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A Case to Note Regarding Charitable Immunity

Jordan Broyles

Arkansas has long recognized the doctrine of charitable immunity, which protects assets held by a charitable entity under the policy that those assets should not be diminished if a person is injured by the entity's agent. *George v. Jefferson Hosp. Ass'n*, 337 Ark. 206, 987 S.W. 2d 710 (1999). Courts recognize that the doctrine favors charities, but permit the defense to be used because these entities exist for the purpose of providing services and benefit the public at large. *Fordyce v. Woman's Christian Nat'l Library Ass'n*, 79 Ark. 550 (1906), 561.

In *Masterson v. Stambuck*, the Arkansas Supreme Court adopted eight factors to judge whether an entity is a charitable organization and is immune. The factors are:

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 of the profit or surplus must be used for charitable or eleemosynary purpose;
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.

321 Ark. 391, 401, SW. 2d. 803, 809 (1995). These factors are not dispositive or exhaustive, and instead are intended to be illustrative. *George*, 337 Ark. at 212, 987 S.W. at 713 (1999). In practice, charitable entities move for summary judgment under the doctrine and offer as exhibits corporate documents and affidavits from company representatives. The aim is to establish as many of the eight aforementioned factors as possible and practicable.

In a recent Arkansas case, *Neal v. Davis Nursing Ass'n*, the defendant asserted charitable immunity and moved for summary judgment. The trial court found the evidence offered by defendant sufficient to demonstrate a *prima facie* case for charitable immunity and that the plaintiff did not provide "any evidence that refuted" the same. On appeal, the Arkansas Court of Appeals, after examining the same evidence, determined that a question of fact existed as to factors 3, 4, 5, 6, and 7. Thus, the decision was reversed.

Factor 3 – Goal to Break Even

Affidavits from a board member and the defendant's CPA demonstrated the "charitable business approach" resulted in annual losses. The Court of Appeals questioned whether the losses were charitable or the result of poor management using a typical business approach and held there to be a question of fact.

Factor 4 – Earning a Profit

Affidavits from a board member and the defendant's CPA demonstrated the entity operated at a loss since 2001 – the year it was organized as a charitable entity. The Court of Appeals questioned how the entity could operate at a loss for so many years and held there to be a question of fact as to whether the financial records were being manipulated. No evidence of manipulation was offered in the opinion.

Factor 5 – Profits Used for Charity Work

Affidavits by Davis company representatives established no existing profits since 2001. Corporate documents established that board members and officers serve without pay. Moreover, any profits could not inure to the benefit of individuals and would be reinvested in the continued operation of the entity. The Court of Appeals found a question of fact as to whether reinvestment in the continued operation of the entity qualified as being used for a charitable purpose.

Factor 6 – Dependence Upon Donations

Evidence demonstrated that the entity only received \$100 in donations in the years 2012 and 2013. The opinion is silent as to any other years. Acknowledging prior opinions stating that hospitals and nursing homes cannot be expected to operate primarily on donations due to the great expense of health care, the Court of Appeals held there to be a question of fact on this issue.

Factor 7 – Free Services

Affidavits established that the entity “writes off” the bills of individuals unable to pay. Moreover, the entity charged private-pay residents the “lowest rate allowed.” The Court of Appeals questioned whether forgiving debt was “equivalent to providing free services.” It also took issue with the overall amount of write-offs by the entity. Thus, the Court of Appeals held a question of fact existed on this factor.

Conclusion

In full disclosure, the full record on appeal was not examined in preparation of the instant case summary. On its face, however,

the opinion appears to provide that the defendant offered evidence to support all eight factors and the plaintiff did not rebut the same. On appeal, the Court of Appeals found questions of fact that the trial court could .

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