

SALVE CHIPOLA III,

Plaintiff/Appellant,

v.

SEAN FLANNERY and JOHN/JANE
DOES 1-10,

Defendant/Respondent.

SUPREME COURT OF NEW JERSEY
CASE NO. 088836

Civil Action

On Appeal from a Final Order of the
Superior Court of New Jersey, Appellate
Division, Docket No. A-3571-21

Sat Below:

Honorable Greta Gooden Brown, J.A.D.

Honorable Lisa A. Puglisi, J.A.D.

**RESPONSE OF SEAN FLANNERY TO *AMICUS CURIAE* BRIEF OF
THE NEW JERSEY CENTER FOR NONPROFIT JOURNALISM AND
THE NEW JERSEY INDEPENDENT LOCAL NEWS COLLECTIVE**

Date: December 30, 2024

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PRELIMINARY STATEMENT

Respondent joins the arguments raised by *amicus curiae*, the New Jersey Center for Nonprofit Journalism and the New Jersey Independent Local News Collective. The arguments raised by *amicus* embrace the sound arguments that Respondent has advanced from the inception of this matter in the trial court, specifically, that Swan v. Boardwalk Regency Corp., 407 N.J. Super. 108 (App. Div. 2009) is both well-reasoned and based on binding New Jersey Supreme Court precedent. Additionally, Respondent joins the arguments raised by *amicus curiae* concerning the implications false light invasion of privacy claims have on the First Amendment and the rights of New Jersey citizens. For the reasons set forth in Respondent's Brief on Certification, Appellate Division Brief and the well-reasoned arguments contained in the *amicus* brief, Respondent respectfully submits that the Court should affirm the dismissal of this case.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Respondent relies on the procedural history and statement of facts set forth in his Brief in Opposition to Appellant's Petition for Certification and his Appellant Division Brief. The essential facts are straightforward: Appellant attended a high school basketball game. While at that game, Appellant allegedly observed Respondent having a conversation with a high school staff member wherein, Appellant alleges, Respondent stated that Appellant sold drugs to students and

purchased alcohol for them. Shortly thereafter, while attending another high school basketball game, Appellant was questioned by law enforcement and barred from other school sporting events. He further alleges that his photo was posted throughout the County as a drug dealer. According to the Complaint, Respondent is alleged to have done nothing more than make a simple statement to a high school official. Appellant does not allege that Respondent himself published any photos of him or engaged in any other conduct. More than a year after the alleged statements were made, Appellant filed a lawsuit against Respondent seeking damages under a theory of false light invasion of privacy. Appellant's case was dismissed by the trial division and the dismissal was affirmed by the Appellate Division. This appeal followed.

On December 13, 2024, the Court granted the motion of the New Jersey Center for Nonprofit Journalism and the New Jersey Independent Local News Collective to appear as *amicus curiae* and file an *amicus* brief. This Court ordered that the parties file any response to the *amicus* brief by December 30, 2024. This brief follows.

ARGUMENT

1. APPELLANT'S RE-LABELING HIS CLAIM IS LEGALLY FLAWED AND TO ALLOW THE SAME WOULD COMPLETELY DISREGARD THE STATUTE OF LIMITATIONS FOR A CLAIM OF DEFAMATION

Appellant's claim is a claim for defamation. He filed his claim after the expiration of the one-year statute of limitations applicable to claims for defamation.

To try and shoehorn his untimely allegations into a cognizable claim, Appellant simply changed the name of his claim. The only damage alleged are emotional distress and harm to his reputation. It is undisputed that a claim of defamation is subject to a one-year statute of limitations. N.J.S.A. 2A:14-3. As noted by this Court, statutes of limitations are essential to an efficient and fair litigation of claims. See Montells v. Haynes, 133 N.J. 282, 292 (1993) (“Statutes of limitations are essentially equitable in nature, promoting timely and efficient litigation of claims”) (internal citations omitted). Importantly, they spur litigants to pursue claims diligently, spare the courts from litigating stale claims and “penalize dilatoriness.” See Farrell v. Votator Div. of Chemetron Corp., 62 N.J. 111, 115 (1973). Allowing a litigant to simply rename their claim to escape the statute of limitations would run afoul of the basic legal principles governing the litigation of claims. This concern is not abstract, as the Appellate Division has been forced to foreclose on this ill-fated strategy on several occasions. See Rodriguez v. Home News, 137 N.J. Super. 320, 323-324 (App. Div. 1975) (appellate division rejected plaintiff’s contention that negligently published article was not subject to a one-year statute of limitations, the court further took issue that under plaintiff’s argument, “[t]he intentional defamer achieves protection after one year; the less culpable, although negligent one, can be sued over a greater period of time”); Swan v. Boardwalk Regency Corp., 407 N.J. Super. 108, 122-123 (App. Div. 2009) (to allow a plaintiff to re-label his claims as “False

Light/Invasion of Privacy” would “condone a transparent evasion of the one-year statute of limitations in New Jersey,” the court also noted that a “multitude of courts” in other jurisdictions apply the same statute of limitations to both defamation and false light privacy claims); Flanagan v. City of Atl. City, No. A-3647-12T3, 2014 WL 6861583, at *6 (N.J. Super. Ct. App. Div. Dec. 8, 2014) (appellate division affirmed summary judgment and concluded defamation claims were time barred whereby plaintiffs’ complaint alleged harm caused by an alleged false statement, which was sound in defamation, regardless of the labels applied by the plaintiffs).

Appellant’s action of recharacterizing his claims to extend the statute of limitations is legally unsound and without merit. The New Jersey courts have routinely rejected this ill-fated strategy, specifically in the context of re-naming a defamation claim as an invasion of privacy claim. Appellant did not merely miss the statutory deadline by a few days, he filed his complaint nearly eleven months after his time had run. Such a flagrant violation of the statute of limitations should not be rewarded simply for changing the label on the claim. Additionally, to allow such a strategy to succeed would undoubtedly spur more litigants who simply re-name their claims to advance otherwise untimely allegations. Furthermore, the sanctioning of this action would render N.J.S.A. 2A:14-3 meaningless. A litigant would have no reason to bring their claims within the year—they must only re-label their claim and can avoid the statute entirely. To allow Appellant’s claim to survive would result in

an inconsistency with precedent, bring legitimacy to “re-labeling” and an elimination of the statute of limitations for defamation cases. As such, Respondent respectfully requests that this Court affirm the Appellate Division and as a result find that invasion of privacy false light claims are subject to a one-year statute of limitations.¹

**2. RESPONDENT’S ALLEGED STATEMENT IS PROTECTED
UNDER THE FIRST AMENDMENT AND SHOULD BE SUBJECT
TO A QUALIFIED PRIVILEGE**

Amicus raises concerns that should a false light claim continue to be viable in New Jersey, the claim must comport with the First Amendment. *Amicus* further notes that false light claims have a “significant chilling effect” on the media and free speech. (Ab23-24)².

“The law of defamation embodies the important public policy that individuals should generally be free to enjoy their reputations unimpaired by false and defamatory attacks.” Swede v. Passaic Daily News, 30 N.J. 320, 331 (1959). However, “speech on ‘matters of public concern’ ...is ‘at the heart of the First

¹ This Court has previously ruled that invasion of privacy false light claims are subject to a one-year statute of limitations. Rumbauskas v. Cantor, 138 N.J. 173, 183 (1994) (“actions for public disclosure of private facts or placing one in a false light, case law in other jurisdictions indicates that such actions are subject to the limitations period for defamation claims, which is one year in New Jersey.” (citing N.J.S.A. 2A:14-3).

² “Ab” refers to the New Jersey Center for Nonprofit Journalism and the New Jersey Independent Local News Collective’s brief.

Amendment’s protection.” Sisler v. Gannett Co., 104 N.J. 256, 264 (1986). In fact, this Court has held that speech related to matters of public concerns “requires maximum protection.” Sisler, supra, 104 N.J. at 266. Communications made to law enforcement are generally held to have a qualified privilege if made in good faith for purposes of bringing a criminal to justice. Dijkstra v. Wisterink, 401 A.2d 1118, 1121 (N.J. Super. Ct. App. Div. 1979). A citizen maintains a qualified privilege when making “statements to authorities for the prevent[ion] and detection of crime.” Senna v. Florimont, 196 N.J. 469, n7 (N.J.2008). Qualified privileges exist because a legitimate public or private interest underlying the publication outweighs the important reputation interests of the individual. Dairy Stores, Inc. v. Sentinel Pub. Co., 104 N.J. 125, 137 (1986). When speech touches on a matter of public concern, courts apply the “actual-malice standard.” Durando v. Nutley Sun, 209 N.J. 235, 247 (2012).

In the instant matter, the statement Respondent is alleged to have made is a matter of public concern. An individual who was allegedly selling drugs and/or buying alcohol for minors was attending a high school basketball game. The illicit drug trade is a matter of public concern but even more so when the alleged purchasers are young members of society who are still in high school. Per the Complaint, the statement was made contemporaneously while Respondent observed Appellant at the game and while in conversation with a school official. Finally, there

was also some urgency, as the Appellant would have allegedly been in the presence of his alleged potential buyers.

Appellant's Complaint concedes that he "suspected that out of an abundance of caution, the Clearview Regional High School staff member had passed on to the Clearview Regional High School District Administration the information learned from his informant [Respondent]." Compl. ¶33. Law enforcement later served Appellant with a letter from a school administrator barring him from school grounds. Compl. ¶¶22-25. The Complaint states no other allegations that Respondent did anything more than have a conversation with a school official. Assuming the Appellant's allegations are true, it is clear that any alleged statement was made in a timely fashion and concerned a serious matter of public concern. Serious enough that law enforcement apparently intervened.

From a public policy standpoint, allowing Appellant's claim to proceed would sanction private lawsuits for simply reporting a *bona fide* public concern. Concerningly, Respondent's alleged to have had very little involvement in this matter. His only alleged affirmative conduct is to have reported Appellant to a school official. Respondent had no involvement in any actions that took place after that. Law enforcement and the school apparently acted on their own accord. The instant case is no different than a citizen calling law enforcement to report a potential crime only to later find themselves defending a lawsuit after law enforcement addresses

the report. Appellant's cause of action will have an immense chilling effect on the public at large in addition to the media companies as referenced by *amicus*. The law should operate to protect the good Samaritan for reporting potential criminality that could have significant consequences for societies' most vulnerable. For these reasons, this Court should affirm the Appellate Division and dismiss Appellant's Complaint. In the alternative, it is respectfully requested that this Court recognize a qualified privilege in this matter and bar Appellant's Complaint.

CONCLUSION

The record is clear-- Appellant attempted to re-package his defamation claim for no other reason than to avoid an expired statute of limitations. This practice has been foreclosed on by several courts. Appellant's claims are subject to a one-year statute of limitations and as such were clearly filed out of time. Furthermore, Appellant's claim raises significant First Amendment issues and Respondent's statements should be held as protected under the First Amendment as a matter of public concern. For the foregoing reasons, Respondent respectfully requests that this Court dismiss Appellant's Complaint.

THE VIGILANTE LAW FIRM, P.C.
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By: /s/ Christopher J. Ross
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Date: December 30, 2024