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SALVE CHIPOLA III,
Plaintiff/Appellant,
v.
SEAN FLANNERY and JOHN/JANE
DOES 1-10,
Defendants/Respondents.

SUPREME COURT OF NEW JERSEY

DOCKET NO. 088836

ON APPEAL FROM OCTOBER 30, 2023
OPINION OF APPELLATE DIVISION
DOCKET NO. A-3571-21

RESPONDENT'S BRIEF

**RESPONDENT BRIEF IN OPPOSITION TO
APPELLANT'S PETITION FOR CERTIFICATION**

Date of Initiation in the New Jersey Supreme Court: November 14, 2023

Nature of Proceeding in the Appellate Court: Final Judgment on October 30, 2023,

Affirming Order of Dismissal dated June 10, 2022

Name of the Court Below: Superior Court of New Jersey, Law Division,

Gloucester County

Sat Below: Honorable Samuel J. Ragonese Jr., J.S.C.

On the Response to the Petition of Certification: Christopher J. Ross, Esquire
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STATEMENT OF PROCEDURAL HISTORY

On December 29, 2021 Petitioner Salve Chipola III filed a Complaint in the Superior Court of New Jersey, Law Division, Gloucester County. The Complaint alleged one count of false light invasion of privacy against Respondent Sean Flannery. The alleged actions occurred on January 9, 2020. Respondent filed an Answer on May 20, 2022. On May 24, 2022, Respondent filed a Motion for Dismissal. On June 10, 2022, after oral argument, the Honorable Samuel J. Ragonese, Jr., J.S.C., issued a written opinion granting Respondent's Motion and dismissing Petitioner's Complaint with Prejudice. At oral argument, Petitioner's counsel acknowledged that the binding case law on the trial court required the trial court to dismiss the case.

On July 22, 2022, Petitioner filed an appeal with the New Jersey Superior Court Appellate Division. On October 30, 2023, the Appellate Division, *per curiam*, affirmed the trial court's dismissal of the Complaint. On November 20, 2023, the Petitioner filed a Petitioner for Certification with the New Jersey Supreme Court.

STATEMENT OF FACTS

Respondent cites the facts as noted by the trial court. The Complaint alleged that on January 9, 2020, Petitioner attended a basketball game held in the gym at Clearview Regional High School. Petitioner alleges that Respondent was also at the game, and that after the game, Respondent told school staff that Petitioner sold drugs

to and bought alcohol for students. On January 10, 2020, Petitioner received a letter from the school, informing him that he was no longer permitted on school premises. On January 14, 2020, Petitioner attended another basketball game, where he was personally served with the letter and questioned by an officer of the Harrison Township Police Department. Petitioner alleges that Respondent's actions painted him in a false light, injuring his reputation and causing him emotional distress. Petitioner filed his Complaint on December 28, 2021.

STATEMENT OF THE QUESTION PRESENTED

Respondent refers to Petitioner's Statement: Should the statute of limitations for the tort of false light invasion of privacy be two years?

PETITIONER'S STATEMENT OF ERRORS COMPLAINED OF

Respondent refers to Petitioner's Statement: The Appellate Division erred by following Swan v. Boardwalk Regency Corp., 407 N.J. Super. 108, 121 (App. Div. 2009). In doing so, the Appellate Division erred in concluding that Swan was properly decided and by declining to disapprove Swan's holding.

Respondent submits that Swan was properly upheld and is based on sound legal principle.

STATEMENT OF REASONS WHY CERTIFICATION SHOULD NOT BE GRANTED

The Appellate Division was correct in finding that Swan is applicable to this matter and bars Petitioner's Complaint. Petitioner's allegations are indistinguishable

from Swan, as Petitioner is essentially complaining that Respondent defamed him. Petitioner has sought, and now continues to seek to alter his allegations, and essentially the definition of invasion of privacy, to suit his claim.

Petitioner argued to the Appellate Division that injuries suffered by a false light plaintiff are more akin to an injury to the person in contrast to the injury suffered by a defamation plaintiff, which is damage to reputation. In making this argument, Petitioner ignores that the entirety of his alleged injuries are damages to reputation—directly akin to a defamation plaintiff. The Appellate Division rejected that argument—noting that in Swan, that court had found that false light invasion of privacy was essentially a claim of defamation. The court further noted that this type of injury was dissimilar to an intrusion on seclusion, which is an injury to a person subject to the two-year statute of limitation, or appropriation, which is an injury to property rights subject to a six-year statute of limitations. The Appellate Court rightfully held that Petitioner’s injury was analogous to the complained of injury in Swan and affirmed the trial court. Furthermore, the court specifically noted that it was satisfied that Swan was properly decided.

Petitioner also attempts to argue that Swan was incorrectly decided, arguing that the Swan Court ignored or improperly overlooked earlier cases. However, the Appellate Court also noted that these issues were considered in deciding Swan, and as a result, did not warrant any further discussion.

Petitioner contends that the question of when an action for false light invasion of privacy becomes time-barred is one of general public importance which has not been but should be settled by the New Jersey Supreme Court. Petitioner overlooks that this has been decided by the Appellate Court in Swan. Our Court system works in a way to not burden this Court with matters that may be properly heard and ruled on in the Appellate Division. As mentioned infra, this matter has been considered by this Court.

COMMENTS WITH RESPECT TO THE APPELLATE DIVISION'S OPINION

Swan was properly decided and based on sound legal principles.

Legal Argument

Swan v. Boardwalk Regency Corp., 407 N.J. Super. 108 (App. Div. 2009) imposes a one-year statute of limitations on false light claims. In Swan, the plaintiff performed surveillance activities for a casino, utilizing a camera system throughout the premises. Swan, 407 N.J. at 111. Plaintiff was named as a defendant in a complaint brought by the Division of Gaming Enforcement (DGE), which alleged that plaintiff was misusing the surveillance cameras to inappropriately observe women. Id. Plaintiff was terminated as a result of the allegations. Id. at 112. After a hearing before the Casino Control Commission, Plaintiff was found not guilty of a regulatory infraction. Id. Plaintiff filed a complaint against the casino alleging wrongful termination and “false light/invasion of privacy.” Id. at 112-114. Plaintiff

claimed that his employer engaged in false light invasion of privacy by disseminating a press release that described the allegations against him. Id. at 114. The trial court dismissed the plaintiff's complaint, in part based on time-bar procedural grounds. Id.

On appeal, the plaintiff argued that his false light claim should be subject to a statute of limitations period of six years. Id. at 117. The plaintiff argued that a false light claim was neither libel nor slander, but a separate and distinct privacy tort and thus the statute of limitations for defamation could not apply. Id. at 118. In the alternative, plaintiff argued that the alleged tort could be considered an "injury to the person" governed by the two-year limitation period. Id. The Swan Court, after a lengthy analysis, determined that plaintiff's claim of invasion of privacy was essentially a claim of defamation. Id. at 121. The court noted that there was no logic to extending the statute of limitations for a claim labeled "false light/invasion of privacy" when similar allegations house under defamation be subject to a one-year statute of limitation. Id. at 122-23.

Petitioner's claim in this matter is factually analogous to Swan. If there are damages, which Respondent vehemently denies all allegations, they are clearly for alleged reputational harm, similar to that of a claim of defamation. Petitioner's Complaint, when boiled down, alleges that Respondent spoke about him to a third party. In Swan, the plaintiff alleges that he was cast in false light as a "pervert." In

the instant matter, Petitioner claims he was cast in the false light as someone who sells drugs and alcohol to minors. There is simply no rationale to consider the Petitioner's claims any different from those of the plaintiff in Swan. The Swan court was cryptic and predicted a similar situation, noting that allowing such a claim of false light to fall under the longer statute of limitations period would be a "transparent evasion" of the one-year statute of limitations under New Jersey law. Id. at 123.

Despite Petitioner's contentions, the Swan Court analyzed Rumbauskas v. Cantor, 138 N.J. 173 (1994). In that case, the New Jersey Supreme Court noted that "actions for public disclosure of private facts or placing one in a false light" are typically subject to the same limitations period for defamation claims. Rumbauskas, 138 N.J. at 183. The Swan Court rightfully concluded that the one-year statute of limitations governing defamation actions would be applied in a false light claim that was "clearly grounded in allegations which were defamatory in nature. Swan, 407 N.J.Super. at 121. Thus, this court had laid the framework for analyzing these types of claims and answering Petitioner's question.

CONCLUSION

Respondent respectfully submits that the New Jersey Supreme Court should not grant certification. The underlying legal principles in this matter are well settled and have been addressed by this Court.

THE VIGILANTE LAW FIRM, P.C.
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Dated: February 5, 2024