

SUPREME COURT OF NEW JERSEY
DOCKET No. 089809

CASSANDRA GIGI SMITH
Plaintiff-Petitioner

v.

NEWARK COMMUNITY
HEALTH CENTERS, INC.,
JOHN/JANE DOE #1 OWNER OF
MEDICAL PRACTICE,
JOHN/JANE DOE #2 OPERATOR
OF MEDICAL PRACTICE,
JOHN/JANE DOE #3 MEDICAL
PRACTICE MAINTENANCE
ORGANIZATION, JOHN/JANE
DOE #4 MEDICAL PRACTICE
MAINTENANCE PERSON
And JOHN/JANE DOE #5 PERSON
WHO MOPPED THE FLOOR
Defendant-Respondent

A Petition for Certification from the
July 30, 2024 Judgment of the
SUPERIOR COURT OF NEW
JERSEY, APPELLATE DIVISION
Docket NO. A-2138-22

Sat Below:

Hon. Lisa Rose, J.A.D.

Hon. Morris G. Smith, J.A.D.

Hon. Lisa Perez Friscia, J.A.D.

PETITION FOR CERTIFICATION OF PLAINTIFF-PETITIONER
CASSANDRA GIGI SMITH

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STATEMENT OF MATTER INVOLVED

Plaintiff, Cassandra Smith, was a patient at a Newark Community Health Centers, Inc. non-profit gynecological clinic. While receiving medical services on February 14, 2019, Plaintiff fell on a freshly mopped floor in the hallway of the clinic, after stepping out of an examining room. Plaintiff testified that there were no “wet floor” signs placed at the location where Plaintiff fell. Plaintiff sustained cervical, lumbar and shoulder injuries as a result of this fall.

After discovery was completed Newark Community Health Centers, Inc., (hereinafter NCHC) filed a Motion for Summary Judgement asserting the affirmative defense of charitable immunity. The Superior Court granted the Defendant’s Motion, dismissing the Plaintiff’s Complaint. The Superior Court Appellate Division, affirmed.

The appellate division’s determination that NCHC was entitled to a charitable immunity defense, despite the fact that it received a very paltry sum from charitable contributions, (less than 3/10 of one percent of its income) (Ja271), was based on the conclusion that it was organized for educational purposes, and, consequently, a “source of funding” investigation was not required. The appellate division seems to rest this conclusion solely on the fact that NCHC lists education as one of its objectives in its certificate of incorporation (Ja265). NCHC’s Certificate of

Incorporation states “the corporation is formed for scientific, educational, and charitable purposes . . . “.

The record establishes that NCHC is a comprehensive group of medical practices and facilities whose primary purpose is to provide medical treatment, it is not an educational entity, and it doesn’t appear to do any more in the way of education than most “for-profit” medical practices and hospitals do. NCHC provided the following scant evidence of its educational functions. It provided six community alert pages shown on its website for the year 2021 and two community alert pages displayed on its website for the year 2022. Each page included pictorials and limited content. (Ja325)

Petitioner Plaintiff also argued that NCHC is an extensive group of medical practices engaged in hospital purposes and, therefore, pursuant to Section 8 of the Charitable Immunity Act, a \$250,000 cap on damages applied, rather than the application of total immunity provided under Section 7 of the Charitable Immunities Act. NCHC provides every service that a hospital does, including the fact that its physicians have privileges at local hospitals, it lacks only a hospital of its own. If the legislature intended that Section 8 of the Charitable Immunity Act apply only to entities that own hospitals, why did it use the language “hospital purposes” rather than hospitals? The Appellate Division found Section 8 of the Charitable Immunities Act inapplicable, because NCHC did not own a hospital.

Turning back to the argument that NCHC is not sufficiently engaged in education to qualify for immunity without meeting the “source of funding” threshold, NCHC provided only the following evidence that it educated. It provided copies of the following four community alert web pages exhibited on its website in 2021: (Ja325)

- 1) A notice that it was black maternal health week;
- 2) A notice that it was world aids month;
- 3) A notice of a women’s health symposium fundraiser;
- 4) A notice that it was national HIV testing day;
- 5) A notice recommending “back to school” immunizations and physicals;
- 6) A notice that United Healthcare Community Plan recognized the ongoing work of Newark Community Health.

NCHC provided the following two website notices for the year 2022:

- a. Colorectal Cancer Awareness Month;
- b. A readiness for back to school notice and suggestion that an appointment be made for a child’s annual physical.

(Note also that Plaintiff’s year of accident was 2019.)

This Supreme Court held in *Bieker v. Cmty House of Moorestown*, 169 N.J. 167, 178 (2001): that an entity organized for charitable purposes must demonstrate a sufficient level of support from private charitable donations and/or trust funds as

it is those sources of income the Act seeks to protect. The sum of contributions that NCHC received from charitable sources (less than 3/10 of one percent of their total revenue, by their own calculations) is an intolerable sum according to the precedent discussed in detail in Petitioner's brief. Moreover, NCH did not provide the evidence of the source of funding that is required under current caselaw, it produced only its tax returns (Ja271); and NCHC also needs to prove that it actively sought donations under current case law, it did not produce this evidence. *F.K V. Integrity House, Inc. 460 N.J. Super 105 (2019)*.

The trial court and the Appellate Division did not do a "source of funding inquiry". Had they done so NCHC clearly would not have met its burden. A fair reading of the Appellate Court decision establishes that the Appellate Court found that NCHC was entitled to immunity based solely on the fact that its Certificate of Incorporation (Ja264) lists education as one of its objectives. The Court did not even address whether its educational activities were sufficient to have met its objectives. Because of this decision hereinafter every non-profit that wants charitable immunity will simply need to list education as one of its objectives in its Certificate of Incorporation. In time such a release latch, will vitiate all "source of funding" inquiries, rendering moot this Supreme Courts decision in *Bieker*, supra.

This Supreme Court has said that weather a nonprofit entity, whose Certificate of Incorporation and by-laws provide that it is organized exclusively for charitable,

religious, educational, or hospital purposes, actually conducts its affairs consistent with its stated purpose often requires a fact-sensitive inquiry.” *Kuchera v. Jersey Shore Family Health Ctr.*, 221 N.J. 239 (2015) The Appellate Division did not do that “fact-sensitive inquiry” that was clearly needed here.

Moreover, the Appellate Division’s decision is inconsistent with their own authority. This is evident in the multiple Superior Court decisions Petitioner’s cites in her brief. Never, has the Appellate Division found that a Defendant was entitled to charitable immunity based on its educational objectives when there was so little evidence that it educated. The Appellate Division has always addressed the amount and nature of education. Where this reversal of its precedent is most evident is in the case of *Abdulla v. Occupational Center of Hudson County, Inc.*, 351 N.J. Super 280, 288(2002).

The defendant in *Abdulla* is an occupational center for the developmentally impaired individuals, a group that no doubt needed more educating than most. The Court noted that this occupational center “functions as a combination of employment agency and sheltered workshop with a component of vocational counseling to determine employability and potential job performance”. The Superior Court said, “we do not regard this function as exclusively educational in any traditional usual or common language sense”. A “source of funding” inquiry was carried out in Abdallah.

Section 8, of the New Jersey Charitable Immunity Act provides as follows:

Notwithstanding the provisions of (N.J.S.A. 2A:53A-7), any nonprofit corporation, society or association organized exclusively for hospital purposes shall be liable to respond in damages to such beneficiary who shall suffer damage from the negligence of such corporation, society or association or of its agents or servants to an amount not exceeding \$250,000, together with interest and costs of suit, as the result of any one accident and to the extent to which such damage, together with interest and costs of suit, shall exceed the sum of \$250,000 such nonprofit corporation, society or association organized exclusively for hospital purposes shall not be liable therefore. N.J.S.A. 2A-53A-8

This Supreme Court in *Kuchera v. Jersey Shore Family Health Center*, 221 N.J. 239 (2015) expanded its interpretation of “hospital purposes” to such a degree that it now likely includes non-profits such as NCHC. *Kuchera* found Section 8 of the CIA applicable where the Plaintiff’s injury occurred in a clinic setting rather than a hospital facility. The clinic in *Kuchera* was not contained in the hospital. However, the defendant in *Kuchera* did own a hospital.

NCHC does not acknowledge ownership or possession of a hospital. However, it provides through its various facilities, every service that a hospital typically provides, and more, and its physicians have hospital privileges elsewhere. Because of NCHC’s expansive services a 2018 U.S. District Court concluded that Section 8 of the CIA, putting a \$250,000 cap on damages was applicable in a personal injury suit. This appears to be a logical progression of *Kuchera*, and, of course, that is the way that the federal district court viewed it in reaching the

conclusion that Section 8 of the CIA was applicable to a personal injury case. That opinion was *Walnise Joseph vs. NCHC, et al*, 2018 WL U.S.D. New Jersey, 5095990. Other federal district courts have reached the same conclusion about other health clinics as is addressed in the *Walnise Joseph* decision. The Court in *Walnise Joseph* was provided with the very same language in the Certificate of Incorporation provided herein (Ja264). That language, provides for the following goals:

- A. To provide comprehensive primary health services including the services of physicians, physicians assistants, nurse clinicians and other health providers;

dental services, diagnostic laboratory and radiologic services, preventative health services (including children's eye and ear examinations to determine the need for vision and hearing corrections), prenatal services; well child services, preventative dental services and family planning services, emergency medical services and transportation services required for adequate patient care;
- B. To provide as appropriate supplemental health services, including **hospital services**, home health services, extended care facilities services, rehabilitative services, (including physical therapy) and long term physical medicine, dental services, vision services, allied health services, pharmaceutical services, therapeutic radiologic services, public health

services (including nutrition, education and social services), health education services and services which promote optimal use of primary and supplemental health services including as necessary and appropriate services of bilingual workers.

NCHC lists hospital services as one of its objectives, it is evident from the above that they did indeed provide every service a hospital generally provides and more. Moreover, *Walise Joseph*, a medical malpractice case, establishes that NCHC physicians had privileges at hospitals not owned by NCHC. One of the doctor defendants in the *Walise Joseph* case was attending to a NCHC patient at the time of the alleged malpractice, while the doctor was employed by NCHC, in a hospital owned and managed by another entity. Specially, the physician in question was participating in the delivery of a baby.

If the legislature intended the term “hospital services” to mean only activities performed by entities that own or manage hospitals, why did it not say so. And why did it use the phrase “hospital purposes”. Hospital purposes seems to imply entities that provide the services that hospitals do, that is the conclusion reached by the federal district courts.

Immunity under the Charitable Immunity Act is an affirmative defense. As an affirmative defense it was NCHC’s burden to prove that it was fully entitled to that immunity. *Abdallah*, supra. It has failed to do so.

QUESTIONS PRESENTED

1. Did NCHC fail to establish that it was entitled to escape the “source of funding” inquiry and burden necessary in the case of most nonprofits, in order to qualify for charitable immunity?
2. Did NCHC engage in Hospital Purposes, resulting in the applicability of Section 8 of the Charitable Immunities Act, capping damages as \$250,000 rather than providing for full immunity.

ERRORS COMPLAINED OF

1. The Superior Court Appellate Division violated its own precedent as well as the precedent of this Supreme Court when it concluded that NCHC did not have to satisfy a “source of funding” inquiry because it stated that education was one of its objectives, when it did not prove that it provided any real degree of education.
2. The Superior Court Appellate Division failed to recognize that the natural progression of the holding of this Supreme Court in the *Kuchera* case, meant that an entity that provided all the of services of NCHC warranted the cap of damages of Section 8 of the CIA, rather than full immunity.

REASONS WHY CERTIFICATION SHOULD BE ALLOWED

1. The Appellate Division of the Superior Court has created a bad precedent that will influence every nonprofit in the future that is not already an educational

institution or religious organization. All other charitable entities can avoid the “source of funding” inquiry this Supreme Court has authorized, by listing education as an objective in its Certificate of Incorporation. If anymore is required, the only additional thing that is arguably required is a few community awareness pages on the website of the nonprofit. This Supreme Court has made it clear, that since the a “source of funding” inquiry is necessary because the whole purpose of the Charitable Immunity Act is to protect charitable donations. Even entities who receive much of their funding from government agencies, as NCHC likely does, are undeserving of charitable immunity. Afterall, there is no full immunity for suits against government entities, there are instead limitations in place for government defendants.

2. As a result of the Appellate Division’s decision in this case, all medical practices of every sort, regardless of the extent of their medical endeavors are now immune from suit under both Sections 7 and Sections 8 of the Charitable Immunities Act, as long as they do not own or manage hospitals and list education as one of their objectives in their Certificates of Incorporation.

COMMENTS WITH RESPECT TO APPELLATE DIVISION DECISION

See Petitioner’s Statement of Matter Involved at the beginning of this Petition.

CERTIFICATION

This Petition presents substantial and impactful issues and is filed in good faith and not for purposes of delay.

CONCLUSION

For the above reasons, Plaintiff asks this Court to grant the petition and reverse the Appellate Division's judgments.

Respectfully submitted,
LOWENTHAL & ABRAMS, PC

Dated: August 28, 2024

BY: /s/ Margaret E. Quinlan
Margaret E. Quinlan

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