

## COURT ADDRESSES THE CHILD ABUSE REPORTING STATUTE

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*Ramsey v. Yavapai Family Advocacy Center (YFAC)*  
Ct. Appeals, Div. One, July 13, 2010

Authored by the [JSH Appellate Team](#)

Father was charged with sexually molesting child, and charges were subsequently dismissed. Father sued the family counseling center, counselor, nurse examiner, and nursing supervisor, alleging claims such as negligence, malicious prosecution, and loss of consortium. All defendants prevailed on their motions for summary judgment.

At issue on appeal was Arizona's abuse reporting statute, A.R.S. § 13-3620, which imposes, upon health care professionals who reasonably believe a minor has been the victim of abuse, a mandatory duty to report the abuse to a peace officer or to CPS. The statute provides qualified immunity from civil or criminal liability to (1) those who furnish a report of abuse, and (2) those who participate in judicial or administrative proceedings or an investigation resulting from a report of abuse. A person who acts with malice, however, is not entitled to qualified immunity.

Father argued there was a question of fact as to whether the nurse, the nurse supervisor, and the counselor reasonably believed the father abused the child. The court held that the "reasonably believed" requirement did not apply to the nurse and the nurse supervisor because they did not make a report. A person making a report of suspected child abuse is required to meet the "reasonably believes" standard to be qualifiedly immune; but individuals participating in a judicial or administrative proceeding or investigation resulting from a report do not need to meet the "reasonably believed" requirement to have the protection. Since the nurse and nurse supervisor simply participated in an investigation, they were entitled to qualified immunity unless their investigation was motivated by malice.

With regard to the counselor who did report, the "reasonably believed" standard is a low one because we want to encourage people to report suspected child abuse. The mother's and child's statements to the counselor regarding the alleged abuse were sufficient to support the "reasonable belief" standard.

Regarding whether the defendants' conduct was motivated by malice, a person reporting abuse under A.R.S. § 13-3620 is presumed to act in good faith and with proper motives. Plaintiff has the burden of establishing malice by showing the actor's intent to do something he or she knows to be wrongful. Father failed to meet this burden, so the Court affirmed summary judgment in favor of the defendants.

Finally, Father argued that the counselor destroyed his parental relationship by counseling his child. Because this claim arose out of the alleged negligent counseling and treatment of the child, statutory qualified immunity did not apply. But the court rejected Father's argument that the counselor owed him a duty of care. As in most other jurisdictions, neither therapists nor unlicensed counselors owe a duty of care to an alleged abuser. The Court noted several important policy considerations that outweighed the father's interests, including the protection of the therapist-patient relationship, the chilling effect such a duty would have upon therapists who treat abused persons, and the policy goals of investigating, reporting, and preventing abuse.