Doe.

STANDARD OF REVIEW

A trial court may properly grant a motion for summary judgment when "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 judgment as a matter of law." Rule 56(c), SCRCP. Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion

to be drawn from those facts. *Id.* In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988). An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to appellant, the nonmoving party below. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976).

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN ITS ORDER ENTERED ON JANUARY 9, 2020 IN GRANTING THE RESPONDENTS' SUMMARY JUDGMENT MOTION BASED ON THE DOCTRINE OF CHARITABLE IMMUNITY WHEN DOE'S COMPLAINT STATED CAUSES OF ACTION BASED ON CHILD SEXUAL ABUSE FOR OUTRAGE, NEGLIGENCE/GROSS NEGLIGENCE, BREACH OF FIDUCIARY DUTY, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, FRAUDULENT CONCEALMENT, CIVIL CONSPIRACY, NEGLIGENT RETENTION OR SUPERVISION, BREACH OF CONTRACT, AND BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT.

The foregoing Standard of Review is a typical recitation as relates to summary judgment. Here, however, the issue is one of just what the state and scope of the law of charitable immunity was in South Carolina at the relevant time, the time of Doe's injury, when his right of action accrued. We are fortunate to have clear, controlling answers from a unanimous Supreme Court opinion issued in the case of *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E.2d 258 (1973), in which the claimant's injury was endured virtually at the same time. Both *Jeffcoat* and *Doe* arose out of non-

negligent acts, intentional torts, by charities which claimed to be absolutely immune. Our Supreme Court found otherwise.

As noted above, the Circuit Court granted the Church summary judgment as to all claims in Doe's Amended Complaint solely on the grounds of the doctrine of charitable immunity. The Church's charitable immunity argument is summed up in the following paragraph of its motion for summary judgment:

> In 1981, the South Carolina Supreme Court abrogated the doctrine of charitable immunity. [*citing Fitzer v. Greater Greenville South Carolina YMCA*, 277 S.C. 1, 282 S.E.2d 230 (1981).] However, the Court only did away with charitable immunity going forward -- the abrogation could not be applied retrospectively. [*citing Hupman v. Erskine College*, 281 S.C. 43,314 S.E.2d 34 (1984), *Hasell v. Medical Society of S.C.*, 288 S.C.318, 342 S.E.2s 594 (1986), and *Brown v. Anderson Cty. Hosp*., 234 S.E.2d 873 (1977).] Thus, a Court must apply charitable immunity as it existed at the time of the allegedly tortious activity. [*citing Laughridge v. Parkinson*, 403 S.E.2d 120 (1991).] (R. pp. 789-842)

Stated otherwise, the Church maintained that Doe's causes of action accrued no later than 1970, more than 10 years before charitable immunity was prospectively abolished by the Supreme Court in 1981, and that charitable immunity affords it a complete defense to every cause of action stated in Doe's Amended Complaint.[4] (R. pp. 789-842) But the Church says whatever serves to meet its need at any particular moment. For example, at the April 6, 2020 hearing the following was called to the Court's attention:

[4] Doe's Amended Complaint alleges he had dissociative amnesia concerning the sexual abuse he suffered as a child. South Carolina recognizes repressed memory of childhood sexual abuse as a basis for tolling the statute of limitations: "We affirm without extensive discussion the Court of Appeals' holding that repressed memories of sexual abuse can exist and a plaintiff may attempt to recover damages when those memories are triggered and remembered. The condition is known as dissociative amnesia. A cause of action based on such a theory is valid in South Carolina for the reasons set forth by the Court of Appeals." *Moriarty v. Garden Sanctuary Church*, 341 S.C. 320, 327, 534 S.E.2d 672, 674 (2000).

From the 4/6/20 59(e) Hearing (R. pp. 691-741)

P28, L14-19 (R. p. 718, lines 14-19)

MR. RICHTER: …[Judge Jefferson] writes on page 16 of her order, the parties concede that the doctrine of charitable immunity would not apply to an intentional tort such as outrage.

Who are the parties? The Diocese of Charleston, in part.

Now the same Church argues that even intentional torts, and, for that matter, contracts, are covered by the doctrine of charitable immunity as it existed in 1970.

Doe concedes that his causes of action accrued no later than 1970, regardless of any future increase in damages or the fact the statute of limitations was tolled due to his repressed memory. *See Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 596 S.E.2d 42 (2004):

> "A cause of action accrues at the moment when the plaintiff has a legal right to sue on it. The law presumes at least nominal damages at that point. The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose." *Stephens v. Draffin*, 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997) (tort claims of patient who had been treated for years by his physician, and claims of patient's wife, accrued before the date contributory negligence was abrogated; thus their claims were controlled by doctrine of contributory negligence as that rule was in effect when their claims first accrued).
>
> "In South Carolina, the law in effect at the time the cause of action accrued controls the parties' legal relationships and rights." *Id.*; *see also Tilley v. Pacesetter Corp.*, 355 S.C. 361, 371, 585 S.E.2d 292, 297 (2003) (plaintiffs' claims accrued prior to filing of class action lawsuit; therefore, version of consumer protection statute in effect when plaintiffs filed the lawsuit and court granted summary judgment was controlling); *Murphy v. Owens-Corning Fiberglas Corp.*, 356 S.C. 592, 590 S.E.2d 479, 482-484 (2003) (cause of action ordinarily accrues when facts relating to negligence and damages exist which authorize one party to maintain an action against another); *Swindler v. Swindler*, 355 S.C. 245, 247 n. 1, 584 S.E.2d 438, 439 n. 1 (Ct. App. 2003) (applying provisions of Uniform Commercial Code in effect when cause of action accrued).

Id. at 397-98, 596 S.E.2d at 45.

Defendants-Respondents (Church) have been quite clear about the date of accrual of Doe's rights of action.

From the 12/12/19 Summary Judgment Hearing (R. pp. 594-677)

P18, L6-9 (R. p. 611, lines 6-9)

THE COURT: And when did the alleged abuse as to John Doe occur?

MR. DUKES: 1970.

THE COURT: 1970. All right. Go on.

Again, the Church's own reference by its counsel at the December 12, 2019 hearing is illuminating on other matters such as when the Church knew or should have known that grammar school students were being sexually assaulted by their teacher at Sacred Heart School:

From the 12/12/19 Summary Judgment Hearing (R. pp. 594-677)

P17, L4-6 (R. p. 610, lines 4-6)

MR. DUKES: Ultimately, and interestingly, Judge Jefferson's case involved abuse of students at Sacred Heart School in about 1960, I think, by a coach named Eddie Fisher.

However, the fact that charitable immunity had not yet been fully abolished at the time Doe was abused is not the end of the required analysis, but rather just the beginning. The Circuit Court clearly erred in its ruling that the charitable immunity defense as it existed when Doe was molested, 1970, provided a complete defense to the types of claims asserted by Doe in this case. To the contrary, there are no reported decisions concerning the relevant time holding that the doctrine of charitable immunity applied to *any* of the claims based on child sexual abuse asserted in this case.

What is further clear from the reported decisions from that era is that the doctrine of charitable immunity was long out of favor with our appellate courts before it was eventually fully extirpated by the Supreme Court in *Fitzer v. Greater Greenville South Carolina YMCA*, 277 S.C. 1, 282 S.E.2d 230 (1981). For example, in *Eiserhardt v. State A. & M. Society of South Carolina*, 235 S.C. 305, 111 S.E.2d 568 (1959), the Supreme Court stated that the applicability of the charitable immunity doctrine depends on the facts of the particular case and held that it did not extend to a commercial venture conducted by a charitable corporation, saying:

> 'And we do not think immunity should be extended to a situation 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. This view is supported by the overwhelming weight of authority. Annotation 25 A.L.R.2d at page 130.'

Id. at 312, 111 S.E.2d at 572.

The first full assault on the doctrine of charitable immunity occurred in 1966 in *Decker v. Bishop of Charleston*, 247 S.C. 317, 147 S.E.2d 264 (1966), where the plaintiff was granted permission to argue, against precedent, that the doctrine should be totally abolished. The facts of that case presented the quintessential justification for applying the doctrine of charitable immunity if it ever had any justification. The plaintiff's claim in that case was based on an allegation of simple negligence involving a six inch fall to the church floor while she was participating in a church service:

> It is alleged in the complaint that on April 8, 1963, Carolyn Gohl Schmidt entered The Cathedral of St. John The Baptist and proceeded up the center aisle to the altar rail in order to say her prayers. When she had finished, she turned from the altar rail and walked back toward the center aisle and at a point near the front-most pew she fell off the platform onto the main church floor, a distance of approximately six inches, seriously injuring herself. She alleges that her injuries were proximately caused by the negligence of the respondent.

Id. at 319, 147 S.E.2d at 265.

The Supreme Court declined to abolish charitable immunity outright at that time based on the particular facts of the case: "It is our conclusion that the doctrine of charitable immunity should not be overruled. The doctrine is particularly applicable in this case. Here, we have a true charity, the church, engaged in conducting a religious service and, in which, Carolyn Gohl Schmidt was participating at the time of her injury." *Id.* at 325, 147 S.E.2d at 268.

There is a very concise and definitive resolution of this instant appeal; it follows. The law which controlled at the time of the accrual of Doe's claim is exactly the same law which controlled at the time Ms. Jeffcoat's claim accrued. She was falsely arrested on June 23, 1970 (South Carolina Supreme Court archived record of *Jeffcoat*), and Doe was sexually molested in the fall of 1970. And a unanimous opinion of the South Carolina Supreme Court told us definitively that when Ms. Jeffcoat was victimized, before Doe, charitable immunity did not insulate a charity against liability for such acts and allowed recovery of damages by the injured party against the charity. There is no authority extending the doctrine to cover intentional or grossly negligent acts. End of debate.

Compellingly and definitively, in 1973 a unanimous South Carolina Supreme Court explained in *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E.2d 258 (1973), a case involving false imprisonment, that the doctrine of charitable immunity had never extended beyond tort claims based on "mere negligence." The Court extensively reviewed the doctrine from its origins and determined that despite some statements in *dicta* suggesting the contrary, "the rule of charitable immunity has never been extended by our decisions beyond the facts in *Lindler*, *Vermillion*, and *Decker"*:

> The doctrine of charitable immunity was apparently first recognized in this State in *Lindler v. Columbia Hospital*, 98 S.C. 25, 81 S.E. 512. The action in that

case was by a patient for damages alleged to have been sustained through the negligence of a nurse employed by the hospital, a charitable institution. The Court, in exempting the hospital from liability, stated the applicable rule and its basis as follows:

> 'The true ground upon which to rest the exemption from liability is that it would be against public policy to hold a charitable institution responsible for the negligence of its servants, selected with due care.'

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 charitable institution 'would be liable for negligence in the selection of its servants without due care is not before the court for consideration.'

The Court next considered the doctrine of charitable immunity in the case of *Vermillion v. Woman's College of Due West*, 104 S.C. 197, 88 S.E. 649. Plaintiff was injured when the balcony of defendant's auditorium fell during the progress of an entertainment. Action was brought on the theory that the balcony fell because of negligence in construction. The decision in this case affirmed the holding in *Lindler* that charitable institutions were exempt from liability for the negligent conduct of their agents and, in addition, held that such exemption from liability for the acts of their agents applied 'whether these be selected with or without due care.' The case was remanded, however, for a new trial and, upon appeal after a retrial, judgment for defendant was affirmed. 111 S.C. 156, 97 S.E. 619.

Subsequently, in *Peden v. Furman University*, 155 S.C. 1, 151 S.E. 907, the Court refused to extend the immunity doctrine so as to exempt a charitable institution from liability for trespass and nuisance arising out of the activity of a lessee.

The Court also refused to extend immunity to the commercial activities of a charity in *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina,* 235 S.C. 305, 111 S.E.2d 568. That was an action for damages allegedly sustained as a result of stepping into a hole in a parking lot controlled and operated by the defendant. The operation of the parking lot was a commercial venture and the Court held that immunity should not be extended 'to a situation 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,' even though the commercial activity was for the purpose of increasing the fund to be used for the charity.

> We applied the rule adopted in *Lindler* and *Vermillion* to exempt a church from liability for negligence in *Decker v. Bishop of Charleston,* 247 S.C. 317, 147 S.E.2d 264.
>
> 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. L.Q. 191; 20 S.C.L.Q. 2; Prosser, *Law of Torts,* 4th ed., *Section* 133, 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.

Id. at 77-79, 198 S.E.2d at 259-60.

The authority of *Jeffcoat* still stands; no surprise, particularly given that it was a unanimous opinion of the court of last resort in this state. A trial judge cannot ignore it, modify it, or overrule it; nor, most respectfully, can this Court of Appeals.

Although the Church raised a strawman argument in its motion for summary judgment that Doe contests the applicability of the doctrine of charitable immunity to the Church by contending

that the Church is not a charitable organization, that is not Doe's argument at all.[5] Doe's argument is that the scope of the doctrine of charitable immunity at the time of the injury would not have afforded the Church exemption from liability for the types of child sexual abuse claims set out in Doe's Amended Complaint. So says *Jeffcoat*. So screams *Jeffcoat*.

It is further manifestly clear that by its order of January 9, 2020, the Circuit Court further erred in relying on other unappealed Circuit Court orders which purported to grant summary judgment in other actions against the Church based on sexual abuse of children. This was error for multiple reasons. Among other things, these were not published appellate court decisions, but were trial court orders and were therefore not authority for any purpose in the Doe case at bar. In addition, the orders contained no analysis of the causes of action that had been pled or of the extent of the scope of the doctrine of charitable immunity as it existed at the time of the claimant's injury, nor before it was finally fully abolished in 1981. Accordingly, they do not even have any predictive value as to how our present appellate courts would view the scope of the doctrine of charitable immunity as it existed at the time of Doe's injury or the *Jeffcoat* decision.

In *Fitzer v. Greater Greenville South Carolina YMCA*, 277 S.C. 1, 282 S.E.2d 230 (1981), the case that finally abolished the doctrine of charitable immunity, the claim was that in a camp operated by the YMCA a camper was injured by a rock thrown by another camper. In abolishing charitable immunity, the Supreme Court delivered this blistering critique of the doctrine:

> Public policy is a dynamic not static concept, and what was valid in the past is not necessarily a valid policy today. Moreover, when the reason for a declared

---

5 **From the 12/12/19 Summary Judgment Hearing (R. pp.594-677)**
P16, L2-9 (R. p. 609, lines 2-9)
MR. DUKES: …those entities have their own charitable status. Sacred Heart School is one of those entities and it's listed as a charity. There is no evidence that the Diocese is not a charity. There's no ---
MR. RICHTER: Well, we stipulate that the Diocese is a charity. All of these entities enjoy a charitable status pursuant to 501(c)(3), is what they are.

public policy no longer exists, we should not hesitate to abolish it and the rules which are supported by the policy.

The rationale for abrogating the doctrine of charitable immunity can be stated no clearer than in *Geiger v. Simpson Methodist-Episcopal Church of Minneapolis*, 174 Minn. 389, 219 N.W. 463, 465 (1928), which held:

> "It is a trite saying that charity begins at home... Men and corporations alike are required to be just before being charitable... We do not think it would be good public policy to relieve them from liability for torts or negligence. Where innocent persons suffer through their fault, they should not be exempted. That rule, in the long run, will tend to increased efficiency and benefit them and the public, as well as persons so injured. It is almost contradictory to hold that an institution organized to dispense charity shall be charitable and extend aid to others, but shall not compensate or aid those injured by it in carrying on its activities."

A rule which no longer serves a legitimate purpose should not be followed solely because of a dogged adherence to *stare decisis. Stare decisis* should be used to foster stability and certainty in the law, but, not to perpetuate error and injustice.

Furthermore, the general availability of liability insurance, which had been obtained in this case, underscores the unreasonableness of our continued adherence to this archaic doctrine. *Brown*, *supra*, 268 S.C. at 491, 234 S.E.2d 873.The doctrine of charitable immunity has no place in today's society. We hold a charitable institution is subject to liability for its tortious conduct the same as any other person or corporation. The doctrine of charitable immunity is abolished in its entirety and the case is reversed and remanded for trial.

Id. at 4-5, 282 S.E.2d at 231.

Although we can only speculate as to how the Supreme Court would have reacted ten years earlier had it been presented with Doe's claims against the Church involving the Church's concealed knowledge of the sexual abuse of children in its care and under its control, facts considerably more horrendous than the summer camp rock throwing claim in *Fitzer* which triggered the complete abolishment of the doctrine of charitable immunity only 10 years later, it seems most probable it would have held at that time that the Church could not hide behind the

doctrine even for simple negligence, much less for the child sexual abuse claims set out in Doe's Amended Complaint. As the Supreme Court aptly noted in *Fitzer*, "It is almost contradictory to hold that an institution organized to dispense charity shall be charitable and extend aid to others, but shall not compensate or aid those injured by it in carrying on its activities." *Id*. at 5, 282 S.E.2d at 231.

Accordingly, Doe respectfully submits that the Circuit Court erred in its order entered on January 9, 2020 in granting the Church's summary judgment motion based on the doctrine of charitable immunity when, among other things, Doe's Complaint stated causes of action arising out of child sexual abuse for outrage, negligence/gross negligence, breach of fiduciary duty, intentional infliction of emotional distress, fraudulent concealment, civil conspiracy, negligent retention or supervision, breach of contract, and breach of contract accompanied by a fraudulent act.

II. THE CIRCUIT COURT ERRED IN ITS ORDER ENTERED ON MAY 11, 2020 IN DENYING DOE'S RULE 59(e) MOTION TO ALTER OR AMEND THE COURT'S JANUARY 9, 2020 ORDER.

As noted above, on January 16, 2020, Doe timely filed his Rule 59(e) motion, requesting the Circuit Court to alter or amend its January 9, 2020 order by vacating the aforesaid order and entering an order in the form attached to Doe's motion as Exhibit A. (R. pp. 1199-1213) On May 11, 2020, the Circuit Court entered its order denying Doe's Rule 59(e) motion to alter or amend the Court's January 9, 2020 order, from which Doe has also timely taken this appeal. (R. pp. 55-57)

Doe's Rule 59(e) motion and the hearing thereon clearly delineated the errors in the Circuit Court's January 9, 2020 summary judgment order and afforded the Court the opportunity to correct

the errors. For the same reasons discussed above in Argument I, Doe respectfully requests that this Court reverse the Circuit Court's order of May 11, 2020.

CONCLUSION

For the foregoing reasons, Doe respectfully requests that the orders of the Circuit Court be reversed.

Respectfully submitted,

THE RICHTER FIRM, LLC

s/Lawrence E. Richter, Jr.
Lawrence E. Richter, Jr. (SC Bar No. 4724)
Anna E. Richter (SC Bar No. 100787)
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 849-6000
LRichter@RichterFirm.com
Anna@RichterFirm.com

ATTORNEYS FOR APPELLANT

February 5, 2021
Mt. Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Amended Final Brief of the Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules.

THE RICHTER FIRM, LLC

s/Lawrence E. Richter, Jr.
Lawrence E. Richter, Jr. (SC Bar No. 4724)
Anna E. Richter (SC Bar No. 100787)
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 849-6000
LRichter@RichterFirm.com
Anna@RichterFirm.com
Attorneys for Appellant

February 5, 2021
Mt. Pleasant, South Carolina