University of Richmond Law Review

Volume 28 | Issue 4 Article 5

1994

Annual Survey of Virginia Law: Charitable Immunity: What Price Hath Charity?

Barbara Ann Williams

CHARITABLE IMMUNITY: WHAT PRICE HATH CHARITY?

Barbara Ann Williams[*]

It is well settled in Virginia that charitable organizations are immune from liability arising from tort claims asserted by persons who accept the organizations' charitable benefits.[1] The determination of whether a plaintiff is the beneficiary of charitable bounty is a legal issue for the court to decide.[2] Although most older Virginia cases discuss charitable immunity as it applies to hospitals, the doctrine has been applied to many other types of charitable organizations.[3]

Over the years, the doctrine of charitable immunity has become firmly embedded in Virginia law as well as Commonwealth's general public policy.[4] Although several states have abolished charitable immunity by judicial fiat, the Virginia Supreme Court has repeatedly held that abolition of the doctrine requires action by the General Assembly.[5] Thus far, the

---

* Principal, Wright, Robinson, McCammon, Osthimer & Tatum, B.A. *Magna Cum Laude*, Agnes Scott College; M.A., University of Rochester; J.D., University of Virginia School of Law.

1. Weston's Adm'x v. Hosp. of St. Vincent, 131 Va. 587, 601, 107 S.E. 785, 790 (1921).

2. Roanoke Hosp. Ass'n v. Hayes, 204 Va. 703, 711, 133 S.E.2d 559, 565 (1963).

3. *See, e.g.*, Roberts v. Wesley Found., 27 Va. Cir. 121 (Williamsburg 1992) (applying doctrine to a charitable organization that leased its kitchen and meeting space to the Peninsula Agency on Aging, which sponsored a lunch program for elderly people); Stayton v. American Legion Battlefield Post No. 144, 18 Va. Cir. 387 (Henrico County 1990) (applying doctrine to Women's Auxiliary of Post); Langston v. American Red Cross, 18 Va. Cir. 451 (Virginia Beach 1990); Boan v. Peninsula YMCA, 18 Va. Cir. 145 (Newport News 1989) (applying the doctrine of charitable immunity to YMCA that sponsored a summer camp and allowed paying guests to use its basketball court).

4. Memorial Hosp. v. Oakes, 200 Va. 878, 885, 108 S.E.2d 388, 396 (1959) (holding that where a charitable institution has exercised due care in employing its staff, the institution is not liable to the beneficiaries of the charity for its torts).

5. *Id.* at 889, 108 S.E.2d at 396.

legislature has refused to abolish the charitable immunity exception as it applies to charitable hospitals.[6]

Although the doctrine of charitable immunity is still viable in Virginia, several recent judicial pronouncements greatly limit its scope. For example, in *Thrasher v. Winand*,[7] the court held that a non-profit Virginia corporation named "Mountain Magic" was not entitled to charitable immunity. According to the court, the group's charitable purpose was too broad, conferring "indirect benefits which [were] too remote to give rise to the defense of charitable immunity."[8]

Mountain Magic's stated corporate purpose "was to organize and promote an annual 'Spring Festival' in Buchanan, [Virginia,] to engage in other community activities, and to donate its net earnings to local charities."[9] The plaintiff, a member of "Purgatory Four Wheelers," a four-wheel-drive truck club that participated in the Spring Festival sponsored by Mountain Magic,[10] was injured when his motorcycle collided with a truck traveling on a road partially barricaded for the festival. According to the plaintiff, the placement of the barricades contributed to the collision.[11]

Although Mountain Magic's charitable nature was undisputed,[12] the court rejected Mountain Magic's charitable immunity argument. The court explained that although the plaintiff took part in his club's activities at the festival and was eligible to receive Mountain Magic's charitable benefits, he was not a beneficiary. According to the court, the only beneficiaries of Mountain Magic's charitable benefits were those to whom Mountain Magic donated the proceeds of fundraising activities. Consequently, the court held that the plaintiff did not become a vicarious beneficiary through his membership in Purgatory or his participation in Purgatory's activities at the festival.[13] Moreover, the court ruled that "mere membership in a class

---

6. *See* VA. CODE ANN. § 8.01-38 (Cum. Supp. 1991).
7. 239 Va. 338, 389 S.E.2d 699 (1990).
8. *Id.* at 342, 389 S.E.2d at 701.
9. *Id.* at 339, 389 S.E.2d at 700.
10. *Id.*
11. *Id.* at 340, 389 S.E.2d at 700.
12. *Id.*
13. *Id.* at 341, 389 S.E.2d at 701.

eligible to receive future benefits, conditioned upon circumstances which might never occur, is too remote and speculative to be considered."[14] In other words, the plaintiff's potential beneficiary status was too remote a possibility to trigger the doctrine of charitable immunity.

Thrasher heralded a trend in Virginia toward a more restrictive definition of beneficiaries for charitable immunity purposes. This trend was continued in *Straley v. Urbanna Chamber of Commerce*.[15] In *Straley*, the plaintiff alleged that she was injured at the Urbanna Oyster Festival when a piece of candy thrown by a clown struck her in the eye. The plaintiff sued the Urbanna Chamber of Commerce, the Urbanna Oyster Festival Committee, and the town of Urbanna for failing to promulgate proper rules and regulations for the behavior of parade participants, and for failing to supervise the participants properly.[16]

It was undisputed that the Urbanna Chamber of Commerce is a nonprofit corporation organized for a charitable purpose.[17] The Chamber of Commerce's principal source of revenue is the Oyster Festival, the proceeds of which are used to pay the Chamber's operating expenses and contribute to a number of local charitable causes.[18] The plaintiff participated in all of the Oyster Festival events. Nevertheless, the court held that the plaintiff "did not become a vicarious beneficiary" of the Chamber of Commerce's charity as a result of her participation in the festival activities.[19]

The court further concluded that because the plaintiff lived sixty-two miles from the town and received no pecuniary benefits from the funds generated by the festival or contributed by the Chamber of Commerce to local charities,[20] she was not a beneficiary of the Chamber's purpose for conducting the festival. In the court's words: "The relationship between the Chamber and the plaintiff, a member of the public attending the festival,

---

14. *Id.* at 342, 389 S.E.2d at 701.
15. 243 Va. 32, 413 S.E.2d 47 (1992).
16. *Id.*
17. *Id.* at 33-34, 413 S.E.2d at 48.
18. *Id.* at 34, 413 S.E.2d at 48-49.
19. *Id.* at 37, 413 S.E.2d at 50 (quoting *Thrasher*, 239 Va. at 341, 389 S.E.2d at 701).
20. *Id.* at 37, 413 S.E.2d at 50-51.

is too attenuated and indirect to classify her as a beneficiary of the Chamber's charitable activities. She was a mere invitee to whom the defendants owed the duty of reasonable care."[21]

Thrasher and *Straley* make it abundantly clear that to be considered a charitable beneficiary for the purposes of charitable immunity, a person must be a direct beneficiary through the receipt of money, goods, or services, and not merely someone who indirectly receives charitable benefits. Association with a charity's activities or eligibility to receive charitable benefits in the future is insufficient. This represents a significant change in Virginia law.[22]

In addition to imposing tighter limits on the scope of the definition of "charitable beneficiary," courts have begun to look past the "magic words" of charitable intent recited in the corporate charters of many nonprofit organizations. Instead, courts will examine how the organizations are actually run.[23] The most recent example of this trend is *Davidson v. The Colonial Williamsburg Foundation*.[24]

The plaintiff in *Davidson* was a visitor at Colonial Williamsburg who fell while exiting her car which was parked near the Visitor Center. She commenced a negligence action against the Colonial Williamsburg Foundation seeking damages for her resulting injuries. The Foundation moved for summary judgment on the ground that it was immune from suit under the doctrine of charitable immunity.[25]

---

21. *Id.* at 37, 413 S.E.2d at 51.

22. *Cf.* Egerton v. R.E. Lee Memorial Church, 395 F.2d 381, 384 (4th Cir. 1968). In *Egerton*, the court held that a plaintiff injured on church premises was a beneficiary of the church's charitable purpose. Although plaintiff was not a member of the church and her injury occurred while she was visiting as a tourist and not as a worshipper, plaintiff partook of the church's spiritual function and services by visiting it. *Id. See also* Taylor v. American Nat'l Red Cross, 8 Va. Cir. 108 (Norfolk 1984) (holding plaintiff, who voluntarily donated blood to the Red Cross, was not a stranger to the organization's charitable benefits because she and her family were eligible to receive in the future, at no cost, any needed blood or blood products from the Red Cross).

23. *See, e.g.*, Danville Community Hosp. v. Thompson, 186 Va. 746, 753, 43 S.E.2d 882, 884 (1947) ("[W]hether a hospital is charitable or otherwise . . . may be determined not only from the powers and purposes as defined in its articles of incorporation or charter but also from the manner in which it is conducted.").

24. 817 F. Supp. 611 (E.D. Va. 1993).

25. *Id.* at 612.

The court denied the Foundation's motion. In doing so, the court noted that while the doctrine of charitable immunity has been widely criticized, and indeed abandoned or sharply curtailed by many states, it enjoys "continuing vitality in Virginia."[26] The court, however, also observed that "Virginia has favored a limited form of immunity that does not exempt charitable organizations from all tort liability."[27]

Thus, the court's first inquiry was whether the Foundation was "charitable" in the context of tort immunity. Factors cited by the court as relevant to this determination were:

> (1) whether the organization's charter limits it to charitable or eleemosynary purposes; (2) whether the organization's charter contains a "not for profit" limitation; (3) whether the organization's goal is to break even; (4) whether the organization earned a profit; (5) whether any profit or surplus must be used for charitable or eleemosynary purposes; (6) whether the organization depends on contributions and donations for its existence; (7) whether the organization provides its services free of charge to those unable to pay; and (8) whether the directors and officers receive compensation.[28]

The court cautioned that these factors are illustrative, not exhaustive, and that no one factor is dispositive.[29]

Measured against the above factors, the court in *Davidson* concluded that even though the Foundation's 1990 charter articulated a charitable purpose and the Foundation was entitled to federal income tax exemption for some of its activities, it could not be characterized as "charitable."[30] The court made four findings. First, the Foundation's articles in effect in 1990 did not state that the Foundation operated exclusively "not-for-profit."[31] Second, the Foundation enjoyed an operating surplus in four of the previous five years.[32] Third, the Foundation was no

26. *Id.* at 612-13.
27. *Id.* at 613 (citations omitted).
28. *Id.* at 614.
29. *Id.*
30. *Id.* at 616.
31. *Id.*
32. *Id.*

longer dependent on contributions for its existence.[33] Fourth, the Foundation paid significant salaries to its chief executive and other officers.[34] Based upon these findings, the court determined that the Foundation was not entitled to charitable immunity and, therefore, did not consider the issue of whether plaintiff was a beneficiary of the Foundation at the time of her accident.[35]

Davidson, coupled with *Thrasher* and *Straley*, reveal that non-profit organizations will no longer be cloaked with charitable immunity simply because they are ostensibly "charitable organizations." Recreational organizations, historical associations, community programs, church groups and other "charitable" entities, especially those that conduct their activities in a business-like manner and generate significant income, should be on notice that their non-profit status may be scrutinized more closely now than in the past. Moreover, unless the organization can show that a claimant received a direct benefit from its activities, charitable immunity may not shield it from tort liability.

33. *Id.*
34. *Id.* at 617.
35. *Id.*