CHARITABLE INSTITUTION LIABLE FOR INJURY CAUSED IN NON-CHARITABLE ACTIVITY

Blankenship v. Alter,
171 Ohio St. 65, 167 N.E.2d 922 (1960)

Plaintiff, while attending a church sponsored bingo game, was injured when the chair in which she was sitting collapsed. An action was brought against the church for negligence, and the trial court entered judgment for plaintiff which the Court of Appeals affirmed. The Supreme Court of Ohio also affirmed,[1] holding that immunity from civil liability for negligence, normally accorded charitable institutions, depends upon the actual devotion of the institution to charitable purposes at the time of the injury.

It was first held in Ohio that a charity was not liable for the negligence of its servants in 1911.[2] This holding was based on public policy considerations. Public policy is said to favor immunity because charities perform vital functions for society which they could not perform if their funds were dissipated by tort liability. Holding a charity liable in damages would divert funds to the plaintiff which would otherwise be devoted to charitable purposes. The implication is that it is better for the individual to suffer injury without compensation than for the public to be deprived of the benefit of the charity.[3] Decisions since 1911 have strictly limited the scope of charitable immunity. In 1922, the supreme court held that a charity was liable for torts committed by its negligently selected employees.[4] Subsequently it was held that charities were liable to strangers or invitees (non-beneficiaries lawfully on the premises).[5] In *Avellone v. St. John's Hosp.,* the supreme court held charitable *hospitals* liable for the torts of their servants committed in the course of their employment.[6] However, since the *Avellone* decision, the supreme court has held that tort liability does *not* extend to charitable institutions other than hospitals.[7]

In *Blankenship,* the supreme court refused to grant charitable immunity for torts committed while the charity is engaging in a non-charitable undertaking even though the proceeds of the non-charitable activities are devoted wholly to charitable purposes.[8] "Charitable purposes" include the relief of poverty, the advancement of education, the advancement of religion,

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1 Blankenship v. Alter, 171 Ohio St. 65, 167 N.E.2d 922 (1960).

2 Taylor v. Protestant Hosp. Ass'n, 85 Ohio St. 90, 96 N.E. 1089 (1911).

3 Southern Methidist Univ. v. Clayton, 142 Tex. 179, 180, 176 S.W.2d 749, 751 (1943).

4 Taylor v. Flower Deaconess Home & Hosp., 104 Ohio St. 61, 135 N.E. 287 (1922).

5 Sisters of Charity v. Duvelius, 123 Ohio St. 52, 173 N.E. 737 (1930).

6 Avellone v. St. John's Hosp., 165 Ohio St. 467, 135 N.E.2d 410 (1956).

7 Gibbon v. Y.W.C.A., 170 Ohio St. 280, 164 N.E.2d 563 (1960) (three justices concurred in the judgment, but dissented as to distinguishing hospitals from other charities); see Note, 21 Ohio St. L.J. 247 (1960).

8 Blankenship v. Alter, *supra* note 1; Note the similarity of this reasoning to that in cases holding charity-held property taxable when it is not being used for a charitable purpose, see Goldman v. Bentley Post No. 50, 158 Ohio St. 205, 107 N.E.2d 528 (1952).

the promotion of health, governmental or municipal purposes, and other purposes the accomplishment of which is beneficial to the community.[9] Since charitable immunity in Ohio is based on public policy, and that in turn is based upon the fact that charities benefit society, it follows that if a charity engages in activities which do *not* especially benefit society, it should not gain the benefits of immunity. In the principal case, bingo, a non-charitable business activity, destroyed the *basis* for immunity.

The *Blankenship* case follows the general rule formulated in other states which have decided the question of immunity for charities engaging in non-charitable activities.[10] Furthermore, it is in accord with a trend narrowing the scope of charitable immunity. It should be noted that the court used broad language in its opinion which may signify that *all* charities will be subject to liability for torts arising out of non-charitable activities and that the application of the decision will not be limited to churches.[11]

Blankenship may be interpreted in two ways, and each interpretation may suggest an approach that can be used by courts to decide cases which are now unresolved in Ohio. The decision can be interpreted as being based solely on public policy. If that same approach were taken in a case where a tort arose from the violation of a statute by a charity, then public policy would certainly require that the charity be held liable. No public good could result from permitting any violator of a statute to remain immune from the liability for damages caused by his violation. There have been two court of appeals decisions in Ohio on this point, and while the earlier one held the charity was liable for a tort arising out of a violation of a statute,[12] the later one upheld charitable immunity.[13] A second interpretation of the *Blankenship* decision is that it is based on a narrow definition of charitable activity. By following this semantic approach and narrowly defining "beneficiary," the court could also hold charities liable in more cases.[14] The court in the principal case indicates that

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[9] *In re* Julian, 93 Ohio App. 221, 113 N.E.2d 129 (1952).

[10] Roland v. Catholic Archdiocese of Louisville, 301 S.W.2d 574 (Ky. 1957); Reavy v. Guild of St. Agnes, 284 Mass. 300, 187 N.E. 557 (1933); Rhodes v. Millsaps College, 179 Miss. 596, 176 So. 253 (1937); Blatt v. Geo. H. Nettleton Home for Aged Women, 365 Mo. 30, 275 S.W.2d 344 (1955); Sudelum v. Animal Protection League of Pittsburgh, 353 Pa. 408, 45 A.2d 59 (1946); Tri State Fair v. Rowton, 140 Tenn. 304, 204 S.W. 761 (1918). See also, Pearlstein v. A. McGregor Home, 79 Ohio App. 526, 528, 73 N.E.2d 106, 107 (1947) (by implication).

[11] The Court carefully restricted its holding to hospitals in Avellone v. St. John's Hosp., *supra* note 6.

[12] Howard's Admr. v. Children's Hosp., 37 Ohio App. 144, 174 N.E. 166 (1930) (immunity rule does not apply to breach of statute imposing absolute liability upon one who takes unlawful possession of the body of a deceased person).

[13] Lovich v. Salvation Army Inc., 81 Ohio App. 317, 75 N.E.2d 459 (1947) (immunity rule applies to breach of pure food laws by a charity).

[14] There has never been an adequate discussion in Ohio as to who is a beneficiary. Cullen v. Schmit, 139 Ohio St. 194, 39 N.E.2d 146 (1942) (person attending church service is a beneficiary); Burgie v. Muench, 65 Ohio App. 176, 29 N.E.2d 439 (1940) (nonmember of church attending a birthday party held by ladies aid is a beneficiary);

Blankenship could be decided on the ground that plaintiff was a non-beneficiary, but preferred to base its decision on the more inclusive former ground.[15]

In light of the fact that charities are growing into large business-like organizations,[16] and liability insurance is easily obtained,[17] it seems desirable to hold charities liable for their torts. The charities of today possess a greater capacity to absorb liability than the injured party. The *Blankenship* decision is another step toward the realization of Prosser's prediction, "The immunity of charities is in full retreat; and it may be predicted with some degree of confidence that the end of another decade will find a majority of the American jurisdictions holding that it does not exist."[18]

Esposito v. Stambaugh Auditorium Ass'n Inc., 49 Ohio L. Abs. 507, 77 N.E.2d 111 (Ct. App. 1946) (patron in a building leased by a charity to a third person for a stage show is a beneficiary).

[15] Blankenship v. Alter, *supra* note 1, at 66, 167 N.E.2d at 923 (1960).

[16] The church held two bingo games every week and charged one dollar per player; the church thus earned about $3,000 a week. Brief for Appellee, p. 5, Blankenship v. Alter, *supra* note 1.

[17] Avellone v. St. John's Hosp., *supra* note 6.

[18] Prosser, Torts p. 788 (2d ed. 1955). The latest count can be found in Simeone, "The Doctrine of Charitable Immunity," 5 St. Louis U.L.J. 357 (1959) (24 states, immune or partially immune; 22 states and District of Columbia, no immunity; and 4 states, no decisions).