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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3571-21**

SALVE CHIPOLA, III,

Plaintiff-Appellant,

v.

SEAN FLANNERY,

Defendant-Respondent.

Submitted September 27, 2023 – Decided October 30, 2023

Before Judges Gooden Brown and Puglisi.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Docket No. L-1501-21.

Kober Law Firm, LLC, attorneys for appellant (Peter Kober, on the brief).

Vigilante Law Firm, PC, attorneys for respondent (Jacqueline M. Vigilante and Christopher J. Ross, on the brief).

PER CURIAM

Plaintiff Salve Chipola, III appeals from the June 10, 2022 order dismissing with prejudice his complaint alleging false light invasion of privacy. Because plaintiff's complaint was not filed within the applicable one-year statute of limitations, we affirm the dismissal.

On December 28, 2021, plaintiff filed a complaint against defendant Sean Flannery containing the following allegations: On January 9, 2020, plaintiff attended a basketball game at the Clearview Regional High School gym in Harrison. He walked past defendant, who was speaking with a school staff member and another individual. Five days later, plaintiff went to the school to watch another game and a police officer served him with a letter from the school advising him that he was no longer permitted on school grounds. The officer asked plaintiff if he was selling drugs to or purchasing alcohol for students, which plaintiff denied. Upon reflection, plaintiff believed defendant may have been the genesis of the allegations. Plaintiff then confronted defendant via text message, and defendant admitted he had made the accusatory statements about plaintiff to the school staff member during the January 9 game.

Plaintiff's complaint alleged defendant either made these statements knowing they were false or in reckless disregard of their falsity and as a result, plaintiff's "reputation as a drug dealer became publicized throughout the

county," his photograph was posted throughout the county "as a drug dealer" and he was barred from school sporting events, which "created a false public impression of [him] as a drug dealer." He further claimed defendant and other unnamed individuals put his reputation in false light and committed the tort of false light invasion of privacy.

In an oral decision on the record, the trial court granted defendant's motion to dismiss the complaint with prejudice pursuant to Rule 4:6-2(e) for failure to file within the one-year statute of limitations applicable to false light invasion of privacy claims. Swan v. Boardwalk Regency Corp., 407 N.J. Super. 108, 121 (App. Div. 2009). This appeal followed.

"Determining whether a cause of action is barred by a statute of limitations is a question of law that we review de novo." Save Camden Pub. Schs v. Camden City Bd. of Educ., 454 N.J. Super. 478, 487-88 (App. Div. 2018) (citing Catena v. Raytheon Co., 447 N.J. Super. 43, 52 (App. Div. 2016)). Accordingly, we review this matter without deference to the trial court's legal interpretations in reaching its decision to dismiss plaintiff's complaint with prejudice as time-barred. Giannakopoulos v. Mid State Mall, 438 N.J. Super. 595, 600 (App. Div. 2014) (citing Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

There are four types of invasion of privacy: (1) intrusion on a plaintiff's "physical solitude or seclusion," (2) public disclosure of private facts, (3) placing plaintiff in a false light in the public eye, and (4) appropriation of a plaintiff's name or likeness for the defendant's benefit. Rumbauskas v. Cantor, 138 N.J. 173, 180 (1994) (citing W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 117 (5th ed. 1984)). While the four forms of the tort concern a plaintiff's right to be left alone, they are separate and distinct causes of action subject to different rules. Ibid. (internal citations omitted).

During argument on the motion to dismiss, plaintiff conceded our holding in Swan, which established a one-year statute of limitations for false light invasion of privacy, required dismissal of the complaint. On appeal, he urges us to reverse our holding in Swan because it was wrongly decided. Specifically, plaintiff contends that in determining which statute of limitations applied to false light claims, the decision failed to focus on the nature of the injuries claimed as opposed to the legal theory of the cause of action. He claims the 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 a damage to reputation.

In Swan, a casino employee was accused of improperly using interior cameras to focus on the breasts of female employees and patrons. The casino issued public releases of the allegations against him, which later were determined to be unfounded. Swan in turn sued the casino for false light invasion of privacy.

In affirming the dismissal of Swan's complaint on statute of limitations grounds, we noted our Supreme Court's consideration of the applicable statutes of limitations for invasion of privacy claims:

The Court quoted approvingly of decisions in other jurisdictions that applied the same statute of limitations to false light and defamation claims . . . giving the reader every reason to believe that although the Court did not have to reach the issue, it also would conclude that the one-year statute of limitations governing defamation actions would be applied in a "false light" action that was clearly grounded in allegations which were defamatory in nature.

[Swan, 407 N.J. Super. at 121 (citing Rumbauskas, 138 N.J. at 180-82).]

Accordingly, we found false light invasion of privacy to be "essentially one of defamation" subject to a one-year statute of limitations; and dissimilar to an intrusion on seclusion, which is an injury to person subject to a two-year statute of limitations; or appropriation, which is an injury to property rights

subject to a six-year statute of limitations. Ibid. (citing Rumbauskas, 138 N.J. 173; Canessa v. J.I. Kislak, Inc., 97 N.J. Super. 327 (Law Div. 1967)).

Because the issues raised by plaintiff were considered in deciding Swan, his arguments do not warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We are satisfied that Swan was properly decided and decline to overturn its holding.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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