

Children's Law Center of Indiana



CHINS/CHILD ABUSE REPORTING

5/10/2018

In **Gresk for Estate of VanWinkle v. Demetris**, 96 N.E.3d 564 (Ind. 2018), the Indiana Supreme Court held that the pediatrician's child abuse report was not an exercise of her right of petition or free speech for the purposes of the anti-Strategic Lawsuits Against Public Participation (anti-SLAPP) statute, and that her child abuse report was not a matter of public concern for the purposes of the anti-SLAPP statute. The Court reversed the Court of Appeals opinion and remanded the matter.

Mother and Father have two children, one of whom has several medical conditions that require procedures and medications. The medically complex child's doctor became concerned that Mother was exaggerating the child's symptoms, recommended admitting the child for observation, then contacted Dr. Demetris, a board certified doctor in pediatrics and child abuse pediatrics, and relayed her concerns that the child was a victim of medical child abuse. After several days of observation, Dr. Demetris concluded that the child suffered from medical child abuse, and a hospital social worker reported Dr. Demetris's diagnosis to DCS. DCS removed both children and filed a CHINS petition. The Children were ultimately returned to the parents, but because Mother was a neonatal intensive care unit nurse, DCS conducted a Child Care Worker Assessment Review and substantiated the allegations of abuse. DCS dismissed the CHINS petitions, and Mother and Father sought an administrative appeal of the substantiation. An administrative law judge substantiated the allegations as to the medically complex child only, but this was later reversed by the trial court. Mother and Father filed a medical malpractice complaint with the Indiana Department of Insurance. Dr. Demetris requested dismissal, arguing that her report to DCS was protected by Indiana's anti-SLAPP statute. The trial court judge agreed, finding that "Dr. Demetris spoke upon a matter of public concern or public interest when she reported her diagnosis of medical child abuse to [DCS]" and therefore her report was protected speech covered under the statute." *Id.* at 567. The Court of Appeals reversed and found that the anti-SLAPP statute did not apply in Gresk v. Demetris, 81 N.E.3d 645, 655 (Ind. Ct. App. 2017), *vacated*. Transfer was granted of the Indiana Supreme Court.

Indiana's anti-SLAPP statute is not applicable in this case; making a confidential report of child abuse or neglect is not a matter of public interest, free speech, political advocacy, free exchange of ideas, or any other expression of civic participation in government. *Id.* at 569-71. A motion to dismiss under Indiana's anti-SLAPP statute is treated as a motion for summary judgment. *Id.* at 567. Summary judgment is appropriate if the designated evidence shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* Dr. Demetris argued that Indiana's anti-SLAPP statute gives protection to reports of suspected child abuse, while Mother and Father argued that it does not apply to a

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statutory duty to report child abuse involving a private confidential matter. Id. at 569. In order for the anti-SLAPP statute to apply, IC 34-7-7-5 must be satisfied. A court must determine (1) whether an action was “in furtherance of the person’s right of petition or free speech;” and if it was, then (2) whether the action was “in connection with a public issue;” and if both these elements are met, then (3) whether the action was “taken in good faith and with a reasonable basis in law and fact.” Id. In concluding that the anti-SLAPP statute did not apply, the Court noted: (1) the report was confidential in nature; (2) the report was not made pursuant to Dr. Demetris’s right of petition or right of free speech; (3) the report was not made to address a grievance of Dr. Demetris’s own; (4) the report was made to report a medical diagnosis in fulfillment of Dr. Demetris’s medical and statutory duty; (5) the report was not made for any political advocacy; and (6) the report was not speech in relation to Dr. Demetris’s participation in government. Id. at 569-71.