Land & Water Law Review

Volume 7 | Issue 2 Article 15

1972

Charitable Immunity - Status of the Charitable Immunity Doctrine in Wyoming - Lutheran Hospitals and Homes Society of America v. Yepsen

Steven A. Bartholow

CHARITABLE IMMUNITY—Status of the Charitable Immunity Doctrine in Wyoming. Lutheran Hospitals and Homes Society of America v. Yepsen, 469 P.2d 409 (Wyo. 1970).

Plaintiff's husband was treated in a hospital owned by the defendant, Lutheran Hospitals and Homes Society of America, for a puncture wound on his thigh. Thereafter he died. The plaintiff, as administratrix of her husband's estate, instituted an action against the hospital. The complaint alleged that the death was caused by gas gangrene resulting from the negligence of the defendant or its employees. The defendant was granted a separate trial solely to determine the availability of either charitable or governmental immunity to insulate itself from liability. The plaintiff presented evidence regarding substantial payments to the hospital from governmental agencies for treatment rendered charity patients. The plaintiff further demonstrated that Lutheran Hospitals and Homes Society of America generally charged its patients for services and that such charges were made in connection with the treatment rendered plaintiff's husband. The defendant presented evidence of an arrangement whereby it leased the hospital building and equipment from the Board of Trustees of Washakie County Memorial Hospital, a governmental unit. The trial court held that the doctrines of charitable and governmental immunity were inapplicable to the defendant. The Wyoming Supreme Court affirmed the lower court's decision. The Supreme Court *held* that the charitable nature of the hospital was insufficient to immunize the defendant from liability and that governmental immunity was not available to a lessee of a governmental agency.[1]

The first case in the United States to hold that charities were immune from liability in tort was *McDonald v. Massachusetts General Hospital*.[2] This early exception of charities from liability was based on the theory that the charity's assets constituted a trust fund and should not be used to pay damage claims because such a use was not intended by the donors of the fund.[3] Later decisions by other courts added different

1. Lutheran Hosps. & Homes Soc'y of America v. Yepsen, 469 P.2d 409 (Wyo. 1970).
2. 120 Mass. 432, 21 Am. R. 529 (1876).
3. *Id.* at 436, 21 Am. R. at 532.

rationale upon which to base charitable immunity. Charitable immunity has been based on the theory that the doctrine of respondeat superior does not apply to charities because they do not receive any benefit from the acts of their employees.[4] Another theory upon which courts have relied in holding that charities are immune in tort is that of implied waiver.[5] The idea of implied waiver is that when a person accepts the benefit of a charity he impliedly waives his right to sue the charity. Still other courts have relied on the theory that public policy favors charitable immunity.[6] It is thought that public policy favors charitable donations and that the public will be more likely to make such donations if charities are immune from tort liability.

In adopting the doctrine of charitable immunity, the Wyoming Supreme Court in *Bishop Randall Hospital v. Hartley*[7] based its decision on all of the above stated rationale except the public policy theory. The holding in *Hartley* was that, in the absence of negligence in the selection of its employees, the hospital, as a charitable institution, was not liable for torts committed by its employees. The fact that the hospital charged those who could pay for the services it rendered did not affect its status as a charity.[8] The controlling facts in characterizing the hospital as a charitable institution were that a large portion of the operating expenses were acquired through donations and that treatment was given gratuitously to those who could not pay.[9]

The applicability of the doctrine of charitable immunity, as adopted in *Hartley,* has now been restricted by the Wyoming Supreme Court in the case of *Lutheran Hospitals and Homes Society of America v. Yepsen.*[10] Recognizing that the

4. *E.g.,* Southern Methodist Hosp. & Sanitorium v. Wilson, 45 Ariz. 507, 46 P.2d 118, 125 (1935); Emery v. Jewish Hosp. Ass'n, 193 Ky. 400, 236 S.W. 577, 582 (1921).
5. *E.g.,* Wilcox v. Idaho Falls Latter Day Saints Hosp., 59 Idaho 350, 82 P.2d 849, 854 (1938); Duncan v. Nebraska Sanitorium & Benevolent Ass'n, 92 Neb. 162, 137 N.W. 1120 (1912).
6. *E.g.,* Taylor v. Flower Deaconess Home & Hosp., 104 Ohio St. 61, 135 N.E. 287, 291 (1922); Weston's Adm'x v. Hosp. of St. Vincent of Paul, 131 Va. 587, 107 S.E. 785, 792 (1921).
7. 24 Wyo. 408, 414, 160 P. 385, 386 (1916).
8. *Id.*
9. *Id.* at 413-14, 160 P. at 386.
10. 469 P.2d 409 (Wyo. 1970).

doctrine of charitable immunity was a judicial creation, the court reasoned that the doctrine could be judicially restricted.[11] The court in *Yepsen* decided that the hospital was not *in fact* a charity. Lutheran Hospital was found to differ from Bishop Randall Hospital in that a large portion of Lutheran's operating fund was derived from paying patients.[12] Another difference between the hospitals was that Bishop Randall Hospital rendered treatment gratuitously to those who could not pay, whereas Lutheran Hospital was substantially reimbursed by governmental agencies in similar situations.[13] In further support of its decision, the Wyoming Supreme Court viewed recent Wyoming legislation as indicating an intent to limit the advantages given charities to those which are truly charitable in nature.[14] The differences in the methods of financing the two hospitals and the recent legislation were relied upon by the court in concluding that *Hartley* did not control its decision in *Yepsen*. *Hartley* continues to be precedent for the doctrine of charitable immunity but is limited in its applicability to institutions which are truly charitable in character. It might be argued that no organization can be characterized as truly charitable if it is true, as some courts have found, that modern charities are big businesses.[15]

Although the court in *Yepsen* did not directly question the wisdom of continued adherence to the doctrine of charitable immunity, the decision does shed some doubt on the strength of at least one of the rationale which has supported the doctrine in Wyoming. Continued reliance on the trust fund theory is certainly in doubt as a result of the court's statement that "institutions such as the Lutheran society can

11. *Id.* at 411.
12. *Id.* at 412.
13. *Id.*
14. WYO. STAT. § 15.1-4 (1957) authorizes cities and towns to purchase liability insurance. It also provides that to the extent of insurance coverage, the city's immunity is waived. WYO. STAT. § 33.343.1 (Supp. 1971) provides that a doctor or other person who, in good faith, renders aid at the scene of an emergency is only liable if charges are made for services rendered. WYO. STAT. § 39-10 (1957) limits the exemption of property owned by charities from property tax to those cases where the property is not used primarily for commercial purposes. The court in *Yepsen* cited and discussed these statutes. Lutheran Hosps. & Homes Soc'y of America v. Yepsen, *supra* note 10, at 411.
15. *E.g.*, Parker v. Port Huron Hosp., 361 Mich. 1, 105 N.W.2d 1, 12 (1960); President & Directors of Georgetown College v. Hughes, 130 F.2d 810, 824 (D.C. Cir. 1942).

and do carry liability insurance to a far greater extent than was done in 1916. Thus, there is less reason for a rule of immunity . . . than there was in 1916."[16] This same argument has been advanced by other courts to discredit the trust fund theory while totally abolishing the charitable immunity doctrine.[17] Although not touched upon in *Yepsen,* arguments of equal merit have been put forward by courts in discrediting the other traditional rationale which have supported the doctrine of charitable immunity.[18]

The statement regarding the availability of liability insurance is important in at least one other sense. It demonstrates the possibility that the court will go at least as far in restricting the charitable immunity doctrine as the legislature has gone in restricting governmental immunity. The legislature has authorzed cities and towns to purchase liability insurance and has further provided that by purchasing insurance immunity is waived to the extent of coverage.[19] This is not to say that liability under *Yepsen* is necessarily contingent upon the existence of insurance. Although some courts have conditioned liability of charities on insurance,[20] such is not true of the decision in *Yepsen.* Courts which have so conditioned liability of charities were deciding whether to make charities liable. These courts were not considering the question presented in *Yepsen* of whether the institution was *in fact* a charity. Once it is determined that the institution is not a charity as in *Yepsen,* the institution is in the same position as any other private litigant.

16. Lutheran Hosps. & Homes Soc'y of America v. Yepsen, *supra* note 10, at 411-12.

17. *E.g.,* President & Directors of Georgetown College v. Hughes, *supra* note 15, at 823.

18. The inconsistency in the theory that the doctrine of respondeat-superior does not apply to charities is apparent from the fact that courts have applied the doctrine when the plaintiff is a stranger, but not when he is a beneficiary. Ray v. Tucson Medical Center, 72 Ariz. 22, 230 P.2d 220, 227 (1951). The implied waiver theory clearly fails where the beneficiary is a minor or is unconscious and unable to enter into a binding legal agreement. Rabon v. Rowan Memorial Hosp., Inc., 269 N.C. 1, 152 S.E.2d 485, 491 (1967). The court in *Rabon* discussed the public policy theory and found that public policy favored holding charities liable in order to force them to exercise care in rendering their services. *Id.* at 493.

19. WYO. STAT. § 15.1-4 (1957).

20. *E.g.,* Myers v. Drozda, 180 Neb. 183, 141 N.W.2d 852 (1966); Cox v. De Jarnette, 104 Ga. App. 664, 123 S.E.2d 16 (1961); Wendt v. Servite Fathers, 332 Ill. App. 618, 76 N.E.2d 342 (1947).

Yepsen's expansive language potentially makes it applicable to all private hospitals as well as all other institutions which are operated and financed in a manner similar to the defendant's. The test applied by both the district court and the supreme court limited the designation of "charitable institution" to those which are not operated in any form for profit, gain or financial advantage.[21] As stated, the test is basically one of degree. Various factors must be considered in determining whether the institution is in fact charitable. Among the factors to be considered, as stated in *Rabon v. Rowan Memorial Hospital Inc.*[22] (cited by the court in *Yepsen*[23]), is whether the institution makes every effort to operate at a profit. Relevant to this factor would be the extent to which payments received for services contribute to the operating fund of the institution.[24] Other factors to consider would include the amount of unreimbursed services which the organization renders and the number of bad debts written off as uncollectable.[25] These criteria do not impose an absolute standard but do provide a yardstick for determining whether an institution is charitable in nature.

The decision in *Yepsen* leaves somewhat unclear the effect upon immunity resulting from an otherwise charitable institution charging for its services. This ambiguity is caused by the court's statement that

> [t]he fact that charges are generally made and were in fact made in connection with Gall's [plaintiff's husband] treatment needs to be viewed in the light of legislative tendencies, since 1916, to limit benefits bestowed upon charities to instances where charges are not made and where compensation is not received.[26]

21. Lutheran Hosps. & Homes Soc'y of America v. Yepsen, *supra* note 10, at 410.

22. 269 N.C. 1, 152 S.E.2d 485, 499 (1967).

23. Lutheran Hosps. & Homes Soc'y of America v. Yepsen, *supra* note 10, at 412.

24. Hodgson v. William Beaumont Hosp., 373 Mich. 184, 128 N.W.2d 542, 544 (1964).

25. *Id.*

26. Lutheran Hosps. & Homes Soc'y of America v. Yepsen, *supra* note 10, at 412.

It might be argued that the court was limiting the liability of institutions such as the Lutheran Hospital to only those patients who have paid for their services. The court cited a recent statute which tends to reinforce this argument. The statute cited was section 33-343.1 of the Wyoming Statutes which exempts a doctor from liability for negligence if he renders aid at an emergency *without compensation.* That liability was not, however, dependent upon payment in *Yepsen* would appear to be shown by the district court's finding with which the Wyoming Supreme Court agreed:

> that defendant-society rendered such a minute amount of service on a 'free' or 'charity' basis, in comparison with those cases where charges are made and payment is expected, that the charity nature of the institution was insufficient to give the defendant the immunity it seeks.[27]

Charging for treatment is relevant to the question whether the institution is a charity. As was stated previously, once it is determined that the institution is not charitable, it is in the same position as any other private litigant.

The holding in *Yepsen* left unaffected hospitals which, as governmental units, are protected from liability by the doctrine of governmental immunity. *Bondurant v. Board of Trustees of the Memorial Hospital,*[28] held that the maintenance of a hospital by a county was a governmental function and therefore the hospital was immune from liability. The court in *Yepsen* noted that the doctrine of governmental immunity creates inequities but expressed the opinion that the legislature should overrule it.[29] *Yepsen,* however, did hold that governmental immunity was not available to the lessee of a government unit.[30]

Although other courts in abolishing or restricting the charitable immunity doctrine have limited their decisions to prospective effect,[31] the Wyoming Supreme Court apparently

27. *Id.* at 410.
28. 354 P.2d 219, 222 (Wyo. 1960).
29. Lutheran Hosps. & Homes Soc'y of America v. Yepsen, *supra* note 10, at 410.
30. *Id.* at 412.

has not done so in *Yepsen*. Prospective holdings only affect causes of action which arise subsequent to their decision. The basic reason for denying retroactive effect to decisions is to protect parties who justifiably relied on the status of the law prior to the decision.[32] This rationale is applicable to charitable immunity cases because charities which have relied on immunity probably are not protected by liability insurance. The court in *Yepsen* may have refused to limit the effect of its decision believing that no charity could justifiably rely on immunity, given the number of other states which have abolished the doctrine. The general rule is that decisions should have retroactive as well as prospective effect.[33] Departure from this rule should only be made when it is necessary to protect one who justifiably relied on the old law. There appears to be at least one other possible explanation for the court's failure to limit the applicability of *Yepsen*. A recent Missouri case refused to dismiss a claim against a hospital which arose prior to the decision which abolished the doctrine prospectively.[34] The court held that the plaintiff could introduce evidence to prove that the hospital was not in fact a charity at the time of the injury. It was further held that such a determination was not foreclosed by the earlier prospective holding. *Yepsen* could likewise be interpreted as a factual determination, in which case it would not have been necessary to limit its applicability. The question of whether the Wyoming Supreme Court was right or wrong in not limiting its decision in *Yepsen* is only of academic importance. The statute of limitations for such actions is only one year and has now foreclosed any cause of action which arose prior to *Yepsen*.[35]

The doctrine of charitable immunity is still in existence in Wyoming. In its present state, the doctrine is applicable

31. *E.g.*, Rabon v. Rowan Memorial Hosp., Inc., 269 N.C. 1, 152 S.E.2d 485, 499 (1967); Parker v. Port Huron Hosp., 361 Mich. 1, 105 N.W.2d 1, 14-15 (1960).

32. Note, *Where the Defense of Charitable Immunity Has Been Abolished Prospectively It Will Also Be Applied Retroactively When the Charity Is Covered By Liability Insurance*, 7, HOUSTON L. REV. 394, 395 (1970).

33. *Id.*

34. Clark v. Faith Hospital Ass'n, 472 S.W.2d 375 (Mo. 1971).

35. WYO. STAT. § 1-19 (1957).

to institutions which are truly charitable unless they are guilty of institutional negligence. In its reference to the availability of insurance to charities, the court demonstrated its discontent with the doctrine of charitable immunity. Charities might be well advised to purchase liability insurance to protect themselves in the event the court further limits or abolishes the doctrine of charitable immunity in the future.

STEVEN A. BARTHOLOW