

# Ola v. YMCA of South Hampton Roads

November 4, 2005

## Virginia Supreme Court

This case thoroughly discusses the charitable immunity doctrine in Virginia.

The plaintiff was a 13 year old girl who was a member of the YMCA and had just finished using the swimming pool and was in the restroom when she was sexually assaulted. The assailant was a nonmember of the YMCA. The YMCA pled charitable immunity, the trial court sustained the plea, and this appeal followed.

The Court summarized the law of charitable immunity. It noted that Virginia gives immunity to a charity for the acts of its servants and agents but only if due care had been exercised in their selection and retention. It also noted that this immunity does not extend to strangers to the charity, but only to its beneficiaries. The Court noted that gross negligence voids the immunity, as does willful and wanton behavior.

To establish charitable immunity the charity first show both that its charter is charitable in nature, and secondly that it is being operated as a charity in accordance with that charter. After showing that it must then show that the plaintiff is a beneficiary of the charity. If the charter shows a charitable purpose there is a rebuttable presumption that it is being operated as a charity.

The trial court and the Virginia Supreme Court examined the charter and found that the YMCA was organized as a charitable organization and that it was being operated as a charitable organization. There is a 10 part test in footnote 1 that summarizes the factors to be considered. They also noted that the plaintiff was a beneficiary noting that she received a discounted membership. However, they then noted that even paying full price does not remove the person from the beneficiary category.