Cite as 2011 Ark. App. 747

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-76

	Opinion Delivered December 7, 2011
TERESA BLOODMAN, ADMINISTRATRIX OF THE ESTATE OF JOHN THOMAS EAGLE, JR., DECEASED APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. CV-2010-494-5]
V.	HONORABLE ROBERT H. WYATT, JR., JUDGE
JEFFERSON HOSPITAL ASSOCIATION APPELLEE	REVERSED AND REMANDED

JOHN MAUZY PITTMAN, Judge

This is a medical malpractice case. Appellant advances several arguments on appeal, but the only issue that we must address is whether the trial court erred in granting the appellee hospital's request to dismiss appellant's lawsuit based on charitable immunity in the absence of any evidence of the hospital's current qualifications for charitable-immunity status. We hold that the trial court did err in so doing, and we reverse and remand.

Few facts are necessary for an understanding of the legal issue. Appellant filed her malpractice claim on July 6, 2010. Appellee Jefferson Hospital Association answered in August, and on September 20, 2010, filed a motion to dismiss, asserting that it was entitled to dismissal from the action with prejudice on the grounds of charitable immunity.[1] No offer

[1]Appellant also named two additional defendants in her complaint, but they were never served. Therefore, the order is appealable despite the fact that the claims against the other defendants were not expressly disposed of by the trial court. Ark. R. Civ. P. 54(b)(5);

of proof was made regarding the facts relevant to a determination of the appellee's charitable-immunity status as of 2010 in support of the motion to dismiss. Instead, appellee filed a brief stating that "the Arkansas Supreme Court has previously confirmed" that Jefferson Hospital Association was entitled to immunity in *George v. Jefferson Hospital Association, Inc.*, 337 Ark. 206, 987 S.W.2d 710 (1999), and asserted that the determination of immunity in *George* was applicable to the present case pursuant to the doctrines of res judicata and collateral estoppel.

The substantive law regarding charitable immunity is stated in the *George* case as follows:

> The doctrine of charitable immunity has over a ninety-year history in Arkansas jurisprudence. The essence of the doctrine is that agencies, trusts, etc., created and maintained exclusively for charity may not have their assets diminished by execution in favor of one injured by acts of persons charged with duties under the agency or trust. Through the years we have examined the doctrine in detail, finding it applicable to some entities claiming charitable-entity status and inapplicable to others. The doctrine obviously favors charities and results in a limitation of potentially responsible persons whom an injured party may sue. We, therefore, give the doctrine a very narrow construction. But applying it narrowly does not mean that we will avoid its use in any appropriate circumstance.
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> In a recent case considering charitable immunity, we adopted eight factors for courts to review to aid in determining whether charitable immunity applies to a given set of facts. These factors are illustrative, not exhaustive, and no single factor is dispositive of charitable status. These factors include: (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.

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see Global Econ. Res., Inc. v. Swaminathan, 2011 Ark. App. 349.

George, 337 Ark. at 211–12, 987 S.W.2d at 712–13 (citations omitted). Based on undisputed evidence regarding these factors contained in the record in that case, the *George* court held that Jefferson Hospital Association's charitable status was established.

The issue in the instant case is whether the trial court could properly conclude that the appellee need not present evidence to support its present claim of charitable immunity because it was held to have established charitable status in *George*, an unrelated case decided more than ten years ago. We hold that it could not. Neither collateral estoppel nor res judicata are applicable. There is nothing in the record to suggest that appellant here was in privity with the plaintiff in *George*, and the *George* case did not decide the question of Jefferson Hospital Association's charitable status in the time period relevant to the present appellant's suit. Consequently, appellant is not bound by the decision in *George*. *See generally Beebe v. Fountain Lake Sch. Dist.*, 365 Ark. 536, 231 S.W.3d 628 (2006).

Anglin v. Johnson Regional, 375 Ark. 10, 289 S.W.3d 28 (2008), holds that charitable-immunity status is a question of fact when there are disputed facts. There, the hospital produced affidavits and other documents to establish its charitable status, and the supreme court distinguished prior case law to hold that summary judgment was proper under the circumstances of that case because there were no disputed facts and the question thus was one of law. Here, however, the trial court was presented with no facts whatsoever; charitable immunity being an affirmative defense, appellee had the burden of establishing that it was entitled to immunity under the circumstances of this case. *See Crossett Health Ctr. v. Croswell*, 221 Ark. 874, 256 S.W.2d 548 (1953).

Reversed and remanded.

VAUGHT, C.J., and GRUBER, J., agree.

Teresa Bloodman, pro se appellant.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., by: *R. T. Beard* and *Benjamin D. Jackson*, for appellee.