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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

M.K., a Minor, etc., Defendant and Appellant, v. JAMES SMITH, Plaintiff and Respondent.	B160120 (Super. Ct. No. MC013256)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frank Y. Jackson, Judge. Reversed and remanded.

Veatch, Carlson, Grogan & Nelson, Mark A. Weinstein, Craig H. Bell and Steve R. Segura for Defendant and Appellant.

Stephen C. Moore for Plaintiff and Respondent.

Respondent, James Smith, brought a defamation action against appellant M.K., a minor. Smith alleged that M.K., at eight years of age, falsely reported to the police that Smith had sexually molested her. When M.K.'s Code of Civil Procedure section 425.16[1] special motion to strike (anti-SLAPP[2] motion) was denied, this appeal followed. We hold that section 425.16 applies to Smith's defamation action, and that because the litigation privilege set forth in Civil Code section 47, subdivision (b) (Civil Code section 47(b)) bars Smith's defamation lawsuit, he cannot demonstrate a reasonable probability of success on the merits. We therefore conclude the trial court erred in denying M.K.'s anti-SLAPP motion. Accordingly, we reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

Smith alleges that in November and December 2000, M.K., then eight years of age, falsely accused Smith of "performing various sexually deviant acts" upon her person. These statements were made to the police. It is also alleged that at the time M.K. made each of the statements she knew them to be false. As a result of M.K's allegedly false accusations, Smith was arrested, booked and jailed.[3] On January 10, 2001, the

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[1] All further statutory references will be to the Code of Civil Procedure unless otherwise indicated.

[2] "SLAPP" stands for "strategic lawsuit against public participation." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1127.)

[3] To the complaint Smith attached police reports and other documents describing relevant events.

criminal complaint was dismissed pursuant to Penal Code section 1385.[4] On January 7, 2002, Smith filed suit against M.K. for defamation.[5]

M.K. filed an anti-SLAPP motion, urging that Smith's lawsuit, based on M.K.'s responses to questions posed to her by police officers investigating reports of child molestations by Smith, was the type of SLAPP lawsuit that can have a chilling effect on M.K.'s exercise of her constitutional rights to seek governmental redress, and which the anti-SLAPP statute was specifically designed to safeguard. M.K. also argued that because the defamation action was based on her statements to investigating officers, those statements were absolutely privileged under Civil Code section 47(b), such that Smith could not establish the "probability of success" necessary to avoid the striking of his complaint.

The trial court, relying primarily on *Begier v. Strom* (1996) 46 Cal.App.4th 877 (*Begier*), denied M.K.'s anti-SLAPP motion. In so doing, the court held, in essence, that minors who report sexual abuse are permissive reporters under Penal Code section 11166, subdivision (e)[6] of the Child Abuse and Neglect Reporting Act (Act) (Pen. Code, § 11164 et seq.), and that the specific privileges set forth within Penal Code section 11172, subdivision (a)[7] of the Act override all other privileges, including those contained

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[4] Penal Code section 1385, subdivision (a) provides that "[t]he judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading."

[5] The complaint set forth three causes of action for slander, based on three different publications.

[6] Penal Code section 11166, subdivision (e) provides: "Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9."

[7] Penal Code section 11172 provides as follows: "No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article. Any other

within Civil Code section 47(b). In other words, M.K., as a permissive reporter, was

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person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

"(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

"(c) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the State Board of Control for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

"This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

"(d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous."

entitled to assert the Penal Code section 11172, subdivision (a) qualified privilege, but not the absolute privilege set forth within Civil Code section 47(b). Implied in the trial court's order denying M.K.'s anti-SLAPP motion is that section 425.16 applies to defamation actions such as the one filed by Smith, and that Smith met his burden of demonstrating a reasonable probability of prevailing on the merits of his defamation claim.

II. ISSUES

M.K. contends the trial court erred in finding that the litigation privilege set forth in Civil Code section 47(b) was inapplicable, and that because Smith's defamation lawsuit is barred by the privilege, Smith cannot demonstrate a reasonable probability of prevailing on the merits of his defamation claim. She therefore concludes the trial court erred in denying her anti-SLAPP motion.

III. DISCUSSION

A. Appellate review of an order denying an anti-SLAPP motion.

An order denying a special motion to strike is appealable. (§ 425.16, subd. (j); § 904.1, subd. (a)(13).)

On appeal, we review the record de novo to determine, first, whether the defendant has made the requisite initial showing that the plaintiff's action arose from protected activity, and, if so, whether the plaintiff has demonstrated a reasonable probability of success. (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999.)

B. Section 425.16 requires a two-step process.

Section 425.16, subdivision (b)(1) provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech . . . in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

Section 425.16 provides a "two-step process for determining whether an action is a SLAPP. First, the court decides whether the defendant has made a threshold showing

that the challenged cause of action is one arising from protected activity. (§ 426.16, subd. (b)(1).) 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e).' [Citation.] If the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. [Citations.]" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.)

C. Smith's defamation claim is covered under the first step of the analysis.

The statutory definition of an "act in furtherance of a person's [constitutional] right of petition or free speech" includes "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law." (§ 425.16, subd. (e).) In the context of statements made in official proceedings, courts may grant anti-SLAPP motions without a separate showing that the underlying statement concerned an issue of public significance. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1113, 1116-1118.)

Implied in the trial court's order denying M.K.'s anti-SLAPP motion is that Smith's defamation action is one "arising from" protected activity. We agree. As discussed below, M.K.'s statements to the police accusing Smith of sexual molestation were made during an "official proceeding authorized by law." We therefore conclude that Smith's defamation action was subject to a special motion to strike pursuant to section 425.16.

D. Smith cannot satisfy the second step of the SLAPP analysis by showing a probability of prevailing on the merits.

Since Smith's cause of action arose from activities that are protected by the anti-SLAPP statute, Smith was required to demonstrate a probability of prevailing on the merits. (§ 425.16, subd. (b)(1); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) This means that Smith was required to state and substantiate a legally sufficient claim. (*Ibid*.)

M.K. contends Smith cannot show a reasonable probability of prevailing on the merits because his defamation cause of action is barred by the litigation privilege set forth in Civil Code section 47(b). We agree.

1. The Act does not apply to minors reporting claimed sexual abuse.

The Act requires "a mandated reporter" who "has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect" to make a report to certain designated agencies. (Pen. Code, § 11166, subd. (a).) "Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse" may make a report, but is not required to do so. (Pen. Code, § 11166, subd. (e).) These individuals are known as permissive reporters. (*Thomas v. Chadwick* (1990) 224 Cal.App.3d 813, 819-820, fn. 8.) Penal Code section 11172, subdivision (a) provides "[a]ny other person" who makes a child abuse report with qualified immunity.

Smith argues that an eight-year-old minor such as M.K. qualifies as "[a]ny other person" as that term is used in Penal Code sections 11166, subdivision (e) and 11172, subdivision (a), and that M.K. is therefore a permissive reporter under the Act. M.K. responds that the phrase "any other person" refers to third parties who report instances of known or suspected child abuse, not to children who report their own sexual child abuse. Review of the Act, together with application of the principles of statutory interpretation, persuade us that M.K. is not a permissive reporter under the Act.

"The fundamental goal of statutory interpretation is to ascertain the Legislature's intent to effectuate the purpose of the law, focusing not only on the words used but also the objectives of the statute, the evils to be remedied and the legislative history of the statute. [Citation.]" (*Thomas v. Chadwick, supra,* 224 Cal.App.3d at p. 821.)

The evil to be remedied, i.e., the abuse of children, is an evil that has tragic consequences for both the child victim and our society.[8] (Hale & Underwood, *Child*

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[8] "Child abuse and neglect are not modern occurrences. Greek and Roman records suggest the predominance of child abuse during those times. 'Because their fathers could

Abuse: Helping Kids Who Are Hurting (1991) 74 Marq. L.Rev. 560, 561 ["Victims of child abuse and neglect exhibit devastating consequences as adults. Statistically, these individuals have lower IQs, a higher frequency of suicide attempts and more alcohol-related problems. Furthermore, they are significantly more prone to become abusers themselves."], fns. omitted.)

In 1962, the publication of "The Battered Child Syndrome" by Dr. C. Henry Kempe drew wide public attention to the problem of child abuse for the first time. (Singley, *Failure To Report Suspected Child Abuse: Civil Liability of Mandated Reporters* (1998) 19 J. Juv. L. 236, 238.)

In 1963, California, recognizing the necessity for early detection and reporting of child abuse, became the first state to adopt a mandated child abuse reporting statute when

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sell, abandon, or maltreat them, Roman children occupied the status of chattels.' Witness accounts throughout history provide vivid stories of how children have been ruthlessly tortured, whipped, burned, disfigured, and even killed." (Richardson, *Physician/Hospital Liability for Negligently Reporting Child Abuse* (2002) 23 J. Legal Med. 131, 132, fns. omitted.) "Even as late as the mid-1800s, infanticide was accepted as a means to control population size and to rid the population of people with birth defects. Children were sold into slavery or used for cheap labor. Abusive practices were common in society at large and parents were influenced by these practices." (Marrus, *Please Keep My Secret: Child Abuse Reporting Statutes, Confidentiality, and Juvenile Delinquency* (1998) 11 Geo. J. Legal Ethics 509, 513, fns. omitted.) The first reported criminal cases involving child abuse in the United States date back to the late 1600s. However, it was not until 1874 that the first documented civil child protection case appeared. It was this case that prompted concerned citizens to organize the New York Society for the Prevention of Cruelty to Children. (Trost, *Chilling Child Abuse Reporting*: *Rethinking The CAPTA Amendments* (1998) 51 Vand. L.Rev. 183, 189.) By 1905, 400 additional organizations had been formed to prevent cruelty to children or to intervene upon discovery of cruelty. (Freiman, *Unequal And Inadequate Protection Under The Law: State Child Abuse Statutes* (1982) 50 Geo. Wash. L.Rev. 243, 244.) These organizations were instrumental in calling attention to the maltreatment of children, in bringing criminal complaints against perpetrators, and in placing thousands of neglected children in institutional care. (Trost, *Chilling Child Abuse Reporting*: *Rethinking The CAPTA Amendments, supra,* 51 Vand. L.Rev. at p. 189.)

it added former section 11161.5[9] to the Penal Code.[10] The statute required physicians and surgeons to report suspected instances of child abuse to designated local agencies when it appeared to these professionals "from *observation* of the minor that the minor may have been a victim" of child abuse. "Physicians were targeted . . . because of the assumption that they were more likely than other groups to come in contact with injured children." (Trost, *Chilling Child Abuse Reporting*: *Rethinking The CAPTA Amendments, supra,* 51 Vand. L.Rev. at p. 192, fn. 47.)

In 1974, Congress enacted the Child Abuse Prevention and Treatment Act of 1974. (Pub.L. No. 93-247 (Jan. 31, 1974) 88 Stat. 4; codified in 42 U.S.C. §§ 5101 et seq.) "Congress intended the federal act to facilitate state programs whose objective is to prevent, identify and treat victims of child abuse. [Citation.]" (*Thomas v. Chadwick, supra,* 224 Cal.App.3d at p. 825.) Toward that goal federal grants were authorized, conditioned on the requirement that states have laws providing "for the reporting of known or suspected instances of child abuse and neglect." (Former C.F.R. § 1340.3-3(d)(2)(i).) The requirement was "deemed satisfied if a State requires *specified persons* by law, and has a law or administrative procedure which requires, allows, or encourages *all other citizens*, to report known or suspected instances of child abuse and neglect to

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9 Former Penal Code section 11161.5 read as follows: "In any case, in which a minor is brought to a physician and surgeon for diagnosis or treatment, or is under his charge or care, and it appears to the physician and surgeon from observation of the minor that the minor may have been a victim of a violation of Section 273a, he shall report such fact by telephone and in writing to the head of the police department of the city or city and county, if the observation is made in a city or city and country, or to the sheriff, if the observation is made in unincorporated territory, or to the nearest child welfare agency offering child protective services. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries. [¶] The physician and surgeon shall not be required to report as provided herein if in his opinion it would not be consistent with the health, care, or treatment of the minor." (Former Pen. Code, § 11161.5.)

10 By 1967 every state had some type of reporting statute in place. (Singley, *Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters, supra,* 19 J. Juv. L. at p. 238.)

one or more properly constituted authorities with the power and responsibility to perform an investigation and take necessary ameliorative and protective steps." (*Ibid.*, italics added.)

In 1975, our Legislature enacted former Penal Code 11161.6, California's first permissive reporting statute. It allowed, but did not require, "probation officer[s]" who "observe" suspected child abuse to make a report to certain specified agencies. (Former Pen. Code, § 11161.6.)

In 1976, former Penal Code section 11161.6 was amended to provide as follows: "In any case in which a minor is *observed* by a probation officer *or any person other than a person* described in Section 11161.5 and it appears to the probation officer or person *from observation of the minor* that the minor has a physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of section 273a has been inflicted upon the minor, he *may* report such injury to the agencies designed in Section 11161.5. [¶] No probation officer or person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be proven that a false report was made and the probation officer or person knew or should have known that the report was false." (Former Pen. Code, § 11161.6.) "Legislators expected that by including lay people as reporters and providing protection for people against possible liability for making reports, the system would be more likely to uncover ongoing child abuse. Neighbors, relatives and friends might be privy to private information or observations which professionals would miss." (Marrus, *Please Keep My Secret: Child Abuse Reporting Statutes, Confidentiality, and Juvenile Delinquency, supra,* 11 Geo. J. Legal Ethics at p. 515, fns. omitted.)

Also in 1976, our Supreme Court held in *Landeros v. Flood* (1976) 17 Cal.3d 399 (*Landeros*) that former Penal Code section 11161.5 was ambiguous with respect to the state of mind of a physician accused of failing to make a required report of child abuse. The court opined that to prove actionable failure to report, a battered child would be required to show that the physician actually "observed" the injuries and formed the

opinion that they were intentionally inflicted upon the child. (*Landeros v. Flood, supra,* 17 Cal.3d at p. 415.)

In November 1978, the state Department of Justice estimated that only about 10 percent of all cases of child abuse were being reported. (*Stecks v. Young* (1995) 38 Cal.App.4th 365, 371.) Faced with this reality, a growing population of abused children and the need to comply more fully with federal guidelines, in 1980 the Legislature repealed former Penal Code sections 11161.5 and 11161.6, and enacted the Child Abuse Reporting Law (Pen. Code, § 11165 et seq.), "a comprehensive scheme of reporting requirements 'aimed at increasing the likelihood that child abuse victims are identified.' [Citations.]" (*Stecks v. Young*, *supra*, 38 Cal.App.4th at p. 371.)

The 1980 version of the Act inserted the element of "knowledge" into the required and permissive reporting provisions so that specified individuals would be required to report, and others would be authorized to report, not only direct observations of child abuse, but also "knowledge" of suspected child abuse obtained directly from the child and/or from other sources. (Pen. Code, § 11166, subds. (a)(c);[11] 65 Ops.Cal.Atty.Gen. 345 (1982).) In addition, the reporting standard was revised to require reporting whenever there exists a "reasonable suspicion" of child abuse. (*Krikorian v. Barry*

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11 In 1980, Penal Code section 11166, subdivision (a) read as follows: "Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she reasonably suspects has been the victim of child abuse shall report such suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, 'reasonable suspicion' means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse." Subdivision (c) provided that "[a]ny person who had knowledge of or observes a child whom he or she reasonably suspects has been a victim of child abuse may report such suspected instance of child abuse to a child protective agency."

(1987) 196 Cal.App.3d 1211, 1217.) These changes were made to address the *Landeros* court's determination that the existing reporting statute was ambiguous.[12] (*Ibid*.)

Simultaneously, permissive reporters were granted qualified immunity.[13] It was believed that "'extending the limited civil and criminal immunity to "*any other person* making a report of child abuse or molestation" [would] encourage members of the general public to report known cases of child abuse,' and that "'[t]he limitation on the immunity for false or negligent reports [was] necessary to prevent a vindictive former spouse or neighbor from making a knowingly false report.'" (*Storch v. Silverman* (1986) 186 Cal.App.3d 671, 680, citing State Bar of Cal., Rep. on Assem. Bill No. 2497 (1979-1980 Reg. Sess.) p. 2.); State Bar of Cal., Com. on Juv. Justice, letter to Sen. Omer L. Rains, Feb. 20, 1980 [opining that providing complete immunity to permissive reporters was unwarranted because it would allow "third persons (e.g., a vindictive neighbor or relative) to make a malice-based report and be totally immune from civil or criminal liability."].)

Following the 1980 enactment, our Legislature continuously amended the reporting provisions as experience revealed areas in need of repair. In 1987, the Legislature once again recast the law, renaming it the Child Abuse and Neglect Reporting Act. (Pen. Code, § 11164, subd. (a), added by Stats.1987, c. 1444, § 1.5.)

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12 The Legislature made clear that in repealing former Penal Code sections 11161.5, 11161.6, and in enacting the 1980 Child Abuse Reporting Law it did not intend "to alter the holding in the decision of [*Landeros*], which imposes civil liability for a failure to report child abuse." (See Historical and Statutory Notes, 51C West's Ann. Pen. Code (2000 ed.) foll. § 11165, p. 566.)

13 Former Penal Code section 11172, subdivision (a) provided, in relevant part: "No child care custodian, medical practitioner, nonmedical practitioner, employee of a child protective agency, or commercial film and photographic print processor who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false."

In its current form, the Act defines a "child" as "a person under the age of 18 years." (§ 11165.) "Child abuse or neglect" is defined generally as "physical injury inflicted by other than accidental means upon a child by another person." (Pen. Code, § 11165.6.) It also means sexual abuse, which includes sexual assault and sexual exploitation. (Pen. Code, § 11165.1.)

The purpose and intent of the Act "is to protect children from abuse and neglect." (Pen. Code, § 11164, subd. (b).) All persons participating in the investigation of suspected child abuse or neglect are required to "consider the needs of the child victim," and to "do whatever is necessary to prevent psychological harm to the child victim." (*Ibid.*) The objective of the Act "has been to identify victims, bring them to the attention of the authorities, and, where warranted, permit intervention." (*Stecks v. Young, supra,* 38 Cal.App.4th at p. 371; see also *Storch v. Silverman, supra,* 186 Cal.App.3d at p. 678 [legislative scheme was "designed to encourage the reporting of child abuse to the greatest extent possible to prevent further abuse."].)

Thirty-four statutorily enumerated classes of individuals are identified as "mandated reporters" under Penal Code section 11165.7 of the Act. These individuals are *required* to "make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, *has knowledge of or observes a child* whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect." (Pen. Code, § 11166, subd. (a), italics added.) The report must be made "immediately or as soon as is practicably possible by telephone," and the reporter is required to "prepare and send a written report thereof within 36 hours of receiving the information concerning the incident." (*Ibid*.) Failure to comply with the reporting requirements is punishable as a misdemeanor. (Pen. Code, § 11166, subd. (b).)

Permissive reporters are described in Penal Code section 11166, subdivision (e) of the Act as follows: "*Any other person who has knowledge of or observes a child* whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may

report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9."[14] (Pen. Code, § 11166, subd. (e), italics added.)

"[I]mmunity is a key ingredient in maintaining the Act's integrity." (*Stecks v. Young*, *supra*, 38 Cal.App.4th at p. 375.) Penal Code section 11172, subdivision (a) provides that "[n]o mandated reporter shall be civilly or criminally liable for any report required or authorized by this article." The absolute immunity conferred on mandated reporters was granted to "obviate the chilling effect the spectre of civil lawsuits would have upon a reporter's willingness to become involved." (*Thomas v. Chadwick, supra,* 224 Cal.App.3d at p. 821; see also *Storch v. Silverman, supra,* 186 Cal.App.3d at p. 677 [broad immunity provided by the Legislature in recognition of the burden placed upon those professionals required to report instances of suspected and known child abuse].)

With respect to permissive reporters, Penal Code section 11172, subdivision (a) grants only qualified immunity. "*Any other person* reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused." (Italics added.)

Smith, focusing on the words "any other person" as used in Penal Code sections 11166, subdivision (e) and 11172, subdivision (a) contends the Legislature obviously meant to include eight-year-old minors as permissive reporters. To resolve the issue, we look first to the words of the statute. "When the language is clear and there is no uncertainty as to the legislative intent, we look no further and simply enforce the statute

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14 The agencies referred to in Penal Code section 11165.9 include "any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department." (Pen. Code, § 11165.9.)

according to its terms." (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387-388.)

The language of the earlier versions of the reporting statutes is plain. Mandated reporters were required to report (former Pen. Code, § 11161.5), and permissive reporters (former Pen. Code, § 11161.6.) were allowed to report, child abuse if the reporter "observed" suspected abuse. The word "observe" means "1. To perceive; notice. 2. To watch attentively: *observe a child's behavior*." (American Heritage Dict. (2d college ed. 1982) p. 858.) Sexual abuse is inflicted upon a child. The abuse is experienced, not observed. We therefore conclude that the earlier versions of the mandated and permissive reporting provisions referred to third parties and not to children reporting their own alleged abuse.

Current versions of the reporting provisions include, in addition to individuals who "observe" suspected child abuse, individuals who have "knowledge of" a child whom the reporter "knows or reasonably suspects has been a victim of child abuse or neglect." (Pen. Code, § 11166, subds. (a), (e).) The word "knowledge is defined as: "1. The state or fact of knowing. 2. Familiarity, awareness, or understanding gained through experience or study. 3. The sum or range of what has been perceived, discovered, or learned. 4. Learning; erudition." (American Heritage Dict. (2d college ed. 1982) p. 705.) It could be argued that a child "has knowledge of" his or her own abuse when he or she experiences it, and thus qualifies as a permissive reporter.

We are mindful, however, that we do not construe statutes in isolation, but rather read every statute with reference to the entire scheme of law of which it is a part so that the whole may be harmonized and retain effectiveness. (*People v. Pieters* (1991) 52 Cal.3d 894, 899.) Nothing contained within the Act suggests that any of its "reporting" provisions are applicable to minors alleging sexual abuse. The Act's definition of "child" (Pen. Code, § 11165), definitions relating to mandating reporting and training (Pen. Code, § 11165.7), provision concerning investigating a child abuse complaint by a parent or guardian against a school employee (Pen. Code, § 11165.14), duty to report provisions (Pen. Code, § 11166) and the "required information" provisions relating to reports (Pen.

Code, § 11167) all suggest that "reporters of child abuse" subject to the Act are third party reporters. The Act describes three classes of individuals, mandated reporters, permissive reporters and the protected class, children. The language of the Act makes clear that it applies to the *reporting* of suspected child abuse and statements made in connection therewith, and not statements made by the protected class to their caregivers and to authorities investigating a subsequently filed complaint.

Our conclusion is bolstered by the legislative history of the Act which establishes that mandated reporters are third parties who, because of their professions, come into close contact with children, and thus are in an ideal position to report suspected child abuse. What Penal Code section 11166, subdivision (e) evidences is the Legislature's concern that other individuals who come into contact with children be encouraged to report known or suspected child abuse. It seems clear that our Legislature was aware that friends, relatives, and neighbors file the largest number of child abuse reports (Freiman, *Unequal And Inadequate Protection Under The Law: State Child Abuse Statutes, supra,* 50 Geo. Wash. L.Rev. at p. 259), and that in recognition of this fact section 11166, subdivision (e) was enacted as a catchall provision necessary to encourage these individuals, as well as other third parties, to report known or suspected instances of child abuse.[15]

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15 Smith, pointing to Civil Code section 48.7, which prohibits a person charged with child abuse from bringing a defamation action against a minor and others while criminal charges are pending, contends that our Legislature must have contemplated meritorious actions for defamation against minors reporting child sexual abuse. We disagree. Section 48.7 was enacted "to prevent a person accused of crimes against children from intimidating victims, witnesses and parents by filing or threatening to file a civil slander or libel action" while the criminal action was pending. (Sen. Republican Caucus, 3d reading analysis of Assem. Bill No. 42, (1981-1982 Reg. Sess.) as amended June 17, 1981, p. 2.) The proponents of the legislation argued that the legislation was necessary because "the tactic of bringing a defamation action may produce a chilling effect on the willingness of persons to participate in the prosecution of actual crimes against the minors." (*Ibid*.) We view the enactment of Civil Code section 48.7 as an acknowledgement of the litigious nature of our society, and recognition of the *possibility*

At least one legal commentator has reached the same conclusion. "Child abuse laws, as most laws concerning children in our society, stem from society's need to protect children, rather than from a concern about children's rights. If an adult is assaulted, he or she is more likely to be capable of reporting the incident to the authorities. Society's view of children, however, is that a child may be too young to protect himself or too frightened to report the abuse to the appropriate authorities." (Marrus, *Please Keep My Secret: Child Abuse Reporting Statutes, Confidentiality, and Juvenile Delinquency, supra,* 11 Geo. J. Legal Ethics at p. 514.)[16] "Because of this reasoning, it is unlikely . . . that when legislators expanded the reporting statutes to include everyone as a discretionary or mandatory reporter that they meant to include the abused child in that category. As stated, the reporting statutes were first developed because of the belief that children need added protection. It is unrealistic to expect the abused child to self report the abuse. If all children were capable of doing this, there would be no need for reporting statutes. Children would call Child Protective Services on their own and the state would be able to intervene to protect the child." (*Id*. at p. 514, fn. 24.)

The language of Penal Code section 11166, subdivision (e), together with the structure and legislative history of the statute, convince us that the phrase "[a]ny other person" used in sections 11166, subdivision (e) and 11172, subdivision (a) means third persons who acquire knowledge, or observe injuries or other signs indicating that a child has been abused. Our conclusion is consistent with the purpose of the Act which is to "combat child neglect and the physical, emotional and sexual victimization of children." (*Planned Parenthood Affiliates v. Van De Kamp* (1986) 181 Cal.App.3d 245, 255; 58

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that defamation actions could be filed against minors, including those of tender years, as tactical maneuvers.

[16] The author notes that Michigan is the only state to include children as reporters, and opines that children were included "to encourage a child who observed another child being abused to feel comfortable reporting the abuse to the appropriate authorities." (Marrus, *Please Keep My Secret: Child Abuse Reporting Statutes, Confidentiality, and Juvenile Delinquency, supra,* 11 Geo. J. Legal Ethics at p. 514, fn. 24.)

Ops.Cal.Atty.Gen. 824, 828 (1975) [opining "entire legislative scheme in the area of child protection is aimed at discovering more cases and preventing serious harm by taking remedial action."].)

2. *Begier* is inapplicable.

The trial court, citing *Begier*, held that because Smith alleged that M.K. made a false report to the police, M.K.'s statements were not privileged under the Act. *Begier* is, however, inapplicable. In that case, the plaintiff filed an action against his former wife for malicious prosecution and intentional infliction of emotional distress based upon her alleged conduct in filing a false police report accusing plaintiff of molesting the couple's daughter and repeating that charge in the couple's dissolution action. (*Begier, supra,* 46 Cal.App.4th at p. 880.) The trial court sustained the wife's demurrer as to the intentional infliction of emotional distress cause of action, but overruled the demurrer as to the malicious prosecution count. (*Ibid*.) The Court of Appeal affirmed the judgment as to the cause of action for malicious prosecution, but reversed as to the cause of action for intentional infliction of emotional distress. (*Id*. at p. 888.) The *Begier* court held that the alleged false accusations within the dissolution action were privileged under Civil Code section 47(b). (*Begier, supra*, 46 Cal.App.4th at p. 882.) The court also held, however, that even if the filing of a false child abuse police report is subject to the litigation privilege found in Civil Code section 47(b), the Legislature's direction in Penal Code section 11172 that a person who knowingly makes a false report of child abuse "is liable for any damages caused" creates a limited exception to the privilege. (*Begier, supra,* 46 Cal.App.4th at pp. 883-885.)

In reaching its decision, the *Begier* court discerned within the Act "a legislative effort to balance, on the one hand, the public interest in ferreting out cases of child abuse so that the child victims can be protected from harm and, on the other hand, the policy of protecting the reputations of those who might be falsely accused. [Citation.] The Legislature has struck that balance by withholding immunity from those who knowingly make false reports of child abuse. If we were to hold that same conduct privileged under

Civil Code section 47, we would essentially nullify the Legislature's determination that liability should attach." (*Begier, supra,* 46 Cal.App. 4th at p. 885, fn. omitted.)

The crucial distinction between *Begier* and the instant case is that unlike the former wife in *Begier*, M.K. is not a permissive reporter under the Act. Accordingly, she is entitled to assert privileges found outside the Act, including the privilege embodied within Civil Code section 47(b).

3. M.K. is entitled to assert the absolute litigation privilege set forth in Civil Code section 47(b).

M.K. contends her statements to the police are absolutely privileged pursuant to Civil Code section 47(b) because her statements were made in an "official proceeding authorized by law." We agree.

Civil Code section 47(b) provides an absolute immunity for any communication made "[i]n any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law . . . ."

The privilege "promotes the effectiveness of judicial proceedings by encouraging 'open channels of communication and the presentation of evidence' in judicial proceedings. [Citation.] A further purpose of the privilege is to assure utmost freedom of communication between citizens and public authorities whose responsibility is to investigate and remedy wrongdoing.' [Citations.]" (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 213.) The privilege "is given a broad application in furtherance of the public policy it is designed to serve." (*Devis v. Bank of America* (1998) 65 Cal.App.4th 1002, 1010.)

California appellate courts are split on the issue of whether the absolute privilege of Civil Code section 47(b) shields testimony or statements to officials conducting criminal investigations. (*Beroiz v. Wahl* (2000) 84 Cal.App.4th 485, 495.) The majority of California courts follow *Williams v. Taylor* (1982) 129 Cal.App.3d 745 (*Williams*), which concluded that the absolute privilege shielded the report to the police by a president of a car dealership of what he believed to be criminal activity conducted by a

discharged employee. (See, e.g., *Beroiz v. Wahl, supra,* 84 Cal.App.4th at pp. 495, 489-490 [statements by residents of a condominium complex initiating a criminal investigation against plaintiffs in Mexico absolutely privileged]; *Cabesuela v. Browning-Ferris Industries of California, Inc.* (1998) 68 Cal.App.4th 101, 112 [company's communication to police accusing terminated employee of threat of violence protected by absolute privilege of Civil Code section 47(b) even if the report was made in bad faith]; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 781-783 [law firm's letters to third persons in connection with the firm's investigation preparatory to filing a complaint with the Attorney General held rationally connected to anticipated litigation]; *Passman v. Torkan* (1995) 34 Cal.App.4th 607, 616-620 [letter by party to district attorney's office recommending investigation and prosecution of opposing party subject to absolute privilege of Civil Code section 47(b)]; *Hunsucker v. Sunnyvale Hilton Inn* (1994) 23 Cal.App.4th 1498, 1502-1505 [absolute privilege of Civil Code section 47(b) applied where hotel management called police upon being informed by a maid that a customer was seen brandishing a gun]; *Cote v. Henderson* (1990) 218 Cal.App.3d 796, 806 [report of rape to police was absolutely privileged under Civil Code section 47(b)]; *Kim v. Walker* (1989) 208 Cal.App.3d 375, 383 [attorney's communications to plaintiff's parole agent were absolutely privileged]; *Johnson v. Symantec Corp.* (N.D.Cal.1999) 58 F.Supp.2d 1107, 1113 [police reports were absolutely privileged under Civil Code section 47(b)(3)]; *Forro Precision, Inc. v. Intern. Business Machines* (9th Cir. 1982) 673 F.2d 1045, 1056 [communications by IBM officials to police were absolutely privileged].)

The other side of the split is represented by *Fenelon v. Superior Court* (1990) 223 Cal.App.3d 1476 (*Fenelon*) which holds that a knowingly false police report is not absolutely privileged, as the police department is not a quasi-judicial body. (*Id*. at pp. 1478, 1483). According to the *Fenelon* court, false police reports are entitled to only the qualified privilege for communications to interested parties. (*Id*. at p. 1483.) *Fenelon*, however, has been criticized by cases following *Williams* on the basis that "the constitutional and procedural safeguards governing California's judicial system undermine the concern that applying the absolute privilege to police reports endangers

the rights of the reported wrongdoer." (*Beroiz v. Wahl, supra*, 84 Cal.App.4th at pp. 495-496.) While the *Williams* court recognized the importance of communication between citizens and the police, and that effective investigation requires an open channel of communication that would not be possible if a qualified rather than an absolute privilege applied (*Williams, supra,* 129 Cal.App.3d at pp. 753-754), the *Fenelon* court feared abuse of the absolute privilege.

We agree with the *Williams* court, and conclude that police investigations are official proceedings within the meaning of the absolute official proceeding privilege of Civil Code section 47(b). Thus, we conclude that M.K.'s statements to the police that Smith sexually abused her are absolutely privileged.

Allowing minors such as M.K. to assert the absolute privilege found in Civil Code section 47(b) promotes the principal purpose of the statute, which "is to afford litigants and witnesses [citation] the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions. [Citations.]" (*Silberg v. Anderson, supra,* 50 Cal.3d at p. 213.) It also promotes California's interest in identifying child abuse victims. (*Storch v. Silverman, supra,* 186 Cal.App.3d at p. 676 ["The state has a strong interest in the prevention of child abuse. Since the child abuser often repeats the abuse, identification of a victim offers an opportunity for intervention by authorities. However, identification is often difficult due to the natural characteristics of the child and the private or special circumstances in which the abuse may occur."], fn. omitted.)

IV. CONCLUSION

We hold that minors who report sexual abuse to the police do not qualify as permissive reporters under the Act, and that such minors are, therefore, entitled to assert the absolute litigation privilege set forth in Civil Code section 47(b).[17] In light of our holding, it is clear that Smith cannot demonstrate a reasonable probability of prevailing on his defamation claim. We therefore conclude the trial court erred in denying M.K.'s anti-SLAPP motion.

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[17] In view of this conclusion, we need not address the parties' remaining contentions.

V. DISPOSITION

The superior court is directed to set aside its order denying appellant's section 425.16 motion to strike and to issue a new and different order granting the motion.[18] Appellant is awarded the costs of this appeal.

NOT FOR PUBLICATION

_____, P.J.
BOREN

We concur:

_____, J.
NOTT

_____, J.
DOI TODD

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[18] The trial court is directed on remand to consider M.K.'s request for attorneys' fees and costs as the prevailing party on the special motion to strike. (§ 426.16, subd. (c).)