



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**JAVAN “J.D.” MESNARD, et al. v. HON. THEODORE
CAMPAGNOLO (DONALD M. SHOOTER)
CV-20-0209-PR**

PARTIES:

Petitioners/Defendants: Javan “J.D.” Mesnard (“Mesnard”) and Holly Mesnard, husband and wife (collectively, “the Mesnards”)

Respondent: Judge Theodore Campagnolo, Superior Court, Maricopa County

*Real Party in Interest/
Plaintiff:* Donald M. Shooter (“Shooter”)

FACTS:

Proceedings in the Trial Court. In February 2018, the Arizona House of Representatives voted to expel one of its members, Shooter, following the release of a report detailing an investigation of allegations that he had sexually harassed another legislator and others.

In January 2019, Shooter sued the Mesnards in superior court under several theories, including defamation. The court dismissed Shooter’s initial complaint, and Shooter filed an amended complaint in January 2020. In it, Shooter alleged that his expulsion was the result of a conspiracy between Mesnard and others to suppress his attempts to expose corruption in the State’s use of no-bid contracts.

The amended complaint reasserted Shooter’s defamation claim along with a claim for civil conspiracy to defame, basing them on (a) an investigative report prepared by an independent consultant and allegedly edited by Mesnard to take out exculpatory information and information about another legislator’s alleged misconduct; and (b) a press release issued by Mesnard in response to Shooter’s criticism of the investigative report, which, according to the complaint, contained false statements intended to make Shooter look deceitful and insensitive to victims of sexual harassment. The amended complaint also asserted several other claims.

The Mesnards again filed a motion to dismiss, arguing (among other things) that Shooter’s defamation and civil conspiracy claims were barred by absolute legislative immunity. In May 2020, the superior court granted the Mesnards’ motion to dismiss with respect to all counts except Shooter’s claims for defamation and civil conspiracy to defame.

The court ruled that it was not prepared to decide whether the Mesnards were entitled to absolute legislative immunity. It recognized that its prior dismissal order had extended absolute legislative immunity to Mesnard’s alleged acts with respect to the investigative report, but said it had reconsidered that ruling in light of the court’s uncertainty about how far legislative immunity extends under Arizona law. It indicated that it could not proceed further based on a motion to dismiss, and needed a well-developed record before it could rule on the immunity defense.

Proceedings in the Court of Appeals. The Mesnards then filed a special action in the Court of Appeals, asking the court to accept special action jurisdiction to review the superior court’s partial denial of their motion to dismiss. In July 2020, the Court of Appeals declined jurisdiction.

The Mesnards filed a petition for review in the Supreme Court, asking for review of the superior court's order and the Court of Appeals' refusal to accept special action jurisdiction. The Supreme Court accepted review in December 2020.

ISSUES:

The petitioner has asked the Supreme Court to address two issues:

- (1) "Whether Mesnard is absolutely immune from suit based on his actions complained of in the Amended Complaint."
- (2) "Whether Mesnard's release of the investigative report from the law firm retained by the Arizona House of Representatives to review the allegations against Mr. Shooter and others was privileged."

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.