NEGLIGENCE-IMMUNITY OF CHARITABLE INSTITUTIONS FROM SUIT

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Negligence—Immunity of Charitable Institutions from Suit—
A patient of defendant charitable hospital died as a result of the transfusion of an incorrect blood type and it was shown that one of defendant's employees had correctly typed the blood but negligently mislabeled it. The widower and children of the deceased brought an action in negligence for damages and the circuit court allowed recovery. On appeal, held, affirmed. The defendant hospital is liable in damages for the death of the deceased caused by the negligence of its employee notwithstanding the fact that defendant is a charitable institution and that the hospital authorities exercised due
care and caution in employing and retaining said employee. *Mississippi Baptist Hospital v. Holmes*, (Miss. 1951) 55 S. (2d) 142.

The law as regards immunity of charitable institutions from actions for damages for injuries to beneficiaries by the negligence of employees has been in a state of flux for the past few decades.\(^1\) It is believed, however, that the principal case represents a comparatively recent trend against the doctrine of immunity formulated before the turn of the century.\(^2\) Several theories have been advanced to justify such immunity. The three most prevalent are the so-called "trust fund" theory, based on the idea that the funds of a charitable institution are held in trust for purposes of the charity only and, therefore, cannot be used to satisfy tort judgments;\(^3\) the "waiver" or "acceptance of benefits" theory, based on the fiction that one who enters a charitable institution and accepts the benefits conferred thereby waives all claims against such institution for injuries caused by the negligence of its employees;\(^4\) and the public policy doctrine which holds that the general public welfare is promoted by granting immunity to charitable institutions.\(^5\)

Other theories are the public function theory, by which the charity is said to be entitled to the immunity of a sovereign,\(^6\) and the theory that the doctrine of respondeat superior does not apply to charitable institutions because their employees are not working for the profit of such institutions.\(^7\)

The majority of states, following one or the other of these doctrines, grant immunity to charitable institutions for injuries caused to patients by the negligence of the employees, unless it can be shown that the injury was a result of a failure on the part of the institutional authorities to exercise due care in selecting the negligent employee.\(^8\) The doctrine of immunity stemmed from the leading American cases of *McDonald v. Massachusetts General*

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\(^1\) See President and Directors of Georgetown College v. Hughes, (D.C. Cir. 1942) 130 F. (2d) 810, for a comprehensive analysis of the confusion in this field at that time.

\(^2\) These theories were severely criticized by leading textbook writers on the law of torts and the trends away from them noted. See Prosser, Tort 1079 et seq. (1941); 3 Scott, Trusts §402 (1939); Harper, Tort §294 (1933).

\(^3\) Perry v. House of Refuge, 63 Md. 20 (1884); McDonald v. Mass. General Hospital, 120 Mass. 432 (1876); Downes v. Harper Hospital, 101 Mich. 555, 60 N.W. 42 (1894); Parks v. Northwestern University, 121 Ill. App. 512, aff'd. 218 Ill. 381, 75 N.E. 991 (1905); 10 Am. Jur. §146 (1939).


\(^5\) Lindler v. Columbia Hospital, 98 S.C. 25, 81 S.E. 512 (1914); Magnuson v. Swedish Hospital, 99 Wash. 399, 169 P. 829 (1918); Jensen v. Maine Eye & Ear Infirmary, 107 Me. 408, 78 A. 898 (1910); 10 Am. Jur. §147 (1939).


\(^7\) Hearns v. Waterbury Hospital, 66 Conn. 98, 33 A. 595 (1895); Taylor v. Protestant Hospital Assn., 85 Ohio St. 90, 96 N.E. 1089 (1911); Hoke v. Glenn, 167 N.C. 594, 83 S.E. 807 (1914); 10 Am. Jur. §150 (1939).

\(^8\) See annotation in 133 A.L.R. 821 at 825 (1941); 10 Am. Jur. §144 (1939).
Hospital\textsuperscript{9} and Perry \textit{v. House of Refuge}\textsuperscript{10} which were in turn based on two English cases,\textsuperscript{11} which had been overruled previous to the American decisions.\textsuperscript{12} Thus from the beginning the American doctrine of immunity was on an insecure footing. At first most of the courts in the United States followed the two leading cases with little thought or reason.\textsuperscript{18} As time went on, however, and cases arose in jurisdictions hitherto untouched by the problem, the theory of immunity underwent more careful scrutiny. The result was confusion, for while many of these courts seemed to feel that immunity was desirable, they tended to pick out one theory and dismiss the others with severe criticism, thus in toto presenting various reasons why none of the theories was tenable.\textsuperscript{14} The end result has been a re-examination by most courts of the whole question of immunity, from which two trends have emerged. The first has occurred in states following the "trust fund" theory. Most of these states have now decided that if the charity has liability insurance or funds not held in trust it may be held liable for the negligence of its employees, at least as to paying patients, to the extent of such funds.\textsuperscript{16} This innovation may be illogical,\textsuperscript{10} but it is indicative of the desire of such courts to limit the immunity without completely overthrowing their past decisions. The second and more general trend is that noted and followed in the principal case. It is that charitable institutions will be held liable for injuries caused to \textit{paying} patients through the negligence of their employees.\textsuperscript{17} The latter trend is so strong that several courts have gone so far as to overrule past decisions, as did the Mississippi court in this case.\textsuperscript{18} Several other courts, facing the question for the first time,
refuse immunity whether the patient is paying or not.\textsuperscript{19} The opinions in cases following this trend carefully examine and discard as untenable the many theories advanced in justification of immunity. The second trend seems logical in the light of the general theories of negligence which were developed by our English predecessors in the early days of the law. It is submitted, however, that there remains a strong policy reason for protecting charitable institutions from liability to direct beneficiaries, i.e., non-paying patients, for the negligence of its employees.

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\textsuperscript{19} Durney v. St. Francis Hospital, (Del. 1951) 83 A. (2d) 753; Foster v. Roman Catholic Diocese of Vermont, 116 Vt. 124, 70 A. (2d) 230 (1950); President and Directors of Georgetown College v. Hughes, supra note 1; Rickbeil v. Grafton Deaconess Hospital, 74 N.D. 525, 23 N.W. (2d) 247 (1946).