

Nevada Court Grants Anti-SLAPP Motion by the Associated Press on Fair Report Grounds

By Chad R. Bowman and Jay Ward Brown

A Nevada state court on August 23 granted a special motion to dismiss brought by The Associated Press (AP) and one of its reporters under the state's anti-SLAPP statute. [Wynn v. The Associated Press](#).

The court dismissed a defamation claim by casino magnate Steve Wynn over an AP news report summarizing allegations of sexual assault in the 1970s that were made against him to police earlier this year. In so doing, the Court held that the AP's summary of a police complaint was subject to the fair report privilege, which is an absolute privilege under established Nevada law.

In what appears to be a ruling of first impression in interpreting the state's recently amended anti-SLAPP statute, the court additionally held that a news report that qualifies as a privileged fair report also constitutes a "good faith communication" for purposes of the statute. The AP is thus entitled to recover attorneys' fees accrued during the course of the case.

The Challenged Report

National news reports broke in late January implicating Mr. Wynn in a decades-long pattern of sexual misconduct at his casino properties, allegations that the billionaire denied but that led him to resign leadership roles at Wynn Resorts and the Republican National Committee. In the immediate aftermath of that controversy, the Las Vegas Metropolitan Police Department (LVMPD) in February released a public statement summarizing allegations by two women that Mr. Wynn had sexually harassed or assaulted them years earlier.

AP reporter Regina Garcia Cano filed a public records request for the police complaints. The LVMPD produced copies—redacted to protect information that would have identified the two alleged victims—to Ms. Garcia Cano. The AP then published her news report summarizing the two official records, which included the LVMPD's statements that it could not investigate the allegations because of Nevada's 20-year statute of limitations but that it had forwarded to Chicago authorities a report concerning the incident alleged to have occurred there.

The news report included both a description of the alleged assaults and the claim by the alleged Chicago victim that she had later given birth to Mr. Wynn's child in unusual circumstances in a gas station restroom—a claim Ms. Garcia Cano paraphrased in her article.

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Mr. Wynn asserted defamation based only on the portion of the article summarizing the incident that was alleged to have taken place in Chicago. He contended that the complainant was obviously "delusional" and that the AP's failure to quote verbatim the description of the alleged childbirth scenario rendered the news article unfair because readers would have found the allegation incredible if they had read the entire police case report.

The Special Motion

The AP and its reporter filed a special motion to dismiss under Nevada's anti-SLAPP statute, which as amended involves a two-step legal analysis.

The statute first requires a defendant to show that a claim "is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS sec. 41.660(3)(a). A "good faith communication" is defined in Nevada in relevant part as a "[c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood." NRS sec. 41.637(4). Once this "initial showing" has been met, the burden shifts to a plaintiff to demonstrate a likelihood of success on the merits of the claim. NRS sec. 41.660(3)(b).

Garcia Cano submitted an affidavit with the special motion and the AP defendants argued that, in light of the public controversy and reliance on official police records, the statute applied. AP then argued that Mr. Wynn could not meet his burden to show a probability of prevailing on the merits of his claim for two reasons: (1) the news article was an absolutely privileged fair report of the police record in question, and (2) he was a public figure who could not establish "actual malice" fault as a matter of law.

Mr. Wynn did not dispute that a published news report about allegations of sexual assault made to police about a public figure satisfies the first prong of the AP's initial burden under the anti-SLAPP statute, but argued that, because the news report was an unfair summary of the police record and purportedly published with actual malice, it was not "truthful."

The parties submitted a stipulation to the court deferring a dispute over whether Wynn was entitled to discovery on fault, agreeing that discovery was unnecessary to decide the first argument for dismissal on the merits—"the fair report privilege under the Nevada Anti-SLAPP Statute, a question of law"—and bifurcating that issue from actual malice. The Court entered that order, which provided that "[i]f the Court finds the reporting in this case not to be covered by the fair reporting privilege, the Court shall continue to a second hearing to consider the issue of fault."

AP argued that Nevada precedent, the Restatement, and courts around the country extend the fair report privilege to official government records generally, and to police complaints specifically, as within the scope of records legitimately of interest to the public.

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Fair Report Privilege

The focus of the briefing then became the fair report privilege. Mr. Wynn first argued that police reports—or at least those that do not lead to arrests or charges—fall outside the scope of the privilege recognized in Nevada, or around the country. He then urged that, even if the privilege applied, by failing to quote *verbatim* the description of the childbirth passage in the police complaint, the AP had failed to summarize the report fairly.

In reply, AP argued that Nevada precedent, the Restatement, and courts around the country extend the fair report privilege to official government records generally, and to police complaints specifically, as within the scope of records legitimately of interest to the public. AP also argued that the birth anecdote was a red herring because it was collateral to the alleged defamatory allegation in the police report—the alleged sexual assault. In addition, the anecdote was paraphrased in the report and far from “obviously exculpatory,” as Mr. Wynn had argued.

The Court’s Ruling and Order

At the conclusion of oral argument on the motion, Clark County District Court Judge Ronald Israel indicated his intention to grant the AP's motion. In the interval between argument and entry by the court of its opinion, Mr. Wynn submitted a letter to the court arguing that he should be entitled to take discovery regarding alleged actual malice before the court ruled.

Based in part on the stipulation the parties had entered into bifurcating consideration of the fair report and actual malice arguments advanced by the AP—and in part on the fact that the fair report privilege is absolute and cannot be defeated by a showing of actual malice under Nevada law—the court rejected that effort:

The Court finds that the reporter accurately described the Police reports, and therefore, the privilege is absolute. The Court further finds that the Nevada fair reporting privilege applies to the news report at issue and, therefore, pursuant to the parties’ stipulation, no hearing on the issue of fault is required. The Nevada Anti-SLAPP Statute applies in this case[.]

Through counsel, Mr. Wynn has said that he will appeal.

The AP and Ms. Garcia Cano were represented by AP’s in-house lawyers Karen Kaiser and Brian Barrett, and by Ballard Spahr attorneys Jay Ward Brown and Chad Bowman, in the firm’s Washington, D.C. office, and Joel Tasca and Justin Shiroff, in the firm’s Las Vegas office. Mr. Wynn was represented by L. Lin Wood, Nicole Jennings Wade, Jonathan D. Grunberg, and G. Taylor Wilson, all of L. Lin Wood, P.C., in Atlanta, and by Tamara Beatty Peterson and Nikki L. Baker, of Peterson Baker, PLLC in Las Vegas.