

Are rape allegations protected under SLAPP?

By David E. Frank

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The Supreme Judicial Court recently heard arguments in an anti-SLAPP case involving a 16-year-old who was sued for allegedly lying to police about a rape she claimed was committed by an adult neighbor.

In *Benoit v. Frederickson* (SJC No. 10187), the court will decide if Superior Court Judge Ernest B. Murphy applied the wrong legal standard when he denied the teen's special motion to dismiss.

Even though criminal charges were eventually dismissed against the man after the teen refused to testify at a probable cause hearing, her lawyer, Krista Green Pratt of Seyfarth Shaw in Boston, argued that reporting the rape to police was protected petitioning activity under G.L.c. 231, §59H.

Pratt, who also represents the teen's family, contended that once she demonstrated the lawsuit was based solely on the young woman's petitioning activities, the judge failed to place the burden on plaintiff Neil Benoit to prove that there was no reasonable factual support for the claims.

"The Superior Court's reasoning is contrary to the very purpose of the anti-SLAPP statute and is a gross misapplication of well-settled law," Pratt wrote in her brief. "By denying [the teen] the immunity provided by the anti-SLAPP statute, the court forced [her] to defend against claims that are based solely on [her] protected activity of filing a police report after Benoit raped her — exactly the type of claims the anti-SLAPP statute is intended to protect against."

Richard J. Yurko of Yurko, Salvesen & Remz in Boston, who argued the first anti-SLAPP case before the SJC in 1996 and submitted an amicus brief in *Benoit*, said Murphy and the



YURKO
Writes
amicus brief

Appeals Court simply got it wrong. The statute was designed to shield citizens from retaliatory lawsuits, he said, cautioning that a ruling in the plaintiff's favor would undo the long-standing procedures in place in anti-SLAPP litigation.

"If Judge Murphy's logic were adopted by the court, it would gut the anti-SLAPP statute," Yurko said.

"His position was contrary to what is now well-established jurisprudence at the [SJC], so we're hopeful that the court will honor its prior decisions."

Yurko said that Murphy conflated the SJC's previously established two-part test and wrongly considered the teen's motives when assessing the petitioning activity.

"He [combined] the two parts of the test together, and then he came up with his own independent approach to the statute," he said. "He appeared to make motivation for the petitioning activity potentially determinative, which is contrary to the law."

But the plaintiff's lawyer, Stephen J. Gordon of Worcester, countered in his brief that the SJC had previously held that actions for malicious prosecution are not barred by anti-SLAPP laws.

"This is because a malicious prosecution claim is not based on the petitioning activity alone," he said. "Its basis is other than, or in addition to, any petitioning activity. The [gravamen] of a malicious prosecution action is the lie."

Felonious allegations

In 2002, the defendant teen reported to police that Benoit had sexually assaulted her. She said he also had assaulted her on several prior occasions, including when she was 4 years old.

Police investigated her allegations and interviewed several fresh complaint witnesses, who corroborated the teen's claims. Benoit subsequently was arrested and charged with one count of forcible rape.

Based on the investigation, a detective recommended to the Worcester County District Attorney's Office that it pursue additional charges of indecent assault and battery, statutory rape and threatening to commit a crime. When the chief of the child abuse unit in the prosecutor's office agreed that there was probable cause to bring the additional charges, Benoit was arraigned.

According to the teen's brief, as the date for a probable cause hearing approached, she grew increasingly anxious about facing Benoit in court. When she did not testify at the hearing, the court dismissed the case for lack of prosecution.

In 2005, Benoit filed suit against the teen and her family alleging numerous violations, including malicious prosecution and false imprisonment.

The defendants filed a counterclaim against Benoit for sexual assault, rape, intentional infliction of emotional distress, false imprisonment, defamation and loss of consortium. Because all claims against the defendants stemmed from the teen's report to the police, they moved to dismiss.

After a series of procedural hearings, Judge Murphy denied the defendants' motion to dismiss. In February, the Appeals Court dismissed their appeal.

Forced defense

In his brief, Gordon said the defendants inaccurately claimed that the conduct in question arose solely out of the teen's filing of a false police report.

SJC
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“What a party cannot do and expect to claim immunity under the right to petition, is to make false statements,” he wrote. “False statements or lies or even careless false statements enjoy absolutely no protection, and especially do not enjoy constitutional protection.”

Gordon, who could not be reached for comment prior to deadline, said in his brief that a reversal of the lower court ruling would deny his client a constitutionally protected right to present his grievances to the court, “as well as steamrolling public policy against making false reports to the police of a crime.”

He added that the issue before the SJC is simply whether or not there was an abuse of discretion or error of law.

“This Court has clearly stated that [the statute] would exclude motions brought against meritorious claims with a substantial basis other than or in addition to the

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**— Stephen J. Gordon,
plaintiff’s counsel**

petitioning activities implicated,” he wrote. “Contrary to the arguments suggested by the defendants, ... this Court specifically states that claims for malicious prosecution are not precluded by the statute.”

But by denying the defendants the immunity provided under the anti-SLAPP

statute, Pratt wrote that the court forced them to defend against claims based solely on the protected activity of filing a police report. That conduct, she said, was exactly what the law was intended to protect against.

Pratt, who declined to comment, wrote that Murphy’s error was further compounded by the Appeals Court’s one-sentence order dismissing the appeal.

“The Appeals Court’s Order ... failed to apply the most recent and pertinent appellate authority,” she wrote. “And ... its conclusion that parties in the [defendants’] position must choose between two legitimate and important rights — their right to an interlocutory appeal and their right to bring counterclaims — is contrary to the very purpose of the anti-SLAPP statute and to this Court’s holding that special movants have the right to an interlocutory appeal.” 

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