

# No charges doesn't mean no case

When an alleged sexual offender is not prosecuted for an attack, one of the only options left to the victim is to file a civil lawsuit. This can be a risky business, especially when the alleged attacker is not convicted of the purported crime.

## ■ Reaching the Verdict



BY WILL  
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One of our featured cases this week deals with just such a scenario. A St. Charles County teenage girl was allegedly sexually assaulted by a teenage boy while they studied to-

gether in the boy's basement. The alleged assault resulted in physical and emotional injuries for the girl, including post-traumatic stress disorder, according to her attorney Matthew J. Devoti.

The 16-year-old boy was certified to stand trial as an adult in 2006, but the prosecuting attorney decided to not file criminal charges. In 2007, the victim filed her civil suit against the boy and his parents for the alleged sexual assault and negligent supervision.

The boy and his parents also filed a counterclaim against the girl for malicious prosecution.

One benefit a civil suit has over a criminal case is the burden of proof a sexual assault victim must bring to the table. In

a criminal case, the state must prove the defendant is guilty beyond a reasonable doubt. In a civil case, the victim need only prove the defendant is liable more likely than not and the preponderance of evidence must be more than 50 percent.

Devoti said the girl offered to settle the case for \$85,000. The boy and his parents made an offer of their own. The girl could take a judgment against the boy and his parents but had to agree to limit the recovery to the parent's homeowner policy coverage, he said.

The only problem with that was the insurance company had denied coverage because the alleged assault was an intentional act.

After a trial last month the jury came

back with a verdict of \$115,000 for the girl, including \$2,500 each against the parents for negligent supervision. The jury also found in favor of the girl on the malicious prosecution claim.

Devoti said the civil lawsuit presented some challenges because the alleged attacker was never convicted of a crime.

"We not only didn't get the conviction, we had to defend the case as well," he said. The resulting civil verdict proves that even when a person is not convicted of a crime, the victim/plaintiff may have a case.

*Send your comments about this column to Associate Editor Will Connaghan. He can be reached at [will.connaghan@molawyersmedia.com](mailto:will.connaghan@molawyersmedia.com).*