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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

CRAIG HARRISON,

Plaintiff and Respondent,

v.

RYAN GILLIGAN,

Defendant and Appellant.

F082516

(Super. Ct. No. BCV-19-102587)

OPINION

APPEAL from an order of the Superior Court of Kern County. Kenneth G. Pritchard, Judge.

LiMandri & Jonna, Charles S. LiMandri, Paul M. Jonna and Jeffrey M. Trissell for Defendant and Appellant.

Law Office of Herb Fox, Herb Fox; Law Offices of Craig A. Edmonston and Craig A. Edmonston for Plaintiff and Respondent.

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Ryan Gilligan (appellant)¹ filed this appeal after the trial court denied his anti-SLAPP² motion under Code of Civil Procedure section 425.16. Raising several arguments, appellant contends the trial court should have struck the core allegations supporting the defamation claims brought against him by respondent Craig Harrison (Harrison), a former Catholic priest. The impetus for the lawsuit is the claim by appellant that Harrison subjected him to inappropriate sexual advances, acted inappropriately with children, and sexually abused at least one minor child. These allegations and the statements forming the basis for Harrison’s defamation claims came to light, in part, when the press published a written statement from appellant allegedly detailing information that he provided to the Bakersfield Police Department during an investigation of claims made against Harrison. For the reasons set forth below, we conclude that the allegedly defamatory statements identified by Harrison are protected by the fair report privilege codified at Civil Code section 47, subdivision (d). Accordingly, we reverse the trial court’s order and remand with instructions.

FACTUAL AND PROCEDURAL BACKGROUND

In this case, the parties’ extensive briefing and arguments demonstrate that they are deeply familiar with the core facts of the case and the multitude of additional facts surrounding the disputes between Harrison and those that accused him of wrongdoing, as well as the intense media scrutiny that surrounded the events leading to Harrison’s lawsuits. We thus focus upon the facts relevant to our final determination and note the broad factual discussions and recitations of additional facts unrelated to the issues we resolve can be adequately reviewed in the parties’ briefing.

¹ Appellant was initially erroneously identified as Justin Gilligan and has previously been known as Ryan Dixon.

² “Anti-SLAPP” refers to a strategic lawsuit against public participation (SLAPP). (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57.)

The Parties

Appellant was formerly a resident of Bakersfield. He lived there between 2005 and 2013 and has maintained contacts in the city since leaving. At one point, appellant desired to enter the Catholic Church and around 2011 began working with and assisting the Saint Francis Roman Catholic Church (the St. Francis Parish) in Bakersfield, where he met and worked with Harrison. Appellant ultimately chose not to become a priest with the Catholic Church and instead entered the Benedictine monastery associated with his undergraduate institution.

Harrison became a Catholic priest in 1987. He was born in Bakersfield and served in multiple parishes within the Roman Catholic Diocese of Fresno (the Diocese) including parishes in Merced, Firebaugh, and Bakersfield. Harrison began serving the St. Francis Parish in 1999.

Background Leading to Appellant's Press Release and Its Publication

Sometime between 2011 and 2013, while working at the St. Francis Parish, appellant met and became friends with an individual identified as E.C. Appellant contends E.C. told him about past childhood sexual abuse that E.C. suffered at the hands of Harrison while E.C. was living in Firebaugh. During the conversation revealing these claims, E.C. recounted aspects of the abuse in front of a mutual friend, C.S. At the time, appellant took no action regarding the events disclosed.

In April 2019, C.S. contacted the Diocese and reported details of his conversation with E.C. and appellant. The Diocese, in turn, contacted appellant to verify aspects of the underlying conversation and eventually asked appellant to facilitate a conversation between the Diocese and E.C.

Appellant met with E.C. on April 11, 2019, and on April 12, 2019, E.C. made a statement to the Diocese concerning the alleged past sexual abuse by Harrison. Based on this statement, the Diocese reported the allegations to the Firebaugh Police Department and placed Harrison on leave pending further investigation. On or about April 25, 2019,

both the Firebaugh and the Merced Police Departments opened investigations into allegations made against Harrison. On or about May 8, 2019, the Bakersfield Police Department also opened an investigation into allegations made against Harrison.

On May 16, 2019, the Bakersfield Police Department interviewed appellant. Appellant was accompanied by a staff member from the Diocese during the interview. In the interview, appellant provided details about his interactions with Harrison between 2011 and 2016.

Appellant recounted a practice whereby he and other young men would cash checks for Harrison, a practice appellant believed was improper. Appellant also described a practice wherein Harrison would gift money to appellant and other needy individuals. Appellant stated he did not see the practice as improper at the time but came to view it as such later, considering it a tactic to maintain a close relationship with certain men.

Appellant next outlined a trip he took with Harrison to Santa Barbara where he alleged Harrison asked him inappropriate questions about pornography. Appellant also related facts about a trip to San Francisco involving Harrison and a third adult individual. During this trip, appellant alleges Harrison made inappropriate sexual jokes, received a shoulder massage from the third individual, and rubbed appellant's chest while the two shared a bed for the night.

With respect to events he witnessed, appellant shared that he viewed Harrison as "touchy" during his time working with him, particularly with young adults and minors between the ages of 12 and 18. This touchiness included tickling stomachs, pinching thighs, and long hugs, but no contact with genitals and not in a sexual manner. Appellant also recounted hearing Harrison regularly make sexual jokes in the presence of other males. Appellant described an incident where he saw Harrison lean his car seat backwards until the headrest was touching the lap of a juvenile sitting behind him.

Focusing next on discussions appellant had participated in regarding Harrison's conduct, appellant recalled a discussion he and two others, including C.S., had with E.C. about past incidents in Firebaugh. In that conversation, E.C. allegedly stated that Harrison had required E.C. to take pictures while dressed in his wrestling singlet and had, at another time, inappropriately touched E.C.'s genitals.

Appellant stated that when he had previously tried to confront Harrison about what appellant considered was inappropriate language used by Harrison, Harrison threatened to break the seal of confession and tell others of things appellant had confessed. Appellant stated this was one reason why he never reported Harrison's conduct.

Several other allegations or concerns about improper conduct by Harrison were discussed which do not relate to the defamation claims made in this case.

At the conclusion of his interview, appellant expressed a desire to share his story publicly.

The Press Release and Allegedly Defamatory Statements

With the blessing of the bishop of the Diocese, appellant drafted a written statement regarding his allegations and distributed it to the media. On May 21, 2019, the media published this statement, the first of two publications referenced in Harrison's complaint.

The statement itself begins with background information about appellant and his time working with Harrison. The statement then lays out appellant's assertions of misbehavior by Harrison. Specifically, appellant wrote:

"I was in [Harrison]'s inner circle from 2011 to 2016 and am a victim of his inappropriate touching, lies, manipulation, and abuse of power.

"I witnessed him being inappropriate with children, giving gifts/money, saying sexual jokes, touching, and being alone with them. We are trained as future priests based on the Charter for the Protection of Children and Young People established in 2002. This type of behavior is advised against in order to create a safe environment for children.

“I have also witnessed him taking advantage and controlling the lives of younger men entrusted to him that have had drug or alcohol problems.”

The statement then explains that appellant was contacted by the Diocese of Fresno and had been interviewed by them. Appellant stated he was told of other potential victims and asked to facilitate contact with one of them, which he did. Appellant stated that upon contact, the alleged victim “told me that he had been abused as a minor, and was grateful that I was there.” Appellant reiterated that his involvement arose after being contacted by the Diocese and detailed a short timeline of his assistance. Appellant then used the remaining several paragraphs to explain why he chose to come forward publicly, how he had no financial motive behind his actions, that his statement reflected facts that he personally witnessed, and that his goal was to help other victims. While explaining why he chose to come forward, appellant wrote: “[Harrison] made sexual advances toward me which I rejected that caused tension through the years.”

As noted, appellant’s statement was published by the media on May 21, 2019. Preceding the statement in the publication is a full news report referencing the allegations made against Harrison and the state of certain pending proceedings. The report then discusses appellant’s statement. In the report, several additional points are made. The report leads off with a statement noting Harrison had been on leave “pending an investigation into allegations of sexual misconduct.” It then contains a quote from Harrison’s attorney claiming appellant’s statement is a part of “an effort to frame and destroy [Harrison] as a means to get to the deep pockets of the church.” Turning to appellant’s position, the report explains appellant “wants it to be clear the [D]iocese is aggressively investigating all accusations, including things that happened to him in Bakersfield” and that “there are certain details [appellant] can share only with law enforcement.” The report then summarizes appellant’s statement while explaining that the “reported allegations against [H]arrison are being re-investigated by the [Di]ocese and various law enforcement agencies.” The report closes with a claim that the “multi-

agency investigation into allegations against ... Harrison is very complex, dealing with highly sensitive issues.” Only after all this is appellant’s statement reprinted in full.

The publication of appellant’s statement caused appellant to be reinterviewed by the Bakersfield Police Department. In that interview, appellant confirmed that his statement in the press release referred only to the allegations discussed in his prior interview.

Harrison’s Complaint and the Anti-SLAPP Motion

On September 11, 2019, Harrison filed his complaint in this action, seeking to recover damages for defamation caused by appellant’s statement. Alleging appellant’s statement was published on or about May 21, 2019, and July 31, 2019,³ Harrison specifically identified four individual lines in appellant’s statement that he defined as defamatory: (1) “that I am a victim of his in appropriate touching, lies, manipulation and abuse of power”; (2) “I witnessed him being inappropriate with children, giving gifts and money, saying sexual jokes, touching and being alone with them”; (3) “I have also witnessed him taking advantage and controlling lives of younger men entrusted to him that had drug or alcohol problems”; and (4) “he made sexual advances toward me which I rejected which caused tension through the years.”

In August 2020, appellant filed his anti-SLAPP special motion to strike Harrison’s complaint. Appellant raised several points, including that both the litigation privilege (Civ. Code, § 47, subd. (b)) and the fair report privilege (Civ. Code, § 47, subd. (d)) applied to his statements, that the accused statements amounted only to opinion, and that Harrison was a public figure embroiled in a public controversy who could not show malice, among others. Appellant filed a declaration in support of the motion, which

³ The July 31, 2019 date appears to refer to a second publication of appellant’s statement as part of a follow-up report published by the “Church Militant.” The specific publication is unclear, however, as Harrison writes that “[n]othing in [his] complaint expressly refers to the publication of [appellant’s] statements in the Church Militant.”

referenced several prior declarations in the case and separately submitted 38 proposed exhibits in support of the motion. Harrison opposed the motion, submitting his own declaration, declarations from eight other individuals, and eight exhibits. Harrison also objected to appellant's evidentiary exhibits.⁴ In reply, appellant attached another four exhibits.

The trial court held a hearing on appellant's anti-SLAPP motion and eventually denied it. The court first found that Harrison's complaint arose "from oral and written statements made during a press conference on May 21, 2019[,] and July 31, 2019," "in connection with an issue of public interest." The court then found that Harrison's complaint was "legally sufficient and supported by a *prima facie* showing of facts to support a favorable judgment on the merits." The court concluded Harrison was a private figure who had not injected himself into an ongoing public controversy as needed to qualify for limited public figure status. The court further rejected any claim that appellant's statements were privileged under the "neutral reportage privilege," which the court concluded does not exist in California, the litigation privilege under Civil Code section 47, subdivision (b), or the fair report privilege under Civil Code section 47, subdivision (d). On this last privilege, the court wrote: "[Appellant's] statements to the police are not an issue. [Appellant's] conduct in question are his comments to news reporters. [Appellant] claiming he made these statements to encourage others to come

⁴ By minute order, the trial court sustained Harrison's objections to all but five exhibits. The court also excluded some of Harrison's evidence. This court's analysis turns upon facts contained within the parties' declarations and the exhibits as admitted by the trial court, save for some background information cited by both parties in their briefing. Thus, we need not resolve appellant's claim that the trial court erred in excluding evidence submitted to show Harrison was a public figure nor Harrison's claim such an argument was waived. For similar reasons, including the lack of relevance of the objectionable material to this court's resolution, we deny Harrison's "MOTION TO STRIKE PORTIONS OF APPELLANT'S OPENING BRIEF," filed on July 14, 2021.

forward is not a privilege to make defamatory statements.” Finally, the court found appellant’s statements were “more than mere opinion.”

This appeal timely followed.

DISCUSSION

Appellant raises many of the same grounds on appeal that he raised before the trial court. These include claims that appellant’s statements are opinion, Harrison is a public figure, the evidence fails to make a prima facie showing of malice, and various privileges apply. As noted above, it is our opinion that the statutorily defined fair report privilege applies in this matter. As such, we do not reach the remaining grounds appellant argues in support of his motion to strike.

Standard of Review and Applicable Law

The California Legislature enacted Code of Civil Procedure section 425.16 in response to “a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.” (Code Civ. Proc., § 425.16, subd. (a).) Code of Civil Procedure section 425.16 states in pertinent part: “A cause of action against a person arising from any act of that person in furtherance of a person’s right of petition or free speech under the United States Constitution or the California Constitution 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.” (Code Civ. Proc., § 425.16, subd. (b)(1).)

Anti-SLAPP motions require a two-step analysis. First, the defendant bringing the motion must make a prima facie showing that the suit arises from an act in furtherance of the defendant’s rights of petition or free speech in connection with a public issue (i.e., the challenged cause of action is one arising from protected activity enumerated in the

statute).⁵ (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 420; see Code Civ. Proc., § 425.16.) Once such a showing is made, the second step shifts the burden to the plaintiff to demonstrate a probability of prevailing on the merits of the challenged claims. (*Ibid.*)

The “ ‘second-step burden is a limited one’—a trial court neither weighs the evidence nor resolves evidentiary conflicts.” (*RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 434.) To overcome any asserted defenses, the defendant must either show that they are inapplicable as a matter of law or make a prima facie showing of facts that, if accepted, would negate such defenses. (*Ibid.*) Privileges such as the litigation privilege and fair report privilege are considered at this second step. (*Ibid.* [“The litigation privilege is one such defense that may be considered at [step] two.”]; *J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87, 101 [considering fair report privilege in second-step analysis].)

The Fair Report Privilege

“A privileged publication or broadcast is one made” “[b]y a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.” (Civ. Code, § 47, subd. (d)(1).)

“The fair report privilege ‘confers an absolute privilege on any fair and true report in, or a communication to, a public journal of a judicial proceeding, or anything said in the course thereof.’ [Citation.] When it applies, the reported statements are ‘absolutely privileged regardless of the defendants’ motive for reporting’ them. [Citations.] Courts have construed the privilege broadly, ‘mindful of the Legislature’s intent ... “to preserve the scarce resources of California’s courts [and] to avoid using the courts for satellite

⁵ In this case, there is no dispute over the first step and Harrison concedes it is satisfied.

litigation.” ’ ” (*Healthsmart Pacific, Inc. v. Kabateck* (2016) 7 Cal.App.5th 416, 431, third bracketed insertion in original (*Healthsmart*).

“Defendants bear the burden of proving the privilege’s applicability. [Citation.] Because there is no meaningful factual dispute over the content and distribution of the ... press release, whether the privilege applies is a question of law.” (*Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 278–279, fn. omitted.)

“Although the fair report privilege is typically invoked by news media defendants, it also protects those who communicate information *to the media*. [Citation.] Indeed, the Legislature’s explicit purpose for enacting a 1996 amendment to [Civil Code] section 47, subdivision (d), was to protect such intermediaries. That amendment expanded the privilege to include fair and true ‘communication[s] to,’ as well as fair and true ‘report[s] in,’ public journals concerning judicial, legislative, or other public proceedings. [Citation.] ... The additional language thus ‘create[d] the bridge’ between the litigation privilege (which covered statements made in judicial proceedings) and the fair report privilege (which covered media reports of judicial proceedings) ‘to protect a third party who communicates this already privileged material to the press.’ ” (*Healthsmart, supra*, 7 Cal.App.5th at pp. 431–432, first, second & fifth bracketed insertions added.) Thus, “[u]nlike the litigation privilege, the fair and true reporting privilege pertains specifically to communications to the press, and it requires that the report be fair and true, not that it actually further the underlying litigation.” (*Argentieri v. Zuckerberg* (2017) 8 Cal.App.5th 768, 787 (*Argentieri*).

Focusing upon the claims raised in this case, then, appellant’s press release is protected by the privilege if it is shown to be a (1) fair and true (2) communication to a public journal (3) of a (4) public official proceeding or anything said in the course of a public official proceeding. We next proceed to analyzing these elements.

Appellant's Press Release Is Protected by the Fair Report Privilege

Although many issues in this case are heavily disputed, there is little discussion by Harrison regarding applicability of the fair report privilege. Indeed, Harrison's complete argument on this point is as follows: "Nor has [appellant] made a 'fair and true report ... of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.'" Civ. [Code,]§ 47[, subd.](d). The statements at issue were not made to law enforcement, but instead were set forth in a statement that he chose to make to the media." The core of Harrison's argument is a focus upon Civil Code section 47, subdivision (d)(1)(e), a theory not argued by appellant and made to the exclusion of the subdivisions that appellant argues do apply, and a claim clearly contradicted by *Healthsmart, supra*, 7 Cal.App.5th at pages 431 through 432 that transmissions to the media cannot be covered by the privilege. Nothing in the positions he argues suggests to this court that the privilege is inapplicable. We thus turn to whether the record supports a finding the privilege applies. (See *Griffin v. The Haunted Hotel, Inc.* (2015) 242 Cal.App.4th 490, 505 [failure to respond does not count as a concession the argument has merit, the court still examines the record with respect to claims of error].)

In our independent review, we see no reasonable dispute regarding the second and fourth elements—appellant's communication to a public journal regarding anything said in the course of a public official proceeding. We find no basis to conclude that local newspapers and news television programs are anything other than public journals as contemplated by Civil Code section 47. (See *Green v. Cortez* (1984) 151 Cal.App.3d 1068, 1073 [television broadcast company and newspapers were "no doubt 'public journals' within the meaning of the statute"]; see also *Hawran v. Hixson, supra*, 209 Cal.App.4th at p. 280 [assuming news outlets were public journals].) Similarly, courts have held that police investigations, such as that conducted by the Bakersfield Police Department and in which appellant was interviewed, constitute public official

proceedings. (*Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1337 [stating in fair report privilege context that public official proceedings include police investigations].) And the concept of a “public official proceeding” has been broadly interpreted to cover a broad range of proceedings conducted by public officials, even if confidential in nature. (See *Carver v. Bonds* (2005) 135 Cal.App.4th 328, 350–351 [noting of public “simply means governmental, as opposed to private”]; *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1051 [applying privilege to State Auditor’s investigative auditing].)

The question is more complex with respect to the first and third elements—whether appellant’s statements were a fair and true recitation of what was said in the underlying proceedings. Upon review of the record and taking a totality of the circumstances approach, however, we conclude appellant’s statements do satisfy these requirements.

“ ‘Fair and true’ in this context does not refer to the truth or accuracy of the matters asserted in the judicial proceedings, but rather to the accuracy of the challenged statements with respect to what occurred in the judicial proceedings.” (*Healthsmart, supra*, 7 Cal.App.5th at p. 434.) In assessing whether a report is fair and true, “ ‘the publication[s] [are] to be measured by the natural and probable effect [they] would have on the mind of the average reader. [Citations.] The standard of interpretation to be used in testing alleged defamatory language is how those in the community where the matter[s] [were] published would reasonably understand [them].’ ” (*Kilgore v. Younger* (1982) 30 Cal.3d 770, 777.) “The defendant is entitled to a certain degree of ‘flexibility/literary license’ in this regard, such that the privilege will apply even if there is a slight inaccuracy in details—one that does not lead the reader to be affected differently by the report than he or she would be by the actual truth.” (*Argentieri, supra*, 8 Cal.App.5th at pp. 787–788.) “In evaluating the effect a publication has on the average reader, the challenged language must be viewed in context to determine whether,

applying a ‘totality of the circumstances’ test, it is reasonably susceptible to the defamatory meaning alleged by the plaintiff: ‘ “[A] defamatory meaning must be found, if at all, in a reading of the publication as a whole.” [Citation.] “This is a rule of reason. Defamation actions cannot be based on snippets taken out of context.” ’ ” (*J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP, supra*, 247 Cal.App.4th at p. 100.)

Even if fair and true, however, one cannot use the opportunity to subvert legitimate defamation protections by, for example, making “defamatory allegations in a complaint and then report[ing] the same alleged facts, *as facts*, to the media with impunity. This is because the fair report privilege protects reports and communications ‘of ... a judicial ... proceeding, or ... of anything said in the course thereof.’ [Citation.] That is, the statements are privileged if they are fair and true reports *about the proceedings* or of what was *said in the proceedings*. [Citations.] There is thus a critical difference between communicating to the media what is alleged in a complaint and communicating the alleged facts without reference to the complaint.... The issue is whether the average viewer or listener of the media reports would understand the attorneys’ statements as communications about the [underlying] complaint” (*Healthsmart, supra*, 7 Cal.App.5th at pp. 435–436.)

Given these standards, we are not concerned with the merits of appellant’s allegations or the truth of the statement contained in appellant’s press release. Rather, our analysis considers whether appellant’s press release accurately conveyed the substance of his interview with the Bakersfield police in a manner that would leave the average viewer, reader, or listener to the press release understanding appellant’s statement related to his role in the ongoing investigation.

On the fair and true aspect of the analysis, we see little in the way of potentially material differences between the statement contained in appellant’s press release and his statements to the Bakersfield Police Department during his interview. If anything, appellant’s press release provides a broader summary of appellant’s claims than his

interview, generally by leaving out the more sensational accusations appellant claimed to have witnessed or learned about during the interview. The main gist of the interview, however, is fairly and accurately contained within the confines of the press release. (See *Argentieri, supra*, 8 Cal.App.5th at p. 793 [“And while [counsel] made a statement summarizing the complaint rather than delivering the complaint itself, it would be anomalous to hold privileged the delivery to the press of the complaint—with its extended and more detailed allegations of [the plaintiff’s] purported wrongdoing—but not the delivery to the press of a mere summary that succinctly sets forth its gist.”].)

We next turn to whether the average viewer, reader, or listener would understand appellant’s statement to relate to a public official proceeding, in this case a police investigation, or to assert matters of fact. In this sense, the direct allegations made by appellant are couched in terms more closely aligned with statements of fact than recitations of past events. The point of appellant’s statement is his personal retelling of events he claimed to have witnessed or been subjected to and his impressions of those events. If this were the sole evidence showing how the average viewer, reader, or listener would understand the published statements, appellant would likely fail to make the required showing that the privilege applies. However, additional evidence is contained both in appellant’s statement and in the manner it was presented to the public, which tempers the nature of appellant’s direct allegations.

The May 21, 2019 news report containing appellant’s statement leads off with background information noting Harrison has been on leave “pending an investigation into allegations of sexual misconduct.” It then identifies the existence of both support for Harrison and “support from victim advocacy groups for the men who’ve come forward” before providing a quote from Harrison’s attorney alleging appellant’s statement is a part of “an effort to frame and destroy [Harrison] as a means to get to the deep pockets of the church.” The report also explains appellant “wants it to be clear the [D]iocese is aggressively investigating all accusations, including things that happened to him in

Bakersfield” and that “there are certain details [appellant] can share only with law enforcement.” The report then summarizes appellant’s press release.

As noted above, appellant’s statement specifically references the investigation by the Diocese and the fact he was contacted as a part of that proceeding. The news report’s summary of appellant’s statement also explains that appellant’s role in the investigation arose when the Diocese contacted him and states that the “reported allegations against [H]arrison are being re-investigated by the [D]iocese and various law enforcement agencies.” The report eventually closes with another statement of denial from Harrison’s attorney and a statement that the “multi-agency investigation into allegations against ... Harrison is very complex, dealing with highly sensitive issues.” Only after all this is appellant’s statement reprinted in full.

In context, then, appellant’s statement is not reasonably understood as a reporting of defamatory allegations as facts. Appellant makes clear reference to his role in an investigation by the Diocese and his desire to share his experiences in the context of a broader investigation. The news report further clarifies that both an internal religious and a multi-agency police investigation are ongoing, with a statement attributed to appellant that he can only share certain information with police agencies. All of this is then further buttressed by prominent placement of statements by Harrison’s counsel discrediting and denying the accusations.⁶

Given the multiple references to investigations, including police investigations, we conclude that in the totality of the circumstances a viewer would understand appellant’s statement to be a fair and true report of information provided in the course of a public official proceeding. As the average viewer would not understand the alleged four

⁶ The July 31, 2019 publication in the “Church Militant” is similar, if not stronger in context. It opens explaining that the Bakersfield Police Department had completed its investigation and notes the aftermath of that decision before discussing a multitude of allegations being investigated, including appellant’s, and eventually reprints appellant’s statement.

defamatory lines to be unassociated with statements made in the ongoing investigation, the fair report privilege applies and absolutely bars Harrison's complaint as drafted. (See *Healthsmart, supra*, 7 Cal.App.5th at p. 436 [attorney's statements privileged in part because news publications containing the allegedly defamatory statements identified speaker as attorney and both prominently referenced and displayed pictures of the underlying complaint].) Because the trial court ruled the privilege did not apply, we reverse the trial court's decision and remand for further proceedings with instructions to grant appellant's motion.

DISPOSITION

Appellant's "FOURTH MOTION FOR JUDICIAL NOTICE," filed on August 13, 2021, is DENIED.

The trial court's "ORDER DENYING ANTI-SLAPP MOTION AND MOTION FOR ANTI-SLAPP ATTORNEYS' FEES," filed on December 14, 2020, is reversed. The cause is remanded to the trial court with instructions to enter a new order granting appellant's special motion to strike under Code of Civil Procedure section 425.16 and dismissing the complaint and to conduct further proceedings to determine the amount of attorney fees and costs to be awarded. Appellant is also entitled to recover his attorney fees and costs on appeal in an amount to be determined by the trial court.

HILL, P. J.

WE CONCUR:

LEVY, J.

SMITH, J.