

IGOR MALENKO

v.

MARY POLLY CAMPBELL

Argued May 10, 2011

Decided November 22, 2011

Panel: SAUFLEY, C.J., and LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Igor Malenko appeals from a judgment entered in the Superior Court (Cumberland County, *Cole, J.*) granting Mary Polly Campbell's special motion to dismiss pursuant to Maine's anti-SLAPP statute, 14 M.R.S. § 556 (2010).

Malenko challenges the court's conclusions made at both stages of the special motion to dismiss analysis, arguing that (A) Campbell's report to the Department of Health and Human Services that Malenko abused his daughter and may be in possession of child pornography does not qualify as an exercise of the right to petition the government protected by the statute, and (B) his affidavit provided sufficient allegations to support the torts charged against Campbell. We disagree and affirm the judgment.

As to the first stage of the analysis, the language of the anti-SLAPP statute broadly protects petitioning activity. *See* 14 M.R.S. § 556. Because Campbell's report was intended to prompt the government to provide redress, it is encompassed within the traditional constitutional right of petition, and thus falls within the ambit of the statute. *See* U.S. Const. amend. I; Me. Const. art. I, § 15.

As to the second stage, Malenko failed to produce prima facie proof that Campbell's activity (1) was without reasonable factual support, (2) was without an arguable basis in law, and (3) resulted in actual injury to him, *see Schelling*

v. Lindell, 2008 ME 59, ¶ 7, 942 A.2d 1226, because the critical averments of his affidavit were based only upon information and belief, and not upon personal knowledge, *see Caron v. Bangor Publ'g Co.*, 470 A.2d 782, 784 (Me. 1984).

The entry is:

Judgment affirmed.

On the briefs:

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Michael E. Saucier, Esq., Thompson & Bowie, LLP, Portland, for appellant Mary (Polly) Campbell

Todd S. Holbrook, Esq., Morgan, Lewis & Bockius LLP, Boston, Massachusetts, for amici curiae Justice for Children and the International Association of Forensic Nurses

At oral argument:

Michael J. Waxman, Esq., for appellant Igor Malenko

Michael E. Saucier, Esq., for appellant Mary (Polly) Campbell