

FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2155-12T3

TERRY KUCHERA,

Plaintiff-Appellant,

v.

JERSEY SHORE FAMILY HEALTH CENTER,  
JERSEY SHORE UNIVERSITY MEDICAL  
CENTER, MERIDIAN HEALTH and MODERN  
REALTY CORPORATION,

Defendants-Respondents.

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Argued September 16, 2013 - Decided October 10, 2013

Before Judges Parrillo and Harris.

On appeal from the Superior Court of New  
Jersey, Law Division, Ocean County, Docket  
No. L-1513-10.

Steven L. Kessel argued the cause for  
appellant (Drazin & Warshaw, P.C.,  
attorneys; Mr. Kessel, on the brief).

Richard A. Amdur argued the cause for  
respondents (Amdur, Maggs & Shor, P.C.,  
attorneys; Mr. Amdur, on the brief).

PER CURIAM

Plaintiff Terry Kuchera appeals from the summary judgment  
dismissal of her negligence lawsuit against defendants Jersey

Shore Family Health Center (Family Health Center), Jersey Shore University Medical Center (University Medical Center) and Meridian Health, on the basis of the charitable immunity afforded by N.J.S.A. 2A:53A-7.<sup>1</sup> We affirm.

The essential facts are not in dispute. On Saturday, March 7, 2009, plaintiff was injured when she slipped and fell on an oily substance while attending a free eye screening conducted by the New Jersey Commission for the Blind and Vision Impaired (Commission) that was being conducted on the premises of the University Medical Center's Family Health Center. The Commission was holding its annual free eye screening event at the facility.

The Family Health Center is a subsidiary of the University Medical Center, a hospital within the Meridian Hospitals Corporation (Meridian),<sup>2</sup> and is located offsite from the University Medical Center. The Family Health Center is a non-profit, charitable, community outreach clinic that is open to the general public. It offers free care and sponsors multiple

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<sup>1</sup> The claim against Modern Health Realty was administratively dismissed for failure to prosecute.

<sup>2</sup> Meridian Hospitals Corporation is also referred to as the Jersey Shore University Medical Center. On May 28, 2003, the corporation filed a form to register this alternative business name with the New Jersey Department of Treasury, Division of Revenue.

free programs for the community regardless of the ability to pay.

The screening event was the only purpose the Family Health Center was being used for that day, and the only reason the building was open, since the facility is usually closed on weekends for its normal operation. The Commission organized and staffed the event. Although some of the volunteers were employees of either the University Medical Center or the Family Health Center, the screening event was outside their regular working hours and they were neither paid by defendants to participate nor compelled to volunteer. Diane Resnick, a registered nurse employed by the Family Medical Center, volunteered for the Commission's screening that day and actually helped plaintiff off the tiled floor after she fell.

According to Meridian's 1998 Restated Certificate of Incorporation, the purpose of the Corporation "is for scientific, educational and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code."<sup>3</sup> In

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<sup>3</sup> On February 7, 2002, the Internal Revenue Service determined that Meridian and its subordinate organizations were eligible for tax exempt status as an organization within section 501(c)(3) of the Code, based upon submitted documents stating Meridian's purposes and activities, and reciting:

In furtherance of its charitable purposes,  
the organization provides various health

(continued)

addition to establishing hospitals, Paragraph 2(c) states as a purpose "to promote, improve and protect the health and welfare of the general public in the communities served by the corporation," and Paragraph 2(d) refers to the purpose "to carry out such other acts and to undertake such other activities as may be necessary, appropriate or desirable in furtherance of, or in connection with or complementary to the conduct, promotion or attainment of the foregoing purposes."

As noted, defendants moved for summary judgment, maintaining that as charitable organizations under N.J.S.A. 2A:53A-7, they are immune from liability to plaintiff, who on the date of the accident, was admittedly a beneficiary of services performed on their premises. Plaintiff opposed the motion, arguing, in essence, that defendants were only entitled to the limited immunity under N.J.S.A. 2A:53A-8, as they are organized exclusively for hospital purposes. In granting summary judgment relief to defendants, dismissing plaintiff's complaint against them, the motion judge reasoned:

. . . this is an organization that has a mixed purpose, a mixed use as it is

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(continued)

care programs for medical training, research, and education and conducts activities established to improve the health of the community.

developed. And it is providing hospital services. It runs a hospital, absolutely. It has an educational component as a medical university. It provides charitable care by making this facility available to provide charitable care to the community. And . . . I don't see that they fall under the Section 8 proviso that this was a situation where they were exercising or they were operating solely as a, exclusively for hospital purposes. There's nothing in the record to indicate that they were operating exclusively for hospital purposes.

The purposes of the entity are obviously much broader than that. I've made findings of fact that they are broader than that and they encompass educational and charitable functions as, as well.

. . . .

This was not a hospital facility. This was a charitable facility set up that the hospital is gaining no benefit from. It's there for the use of the impoverished residents in the area to come in to get these beneficial services. It's an operation that is controlled by and undertaken by the Commission for the Blind. They set up and allowed the use of this facility for the Commission of the Blind. And I'm satisfied that they are entitled to the immunities that are present under Section 7 and Section 9, and, therefore, that then works as a bar to plaintiff's cause of action.

At issue on appeal then is whether the Family Health Center is an institution organized exclusively for hospital purposes so as to fall within the limited liability cap (\$250,000) of N.J.S.A. 2A:53A-8, or is a hybrid entity having, among other

things, a charitable or educational purpose, and therefore qualifying for the absolute immunity afforded by N.J.S.A. 2A:53A-7.

Section 7 of the New Jersey Charitable Immunity Act, N.J.S.A. 2A:53A-7 to -10 (Act), affords blanket immunity from tort liability to eligible organizations, and provides as follows:

No nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes 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; but nothing herein contained shall be deemed to exempt the said agent or servant individually from their liability for any such negligence.

[N.J.S.A. 2A:53A-7.]

Thus, under Section 7, to receive complete immunity, an organization must establish that it is a nonprofit corporation "that is organized exclusively for religious, charitable,

educational or hospital purposes, and promoted such purposes at the time of the incident." Palaez v. Rugby Laboratories, Inc., 264 N.J. Super. 450, 454 (Law Div. 1993). Further, the injured party bringing the negligence action must have been a beneficiary of its charitable services at the time of the accident, ibid., a fact stipulated to here.

Section 7's blanket immunity provision, however, is subject to the provision of Section 8, which exposes the entity to limited liability if it is organized exclusively for hospital purposes, and thus provides:

Any nonprofit corporation, society or association organized exclusively for hospital purposes shall be liable to respond to 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 . . .

[N.J.S.A. 2A:53A-8 (emphasis added).]

Furthermore, as Section 9 makes clear, it is the actual use and operation of the facility, rather than its formal designation, that determines whether it serves a charitable purpose within the intendment of Section 7. N.J.S.A. 2A:53A-9. And lastly, Section 10 directs that the Act is remedial and should "be liberally construed so as to afford immunity to the . . . 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.

In establishing charitable immunity under the Act, the burden of proof is on the party claiming the immunity to demonstrate that it has satisfied the statutory requirements. Snyder v. Am. Ass'n of Blood Banks, 144 N.J. 269, 305 (1996). The focus of this inquiry should be "on the essence of the entity itself." Ibid. (quoting Parker v. St. Steven's Urban Dev. Corp., 243 N.J. Super. 317, 327 (App. Div. 1990)). And when, as here, "there is no dispute as to the material facts, the determination of whether a non-profit corporation, society or association is organized for religious, charitable, educational or hospital purposes is a question of law for the court to decide." Palaez, supra, 264 N.J. Super. at 454; see also Bixenman v. Christ Episcopal Church Parish Home, 166 N.J. Super. 148, 150 (App. Div. 1979); Gould v. Theresa Grotta Ctr., 83 N.J. Super. 169, 171 (Law Div. 1964), aff'd o.b., 89 N.J. Super. 253 (App. Div. 1965).

Plaintiff contends that operating a teaching hospital and community health care clinics for the poor are services rendered by a hospital and therefore defendants, which provide both, are



organized exclusively for hospital purposes. We disagree, as the undisputed proofs demonstrate that, in addition to maintaining a hospital, defendants also provide the beneficial services listed in Section 7 and are, therefore, not engaged solely in hospital functions to the exclusion of educational and charitable purposes. These include defendants' role in providing training of physicians, nurses, laboratory students and radiology students as well as maintaining off-site facilities that serve a variety of functions, including the Family Health Center.

As to the former, the term "educational purposes" under Section 7 should be interpreted broadly, consistent with Section 10's legislative mandate, and should not be limited to strictly scholastic pursuits. Bloom v. Seton Hall Univ., 307 N.J. Super. 487, 492 (App. Div. 1998), certif. denied, 153 N.J. 405 (1998). As the motion judge correctly noted, University Medical Center has a clear mission to promote the educational development of future physicians, and provides educational services through a variety of platforms. As the summary judgment record demonstrates, students from different medical institutions come to the University Medical Center to fulfill their fellowship and residency requirements. In fact, in 2004, the entity changed its name from Jersey Shore Medical Center to Jersey Shore

University Medical Center to demonstrate its continued commitment to research and education. In addition, the University Medical Center has several offsite facilities that provide medical education and training to, as noted above, nurses, general physicians, laboratory physicians, and radiology students. Thus, given its commitment to, and provision of, medical training, education and research, undeniably the University Medical Center has an "educational" purpose within the intendment of N.J.S.A. 2A:53A-7, a fact even plaintiff concedes.

In evaluating whether an entity is "charitable" under the Act, the court, in Palaez, supra, determined that the definition used for "charitable purposes" in N.J.S.A. 54:4-3.6 for tax exempt status applies for charitable immunity as well. 264 N.J. Super. at 456 (citing Parker, supra, 243 N.J. Super. at 324)). Under N.J.S.A. 54:4-3.6, "charitable purposes" is defined as:

an application of property for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering and constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens on government.

[Palaez, supra, 264 N.J. Super. at 456 (quoting Presbyterian Homes of Synod v.

Division of Tax Appeals, 55 N.J. 275, 284  
(1970)).]

Although nonprofit status alone does not demonstrate that a corporation is organized for "charitable" purposes, Palaez, supra, 264 N.J. Super. at 455, defendants' 1998 Restated Certificate of Incorporation attests to the entities' multi-purpose mission, including, most notably for present purposes, charitable work.<sup>4</sup> Pursuant to this mission, the University Medical Center, through its subsidiary Family Health Center, provides charitable clinics for people who are uninsured, underinsured, without a primary care physician and/or who lack access to regular medical care. Indeed, on the day of the incident, consistent with this purpose, the Commission was providing a free eye examination clinic at the Family Health Center while the facility was closed for normal operation. The loaning of the Family Health Center facility to the Commission so that the agency could conduct a free eye screening is well within the charitable purpose to promote, improve and protect the health and welfare of the community.

Contrary to plaintiff's contention, the fact that an entity provides services that fall within both "hospital" and

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<sup>4</sup> Section (c) of the 1998 Restated Certificate of Incorporation expressly states one of the entity's purposes is "[t]o render necessary health care and related services to all who require such care regardless of their ability to pay. . . .

"charitable" functions does not mean the institution is organized "exclusively for hospital purposes," within the intendment of N.J.S.A. 2A:53A-8. Courts have recognized that an organization can have a "mixed" purpose and still be afforded blanket charitable immunity under N.J.S.A. 2A:53A-7. See Gould v. Theresa Grotta Ctr., 83 N.J. Super. 169 (Law Div. 1964), aff'd o.b., 89 N.J. Super. 253 (App. Div. 1965); cf. Kirby v. Columbian Inst., 101 N.J. Super. 205, 209 (Law Div. 1968) (implying that nonprofit corporations that are devoted to a combination of the enumerated purposes (religious, charitable, educational or hospital) will be afforded charitable immunity).

Gould, supra, involved a nursing home that employed a medical staff of doctors and nurses in addition to providing the charitable and beneficial functions of a nonprofit nursing home, which included providing "rehabilitative technique, physical restoration and social case work services" to "enable patients to recover from acute illnesses or accident, to normal living, and thereby to perpetuate the name of Theresa Grotta." 83 N.J. Super. at 172.

In holding that the nursing home was entitled to charitable immunity under N.J.S.A. 2A:53A-7, the court reasoned that the nursing home was a hybrid organization that provided its patrons with both hospital and charitable services, id. at 176, and that

an organization with such a mixed purpose is more properly recognized under section 7 than section 8. Ibid. The court found that this interpretation is consistent with the overall scheme of the Act and the legislative intent in enacting the statute, id. at 175, further reasoning:

It is highly probable that in many charitable institutions there may exist such an overlapping of functions as exists here, but if this factor alone could bring institutions such as defendant within the ambit of those used 'for hospital purposes,' there would be no reason for distinguishing between the various types of institutions, as is done throughout the statute and especially in section 9.

[Id. at 176.]

Undeniably, the Family Health Center has a charitable purpose in being a community outreach center that provides free charitable care to the community, is open to the public, and turns no one away because of an inability to pay. Even more to the point, the Family Health Center lends its facility to other entities, such as the Commission for the Blind, so that the community can be afforded other beneficial services, such as the free eye screening event, to improve its members' health and well-being. This was the very purpose for which the Family Health Center's facility was being used when plaintiff sustained her injury. We conclude that such a function is not a "hospital purpose." Indeed, it cannot reasonably be argued that on the

weekend, when the Family Health Center was not even open to conduct its own business, that it was providing a hospital service to members of the community. As such, it cannot be said that defendants are organized "exclusively for hospital purposes" within the meaning of N.J.S.A. 2A:53A-8, since the term "exclusively" "must necessarily import an absence of the additional charitable and beneficial functions," Gould, supra, 82 N.J. Super. at 176, that the Family Health Center has been shown to have engaged in.


Lastly, plaintiff argues that Hunterdon Med. Ctr. v. Twp. of Readington, 195 N.J. 549 (2008), a tax exemption case, provides a broader definition of hospital purposes that should be applied here to deny defendants protection under section 7. In delineating what would constitute a "hospital purpose" for tax exemption purposes, the Hunterdon Court included "any medical service that a hospital patient may require pre-admission, during a hospital stay (whether it is for less than a day or for one or more days), or post-admission." Id. at 572. However, plaintiff cites to no authority extending this inclusive definition to the charitable immunity context, and we discern no compelling rationale for its application here, particularly given the legislative mandate of liberal construction in favor of affording blanket immunity.

In any event, even if we were to apply Hunterdon's test for determining whether a particular use constitutes a legitimate core hospital task, the use of the Family Health Center on the day in question hardly meets the criteria. The Family Health Center was not serving primarily hospital patients and employees in allowing the Commission to conduct its free screening event as it was available to the general public and did not even require that an appointment be made through the hospital, let alone limit screenings to hospital patients. Nor was the free screening event conducted under the control and supervision of hospital medical staff or personnel since the Commission brought its own doctors to conduct the screenings and the only hospital employees present were there as unpaid volunteers. We therefore conclude that, even under Hunterdon, the functions performed at the Family Health Center on the day in question were not in the nature of a necessary and required hospital service.

For all these reasons, we find that defendants are entitled to complete immunity under N.J.S.A. 2A:53A-7, and therefore summary judgment dismissal of plaintiff's complaint was properly issued.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION