



TORTS

Charitable Immunity Amended, but Still a Viable Defense

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Imagine meeting with clients to discuss a potential case. They are a very nice elderly couple. You learn that the husband was walking with family members down steps while "touring around" a college campus when he fell. There were no handrails, the steps were very wide and there was a pattern to the steps that was visually confusing, causing the elderly gentlemen to lose his balance and fall. He fractured his neck, requiring a Halo and subsequent multilevel cervical fusion surgery. Before going out and putting down a deposit on that Lexus you have had your eye on, you should consider the New Jersey Charitable Immunity Act, N.J.S.A. 2A:53A-7, et seq.

Originating in 19th century Britain, charitable immunity insulates a charitable organization from tort liability. The basis for the doctrine was the belief that charitable funds should not be diverted from the purpose for which they were donated. New Jersey followed the doctrine until 1958 when, in two cases, the New Jersey Supreme Court abolished it. Quickly after the Supreme Court decisions, the legislature restored it with temporary legislation, and then in 1959 adopted the Charitable Immunity Act, the purpose of which was to reinstate the common-law doctrine. Today, in addition to protecting against the diversion of funds, it is also recognized that the act's purpose is "broader than simply preserving charitable trust funds and include[s] the encouragement of altruistic activity." *Ryan v. Holy Trinity Evangelical Church*, 175 N.J. 333, 341 (2003).

Scope of the Act

The New Jersey Charitable Immunity Act bars negligence claims against a nonprofit corporation organized exclusively for religious, charitable, educational or hospital purposes. In pertinent part, the statute provides at 2A:53A-7(a) that:

No nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes or its trustees, directors, officers, employees, agents, servants or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damages from the negligence of any agent or servant of such corporation, society, or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporations, society or association.

The immunity provided to a qualified organization extends to those who may be employed by the organization or who serve without compensation, such as trustees, directors, officers, employees, agents, servants and volunteers. A hospital that can demonstrate that it is a nonprofit corporation, society or association and is organized exclusively for hospital purposes also qualifies for protection under the act. The Act expressly excludes from immunity any health-care provider in the practice of his or her profession who is a compensated employee, agent or servant of any nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes. The Act also caps the prospective liability of a nonprofit hospital for damages as a result of the negligence of the institution or its agents or servants at \$250,000, together with interest and costs of suit arising from any one accident. The cap is available only to organizations "organized exclusively for hospital purposes." Independent contractors of a protected organization are not granted immunity. N.J.S.A.53A-7(c)(3).

Invoking the Act

For a protected organization to prevail in an action brought against it by a plaintiff, the organization must show that it meets the

statutory requirements for charitable immunity. To successfully invoke the Act, the defendant institution has the burden and must show that it: "(1) was formed for nonprofit purposes; (2) is organized exclusively for religious, charitable, or educational purposes; and (3) was promoting such objectives and purposes at the time of the injury to plaintiff who was then a beneficiary of the charitable works." *Bieker v. Cmty. House of Moores-town*, 169 N.J. 167, 175 (2001).

In meeting its obligation to demonstrate that it was organized in such a fashion as to be entitled to immunity, the defendant organization can rely upon its charter or certificate of incorporation, as well as demonstrating that it is entitled to 501(c)(3) status of the Internal Revenue Code of 1986. It can also be helpful for the defendant organization to point out that the institution is a public charity under Section 170(c) of the Internal Revenue Code and exempt from state sales and use taxes under N.J.S.A. 55:32B-1 et seq., as well as establishing that no dividends or profits are distributed to individuals. As to any fundraising, the defendant organization should demonstrate that all fundraising and investments are related to the mission of the organization.

When reviewing an institution's assertion of protected status, courts recognize the strong public policy underlying the act compelling its liberal construction. N.J.S.A. 2A:53A-10 provides:

This Act shall be deemed to be remedial and shall be liberally construed so as to afford immunity to the said corporations, societies and associations from liability as provided herein in furtherance of the public policy for the protection of nonprofit corporations, societies and associations organized for religious, charitable, educational or hospital purposes.

See *Bloom v. Seton Hall Univ.*, 307 N.J. Super. 487, 491 (App. Div. 1998) cert. denied, 153 N.J. 405, 1998. Once an institution establishes that it is organized exclusively for educational or religious purposes, it automatically satisfies the second prong of the charitable immunity standard. *Ryan*, 175 N.J. at 346.

New Jersey state and federal courts have afforded statutory immunity many times to the status of universities. For example, in *Lax v. Princeton Univ.*, 343 N.J. Super., 568 (App. Div. 2001), the court found that as a nonprofit corporation devoted to educational purposes, Princeton University was entitled to dismissal of the plaintiff's negligence suit against it.

Who Is a Beneficiary?

To benefit from charitable immunity, the protected organization must show that the plaintiff was a beneficiary "to whatever degree" of the works of the organization. For example, in *Lax*, members of the general public were beneficiaries of Princeton University's promotion of its educational works. The plaintiff in *Lax* was a member of the public, who was attending a classical music concert on university property when she tripped and fell. The concert was sponsored by the Princeton Chamber Symphony, which rented the University's Richardson Auditorium. In *Bieker*, the New Jersey Supreme Court dismissed a law suit brought by the parents of a three-year-old boy who was injured when he fell off of a fire escape in the defendant's community center/gymnasium, while his father played basketball. The court found that the child was "plainly a recipient of [defendant] Community House's 'benefactions' even if only as a companion of his father and a spectator at his father's basketball game." In *Anasiewicz v. Sacred Heart Church*, 74 N.J. Super. 532 (App.Div.), cert. den., 38 N.J. 305 (1962), a nonchurch member/wedding attendee's personal injury suit against the church as a result of a slip and fall on icy outside steps was dismissed on charitable immunity grounds, as was the plaintiff's case in *Loder v. St. Thomas Greek Orthodox Church*, 295 N.J. Super. 297 (App.Div. 1996). In *Loder*, the court dismissed on charitable immunity grounds a personal injury suit brought by a nonchurch member/Greek festival attendee, injured in a slip and fall on church grounds, finding that the plaintiff was a beneficiary because he voluntarily partook in the church's efforts to introduce and educate the community about the importance of Hellenic culture.

And yes, our elderly gentlemen who fell down fracturing his neck was a real plaintiff who had his case dismissed. The defendant filed a motion for summary judgment based upon the Act, and the dismissal was upheld on appeal in a case handled by this author. Our elderly plaintiff was found to be "a beneficiary, to whatever degree, of the University's works." N.J.S.A. 2A:53A-7(a); *Ryan*, 175 N.J. at 350.

The term "educational purposes" under N.J. S.A. 2A53-7 is interpreted broadly, consistent with Section 10's legislative mandate and is not limited to strictly scholastic pursuits. See *Bloom*, 307 N.J. Super. 487. N.J.S.A. 2A:53A-9 provides in pertinent part:

For the purposes of this Act but not in limitation thereof, the buildings and places actually used for colleges, schools, academies ..., however named or designated, operated and maintained for equivalent uses, when so operated and maintained by any such nonprofit corporation, society or association, shall be deemed to be operated and maintained for a [n] ... educational purpose.

Members of the general public touring property owned by a charitable organization have also been found to be beneficiaries of that organization's charitable works. N.J.S.A. 2A:53A-9. In *Heffelfinger v. Morristown*, 209 N.J. Super. 380, 392 (Law Div. 1985), the court dismissed, as barred by the charitable immunity statute, a negligence suit brought against the trustees of the Morristown Green by a member of the public who fell while attending a Christmas display. The court described the Morristown Green, a "square 2.5-acre public common" in the business area/center of town, as "one of the town's most attractive features, with serpentine paved walks, wooden benches, Civil War monuments, soldier's memorials, decorative water fountains, stately trees, flower beds and luxurious lawns." Dismissing the suit, the court rejected the plaintiff's argument that as a grown woman she was not the beneficiary of a child-oriented Christmas display, observing that "[b]efore [plaintiff visitor] fell, she and her daughter had been enjoying the benefit of the trustees' charitable works on the green."

Similarly, in *Peacock v. Burlington Co. Historical Society*, 95 N.J. Super. 205, 209 (App. Div.), *certif. den.*, 50 N.J. 290 (1967), the court dismissed, on charitable immunity grounds, a suit brought by a couple who visited the defendant historical society's library, where Mrs. Peacock was injured when she fell off a chair that slipped out from under her. Her husband was at the historical society to obtain genealogical information. Prior to attempting to sit down on a library chair next to her husband, Mrs. Peacock had been "casually view[ing] exhibits and maps which were displayed for the benefit of any member of the public who chose to avail h[er]self of the library facilities." Despite Mrs. Peacock's assertions that she had no interest in her husband's research and was at the society only to keep him company, the court dismissed the case, finding that "Mrs. Peacock's activity on defendant's premises immediately before the accident was such as to classify her as a beneficiary of defendant's works at least in some degree, and that because of such activity she may not be deemed to be a person 'unconcerned in and unrelated to and outside of the benefactions' of the Society."

Exclusions

Claims for damages alleging a willful, wanton or grossly negligent act including sexual assault are not covered by the Act. Following a case against the American Boychoir in Princeton, the legislature amended the act effective Jan. 5, 2006, (N.J.S.A. 2A:53A-7.4) to exclude from immunity any claim that the "negligent hiring, supervision or retention of any employee, agent or servant resulted in a sexual offense being committed against a person under the age of eighteen (18) who is a beneficiary of the nonprofit organization."

Also excluded from immunity are claims against any trustee, director, officer, employee, agent, servant or volunteer who has caused damage as a result of the negligent operation of a motor vehicle within the exercise of his or her duties.

Conclusion

While the charitable immunity statute has withstood constitutional challenges and is "deemed to be remedial and shall be construed so as to afford immunity to the said corporations, societies and associations from liability as provided herein" (N.J.S.A. 2A:53A-10), it is still incumbent upon the organization to demonstrate that it satisfies the requirements of the statute. The determination of whether an organization is covered by the act is a question of law for the court to decide. Frequently, a motion for summary judgment will dispose of a plaintiff's claim in advance of trial.

The Charitable Immunity Act is legislation that has withstood the test of time and remains in full force despite many challenges to it over the years and still is a viable and powerful defense for qualified organizations. •