
Supreme Court of New Jersey

Docket No. 089809

CASSANDRA GIGI SMITH,	:	CIVIL ACTION
	:	
<i>Plaintiff-Petitioner,</i>	:	ON PETITION FOR
	:	CERTIFICATION FROM
vs.	:	THE JULY 30, 2024
	:	JUDGMENT OF THE
NEWARK COMMUNITY	:	SUPERIOR COURT
HEALTH CENTERS, INC.,	:	OF NEW JERSEY,
JOHN/JANE DOE #1 Owner of	:	APPELLATE DIVISION
Medical Practice, JOHN/JANE DOE	:	
#2 Operator of Medical Practice	:	DOCKET NO. A-2138-22
JOHN/JANE DOE #3 Medical	:	
Practice Maintenance Organization,	:	
JOHN/JANE DOE #4 Medical	:	Sat Below:
Practice Maintenance Person and	:	
JOHN/JANE DOE #5 person who	:	HON. LISA ROSE, J.A.D.
mopped the floor,	:	HON. MORRIS G. SMITH, J.A.D.
	:	HON. LISA PEREZ FRISCIA, J.A.D.
<i>Defendants-Respondents.</i>	:	

BRIEF IN OPPOSITION TO PETITION FOR CERTIFICATION

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STATEMENT OF THE CASE

This matter arises out of an alleged accident that occurred on February 14, 2019, where Plaintiff Cassandra Gigi Smith (Hereinafter “Smith”) claims she sustained injuries on the property owned and operated by Newark Community Health Centers, Inc. (Hereinafter “NCHC”) **(Ja32,33)**¹. Defendant seeks the affirmation of the lower court’s ruling that NCHC is an entity that would be covered under the Charitable Immunities Act.

At the time of the accident, Plaintiff, Smith, was on the premises as a patient to NCHC. **(Ja76,116 L20-22)** Plaintiff had been a patient at NCHC for approximately two years prior to the subject accident. **(Ja117 L18-21)** At the time of the accident, Plaintiff was insured with Medicare. **(Ja118 L10-4)**. Plaintiff did not provide any payment for the care she received on the date of accident aside from the payment made by Medicare on her behalf. **(Ja119 L5-8)** Bridget Hogan is employed by Newark Community Health Centers, Inc. as its Chief Operating Director. **(Ja207,214 L8-10)**. As such, she supervises the foundation staff and the operations of the seven facilities. **(Ja215 L12-19 and 23-25; see also Ja216 L1-2)**

¹ Joint Index hereinafter Ja referring to Joint Index attached to Plaintiff/Petitioner’s Moving Papers.

Defendant, Newark Community Health Centers, Inc., is a Federally Qualified Health Center that was incorporated as a nonprofit charitable foundation. **(Ja264)** The Certificate of Incorporation states “[t]he corporation [NCHC] is formed for scientific, educational, and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954....” **(Ja265 Section Two)** The Certificate of Incorporation outlines the following actions as some of Newark Community Health Centers Inc.’s scientific, educational, and charitable purposes:

To provide comprehensive primary health services.... supplemental health services...referrals to supplemental health services and payment as appropriate and feasible... act as an active partner to address and take action on the regions short- and long-term public health, environmental and medical problems... to advance the health status of the region’s population... and to raise funds from private donations and apply for and receive governmental private grants and loans

(Ja265 Section Two, ¶ A-C, Ja266 ¶ F-H, N)

Furthermore, The Certificate of Incorporation provides that NCHC “has not been formed for pecuniary profit or financial gain...” **(Ja266, at Section Three)** The formative purposes of NCHC are still reflected on the organization’s website which provides a mission statement:

To provide affordable, high quality, and accessible healthcare to the communities that we serve. As one of the largest providers of comprehensive primary care services for uninsured and medically underserved populations in one of the country’s most populated areas, our primary goal is to eliminate health disparities and help people live stronger, healthier and happier lives. **(Ja269)**

The purpose of NCHC is to “operate a federally qualified health center and provide health care services to economically disadvantaged individuals in the area.” **(Ja70 No.17)**. Defendant NCHC is recognized as a Section 503 (c)(3) organization by the Internal Revenue Service. **(Ja70 No.18)**. As such, it is recognized as a NonProfit Corporation by the State of New Jersey. Pursuant to the New Jersey Charitable Registration and Investigation Act, Defendant NCHC filed Form CRI-300R for 2019 confirming its status as a New Jersey charitable organization. **(Ja70 No.19)**. That form includes a statement of charitable purposes which defines the works of the Defendant: **(Ja70 No.19)**.

Defendant NCHC receives government support including federal grants for the city of Newark and the state of New Jersey. **(Ja71 No.21)**.

NCHC earned a total revenue of \$33,819,482.00 in 2019 **(Ja271, 272)**. Inclusive in that revenue is \$9,669,591 in public support, within that figure \$51,460.00 came from charitable fundraising events and an additional \$51,528 from other contributions, gifts and grants. **(Ja280)**. The total revenue for NCHC in 2019 less operating expenses was \$873,360.00 which is less than the charitable and public support it receives. **(Ja271, 272)**. NCHC received 71.38% of its support through public support in 2019 qualifying it as a publicly supported organization. **(Ja71 No.24)**

The Certification of Incorporation provides that the NCHC is constituted to attract substantial support from contributions, directly or indirectly from governmental units...and has not been formed for pecuniary profit or financial gain.... **(Ja264,266 Section 3)**. “[T]his corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954....” **(Ja264,266 Section 3)**.

The Appellate Court found that NCHC was formed for educational and charitable purposes and thus the source of funding test investigation was not merited. Furthermore, they determined based on this test that the full immunity protection of the Charitable Immunity Act should apply to NCHC.

LEGAL ARGUMENT

I. CERTIFICATION SHOULD BE DENIED BECAUSE THERE IS NO “SPECIAL REASON” FOR THIS COURT’S DISCRETIONARY REVIEW

In deciding whether to hear an appeal, this Court is guided by the standards in Rule 2:12-4, which instructs that “certification will not be allowed on final judgements of the Appellate Division except for special reasons.” Rule 2:12-4 provides a discretionary grant of certification under three limited circumstances: where the appeal “presents a question of general public importance which has not been but should be settled by the Supreme Court”; “if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision”; “and in other matters if the interest of justice requires.” Id.

Regarding the factor first laid out there is no question of public importance where the Appellate Division simply applied established case law to the facts of the case. Bandel v. Friedrich, 122 N.J. 235, 237 (1991). Regarding the second element, cases rarely trigger the Court’s “supervisory powers” unless they conflict with another decision of an appellate court or otherwise “transcend[] the immediate interests of the litigants.” Mahony v. Danis, 95 N.J. 50, 51-52 (1983). Furthermore, appeals do not warrant “invocation of the court’s certification authority in the interest of justice” unless the decision below is

“palpably wrong, unfair or unjust.” Bandel, supra, 122 N.J. at 237. “Typically, a case for certification encompasses several of the relevant factors controlling the exercise of the Court's discretionary appellate jurisdiction.” Mahoney, supra, 95 N.J. at 53.

Here, none of the factors are present to warrant review by this court. The Appellate decision applied longstanding precedent of this and other courts to decide whether the Charitable Immunity defense should apply to NCHC; petitioner Cassandra Gigi Smith disagrees with the result wants the matter re-litigated. Although prior to this case, there was never a published opinion on whether an entity such as NCHC fell under the protections of the Charitable Immunity Act, the Appellate Division correctly applied the relevant tests to make such a determination. Furthermore, the questions presented by petitioner were answered thoroughly and extensively via analysis of the appellate division through dissection of the relevant precedents. As such there is no issue of general importance that must be resolved by this court and the Petitioner has not established that the Appellate Division’s decision is in any way “palpably wrong, unfair or unjust.” Bandel, supra, 122 N.J. at 237. For these and the reasons argued below Petitioners Petition for Certification should be denied.

**II. THE APPELLATE DIVISION'S DECISION REGARDING THE
APPLICATION OF THE CHARITABLE IMMUNITY ACT TO
THE NCHC WAS BASED ON WELL-SETTLED LAW**

Certification should be denied where a case involves an "intensely factual situation, in no way implicating 'an unsettled question of general public importance.'" Bandel, supra, 122 N.J. at 237-38 (quoting In re Route 280 Contract, 89 N.J. 1 (1982)). The New Jersey Charitable Immunity Act, (hereinafter referred to as the Act) provides in pertinent part:

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 damage 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 corporation, society or association.

N.J.S.A. 2A:53A-7(a)

The Charitable Immunity Statute is to be liberally construed:

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.

N.J.S.A.2A:53A-10.

Many cases in New Jersey have established steps for determining whether The Charitable Immunity Act would apply to particular scenarios. As stated in Green v. Monmouth University, 237 NJ 516, 530-531 (2019):

this Court has determined that “an entity qualifies for charitable immunity when 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.” Ryan, 175 N.J. at 342, 815 A.2d 419 (quoting O’Connell v. State, 171 N.J. 484, 489, 795 A.2d 857 (2002))

After reviewing the test established in Green, the NCHC clearly qualifies for the full immunity of the Charitable Immunity Act.

A. Newark Community Health Centers, Inc. Is A Nonprofit Corporation Organized Exclusively For Charitable, Hospital And Educational Purposes.

NCHC is a nonprofit corporation as illustrated by its Certificate of Incorporation and its IRS tax exempt status. (JA264,271). It is organized and operates, very specifically, to manage and operate, assets of, and income from, charitable foundations, government grants and government health care assistance programs. (JA264,271). The various purposes of the Foundation are set forth in the Certificate of Incorporation, Section Two and defined by the scientific, educational, and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954. Among those stated purposes are:

To provide comprehensive primary health services.... supplemental health services...referrals to supplemental health services and payment as appropriate and feasible... act as an active partner to address and take action on the regions short- and long-term public health, environmental and medical problems... to advance the health status of the region's population... and to raise funds from private donations and apply for and receive governmental private grants and loans

(Ja265 Section Two, ¶ A-C, Ja266 ¶ F-H, N).

Furthermore, the Certificate of Incorporation shows it was formed “by virtue of the provisions of the New Jersey Nonprofit Corporation Act.” Thus further showing intent that this entity was to be a nonprofit entity.

The NCHC for these very purposes provides a sliding scale payment plan tailored to each individual's financial capabilities and other activities. **(Ja217 L17-19).** Additionally, the charitable and educational purposes for which NCHC was formed are still reflected on its website which provides:

“The mission of Newark Community Health Centers Inc. is to provide affordable, high quality, and accessible healthcare to the communities that we serve. As one of the largest providers of comprehensive primary care services for uninsured and medically underserved populations in one of the country's most populated areas, our primary goal is to eliminate health disparities and help people live stronger, healthier, and happier lives.

(Ja269)

NCHC promotes, creates, and sponsors monthly outreach events to educate and inform the community on pressing healthcare topics, solutions and resources. **(Ja217).**

New Jersey courts have stated that a determination of whether a particular entity was organized solely for charitable, religious, or educational purposes, as the Charitable Immunity Act requires, is made on a case-by-case basis and requires a fact-sensitive inquiry which looks “beyond [an entity’s] benevolent acts.” Ryan v. Holy Trinity Evangelical Lutheran Church, 175 NJ 333, 344 (2003).

When an organization claims a “charitable” purpose, “[w]hat is is an examination of the entity seeking to clothe itself in the veil of charitable immunity to discover its aims, its origins, and its method of operation in order to determine whether its dominant motive is charity or some other form of enterprise.” Parker v. St. Stephen’s Urban Development Corp., Inc., 243 NJ Super. 317, 325 (App.Div. 1990)

The chief operating officer of NCHC also provided further proof of the entity’s charitable purposes at his deposition:

Q. So tell me what a federally qualified health center is? And I did do a little research myself on line, but I don't know how reliable that is. Would you please explain that to me?

A. Federally qualified health centers are nonprofit and they work delivering primary care to patients, regardless of their ability to pay. So our populations are insured, uninsured, underinsured, and we do involve services whether on — the patient has the ability to pay that bill or not.

Q. So am I understanding this correctly that federally qualified health centers are for 6 people who are ecomanically [sic] challenged, some have insurance and some don't; correct?

A. Yes.

Q. And when they have insurance, are you generally paid for your services?

A. Yes.

(Ja216,217)

Further of note, regarding this prong of the test, in the below court, the plaintiff/petitioner only attacked the idea that NCHC was formed for a charitable purpose through subsequently examined tests but never truly offered a definition of its own. This illustrates the weakness in plaintiff/petitioner's argument as it conceded that NCHC passes the first part of the Green test, which is arguably of the most paramount in the three as failure to form as anything other than a nonprofit would immediately deny such protections under the Charitable Immunity Act.

B. Newark Community Health Centers, Inc. is a Nonprofit Corporation That Provides Educational Services.

Plaintiff/Petitioner contends that NCHC is organized **exclusively for hospital purposes** rather than religious, charitable, or educational purposes and therefore under Kuchera v. Jersey Shore Family Health Center, 221 N.J. 239 (2015) NCHC is entitled only to a \$250,000.00 cap on damages under N.J.S.A.

2A:53A-8 instead of total immunity under N.J.S.A. 2A:53A-7. The subject case, Kuchera, case is readily distinguishable from the case at bar in that the plaintiff in Kuchera was injured in an outpatient health care facility which was owned and operated by a nonprofit hospital. Ibid. **NCHC is not owned nor operated by a hospital facility and is instead an independent, freestanding, charitable organization that provides healthcare, education, and scientific advancement for the betterment of the community. (Ja265 Section 2, Ja270).** If, arguendo, NCHC were considered a ‘modern hospital’ as described in Kuchera, which defendant does not concede, NCHC is not organized **exclusively** for hospital purposes as it also was organized for and offers educational services advancing those objectives.

Furthermore, under the same case that plaintiff/appellant relies upon, Kuchera, the court noted that “whether 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 Center, supra, 221 N.J. at 239 citing Bieker v. Cmty. House of Moorestown, 169 N.J. 167, 177 (2001).

The fact sensitive analysis required under Kuchera clearly favors respondent/defendant in this matter. In addition to health care services, NCHC’s

Certification of Incorporation also outlines educational purposes which cannot be ignored. (**Ja265 Section 2**). Using the fact sensitive analysis stated above, NCHC provides educational programing and resources for initiatives to educate the population on maternal health within the black community, AIDS awareness, the effect of Covid-19 on maternal health, pediatric health, and colorectal cancer awareness. (**Ja325**). NCHC providing healthcare services does not negate the fact that they also were organized to provide educational services and programs and do so. The New Jersey Courts have held that while nonprofits may provide a “wide range of services beyond their core purpose, it does not eviscerate their entitlement to immunity as long as the services or activities further the charitable objectives [the entities were] organized to advance.” Green v. Monmouth Univ., 237 N.J. 516, 531–32 (2019). Plaintiff/Appellant argues that the educational services provided by NCHC are those that any modern hospital would provide, however respondent/defendant again disagrees with this contention that they fit the categorization as a modern hospital given the already stated reasons, thus showing that these stated educational services do provide and fulfill the second prong of the test laid out in Green.

Plaintiff/Appellant further attempts to limit and discredit NCHC’s educational offerings by claiming that this is in fact the absolute minimum that the entity could do and should not fall fulfill the educations prong of the Green

test. However, when a history of other cases in New Jersey are examined for the educational prong of the test one can clearly see that definition has been liberally construed, which is of course what the legislature intended. In Green the court notes this and states that “institutions offering an array of services to be educational in nature and have found a broad variety of activities offered by educational institutions to advance their educational objectives.” Id. at 536 *citing* N.J.S.A. 2A:53A- 10. (A country music concert is a cultural and educational experience which is both charitable and educational under the Charitable Immunity Act). *See also* Rupp v. Brookdale Baptist Church, 242 N.J. Super. 457, 465 (App. Div. 1990) (Crafts and games foster sportsmanship, honesty and creativity making them educational under the Charitable Immunity Act); Est. of Komninos v. Bancroft Neurohealth, Inc., 417 N.J. Super. 309, 324–25 (App. Div. 2010). (Group home for developmentally disabled providing vocational and life skills was organized for educational purposes); Pomeroy v. Little League Baseball of Collingswood, 142 NJ Super. 471 (App. Div. 1976). (Education broadly defined to include good sportsmanship, honesty, loyalty, courage, and reverence through teaching and supervising baseball). These cases demonstrate that NCHC should succeed under the education prong of the Green test and further demonstrate that Charitable Immunity is appropriate for this entity.

By taking all the above into account and by looking at other examples of what qualified as educational, the Appellate Court correctly determined that NCHC qualifies through the services it offers and thus the “source of funding” test was not needed. This is very clear when some of the prior accepted examples of educational services included a country music concert or a baseball game; compared to the essential topical and educational services NCHC provided such as maternity information and services in regards to the then active COVID-19 pandemic.

**III. PLAINTIFF/PETITIONER’S CONTENTION THAT NCHC
WOULD NOT PASS THE SOURCE OF FUNDING TEST IS
ERRONEOUS AND ATTEMPTS TO CREATE A NEW STANDARD
NOT ESTABLISHED BY THE COURTS**

Regardless of Plaintiff/Petitioner’s prior arguments, plaintiff/petitioner’s source of funding argument without merit in itself, as pointed out in the prior brief. Plaintiff/Appellant attempts to create new standards through creative interpretation of precedent in New Jersey regarding the amount of income needed for an organization to qualify as one under the Charitable Immunity Act. Plaintiff/Petitioner’s brief cites *Bieker v. Cmty. House of Moorestown*, 169 N.J. 167, 178 (2001); *Morales by Martinez v. New Jersey*, 302 NJ Super 50(1997) regarding the determination by a court for an entity organized for charitable purposes level of funding needed for the

immunity. The brief states that under Bieker, an entity **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. (Id.) Plaintiff/Appellant changes the phrase from “**some** level of support” to “a **sufficient level of support.**” Although this change appears de minimis it is in fact significant. As Plaintiff/Petitioner is raising the bar for how much support is enough to qualify for the Immunity. Plaintiff/Petitioner points to no case law that makes such a determination and attempts to constrain the liberally applied standard for funding. NCHC made clear its funding sources and whilst it may not be broken down into the categories that Plaintiff/Petitioner would prefer that does not disqualify it from protection under the Charitable Immunity Act. Again, NCHC received 71.38% of its support through public support in 2019, even if the source of the funding was made up in such a way that would favor Plaintiff/Petitioner’s argument, there is not legal support for their position that it is not sufficient rather the courts have said that it must be “**some level of support**” thus Plaintiff/Petitioner’s argument fails to impede NCHC’s passage of the test established under Bieker and instead shows that NCHC is indeed qualified for protection under The Act.

IV. THE APPELLATE COURT CORRECTLY DETERMINED THAT NCHC DID NOT EXCLUSIVELY ENGAGE IN HOSPITAL PURPOSES WHICH RESULTED IN THE APPLICABILITY OF THE FULL IMMUNITY PROTECTION OF THE ACT RATHER THAN THE \$250,000 DAMAGES CAP

Plaintiff/Petitioner contends that NCHC is organized exclusively for hospital purposes rather than religious, charitable, or educational purposes and therefore under Kuchera v. Jersey Shore Family Health Center, 221 N.J. 239 (2015) NCHC is entitled only to a \$250,000.00 cap on damages under N.J.S.A. 2A:53A-8 instead of total immunity under N.J.S.A. 2A:53A-7. As previously argued by NCHC the Kuchera case is readily distinguishable from the case at bar in that the plaintiff in Kuchera was injured in an outpatient health care facility which was owned and operated by a nonprofit hospital. Ibid. NCHC is not owned nor operated by a hospital facility and is instead an independent, freestanding, charitable organization that provides healthcare, education, and scientific advancement for the betterment of the community. If, arguendo, NCHC were considered a ‘modern hospital’ as described in Kuchera, which defendant does not concede, NCHC is not organized exclusively for hospital purposes as it also was organized for and offers educational services advancing those objectives as previously discussed in this brief.

Plaintiff points to NCHC’s Articles of Incorporation which notes in Section B they provide “supplemental health services, including hospital

services” for the proposition that NCHC is organized exclusively for hospital services. However, “whether 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 Center, *supra*, 221 N.J. at 239 *citing* Bieker v. Cmty. House of Moorestown, 169 N.J. 167, 177 (2001). In addition to health care services, NCHC’s Certification of Incorporation also outlines educational purposes which cannot be ignored. Using the fact sensitive analysis stated above, NCHC provides educational programing and resources for initiatives to educate the population on maternal health within the black community, AIDS awareness, the effect of Covid-19 on maternal health, pediatric health, and colorectal cancer awareness. NCHC providing healthcare services does not negate the fact that they also were organized to provide educational services and programs and do so. The New Jersey Courts have held that while nonprofits may provide a “wide range of services beyond their core purpose, it does not eviscerate their entitlement to immunity as long as the services or activities further the charitable objectives [the entities were] organized to advance.” Green v. Monmouth Univ., 237 N.J. 516, 531–32 (2019).

The Appellate Court correctly determined that despite providing health services NCHC was not organized exclusively for hospital purposes but rather educational as previously discussed. As such the lower court's decisions should stand.

CONCLUSION

For the above reasons, Defendant/Respondent asks this court to deny the Plaintiff/Petitioner's petition and affirm the Appellate Division's judgements.

Respectfully Submitted,
The Law Offices of James H. Rohlfing

Dated: November 22, 2024

BY: /s/ Samuel P. Reisen

Samuel P. Reisen

Attorneys for Defendant/
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