No.

IN THE

Supreme Court of the United States

BRUCE J. CHASAN, PETITIONER

v.

CORREALE F. STEVENS, CAROLYN H. NICHOLS, AND MARY P. MURRAY,

PETITION FOR A WRIT OF CERTIORARI TO THE COMMONWEALTH COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

BRUCE J. CHASAN,
pro se

1500 J.F.K. Boulevard
Suite 910
Philadelphia, PA 19102
bjchasan@brucechasanlaw.com
(215) 567-4400

CURRY & TAYLOR ♦ (202) 350-9073

QUESTION(S) PRESENTED

1. Where Superior Court judges in Pennsylvania are deprived by statute of jurisdiction to make findings of fact and credibility determinations as appellate judges, are their defamatory findings about petitioner in their opinion actionable as a "usurpation of authority" within the meaning of *Bradley v. Fisher*, 80 (13 Wall.) 335, 351-352 (1872) or merely actions "in excess of jurisdiction" protected by judicial immunity?

2. When appellate judges in their opinion stray into defamatory fact-finding and yet lack the statutory jurisdiction to do so, are they nonetheless immune from suit where petitioner seeks only non-monetary relief?

PARTIES TO THE PROCEEDING

All the parties in this proceeding are listed in the caption.

STATEMENT OF RELATED CASES

None.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

RULES

OTHER AUTHORITIES

OPINIONS BELOW

The unpublished and unreported Opinion of Robinson, J., of the Philadelphia County Court of Common Pleas in *Bruce Chasan, Esq. v. Gregory Littman, Esq.*, Docket No. 150200623, dated June 30, 2017, in support of the grant of summary judgment in favor of defendant in petitioner's defamation suit brought against defendant, is set forth in the Appendix hereto (App. 1-16).

The unpublished decision of the Superior Court of Pennsylvania in *Law Office of Bruce J. Chasan, LLC v. Freunslich & Littman*, LLC, Docket No. 2928 EDA 2016, dated January 29, 2019, and reported at 2019 Pa. Super. Unpub. LEXIS 32 (1/29/2019), containing respondents' offending defamation of petitioner, is set forth in the Appendix hereto (App. 17-39).

The unpublished and unreported Order of the Philadelphia County Court of Common Pleas in *Bruce Chasan v. Correale F. Stevens et al.*, Docket No. 200103031, dated January 20, 2021, sustaining respondents' preliminary objections to petitioner's amended complaint and dismissing the amended complaint, is set forth in the Appendix hereto (App. 40-41).

The unpublished Memorandum Opinion of the Commonwealth Court of Pennsylvania in *Bruce J. Chasan v. Correale F. Stevens et al.*, Docket No. 169 CD 2021, dated July 26, 2022, and reported at 283 A.3d 906

(Table) and 2022 WL 2920995 (Pa. Cmwlth. July 26, 2022), affirming the trial court's ruling which sustained respondents' preliminary objections to petitioner's amended complaint and dismissed same, is set forth in the Appendix hereto (App. 42-69).

The unpublished *Per Curiam* Order of the Supreme Court of Pennsylvania in *Bruce J. Chasan v. Correale F. Stevens et al.*, Docket No. 208 EAL 2022, dated January 4, 2023, and reported at 2023 WL 31264 (Pa. January 4, 2023) (Table), denying petitioner's Petition for Allowance of Appeal, is set forth in the Appendix hereto (App. 70).

JURISDICTION

The Order of the Supreme Court of Pennsylvania, the State court of last resort having jurisdiction to review the decisions of all inferior State courts, denying Petition for Allowance of Appeal from the decision of the Commonwealth Court of Pennsylvania, was decided and filed on January 4, 2023 (App. 70).

On March 22, 2023, this Court, Alito, J., granted petitioner's application for an extension of time to file his petition from April 4, 2023, until May 4, 2023 (Docket No. 22A831).

This petition for writ of certiorari is filed within the time allowed by Justice Alito's Order allowing

petitioner to file his petition by May 4, 2023. Supreme Court Rule 30.1.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1257(a). *Lear, Inc. v. Adkins*, 395 U.S. 653, 656 (1969).

RELEVANT PROVISIONS INVOLVED

United States Constitution, Article III, Section 2, Clause 2:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

United States Constitution, Amendment XIV, § 1:

> ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257(a):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

42 Pa. C.S.A. § 741:

Original jurisdiction.

The Superior Court shall have no original jurisdiction, except in cases of mandamus and prohibition to courts of inferior jurisdiction where such relief is ancillary to matters within its appellate jurisdiction, and except that it, or any judge thereof, shall have full power and authority when and as often as there may be occasion, to issue writs of habeas corpus under like conditions returnable to the said court.

42 Pa. C.S.A. § 742:

Appeals from courts of common pleas.

The Superior Court shall have exclusive appellate jurisdiction of all appeals from final orders of the courts of common pleas, regardless of the nature of the controversy or the amount involved, except such classes of appeals as are by any provision of this chapter within the exclusive jurisdiction of the Supreme Court or the Commonwealth Court.

42 Pa. C.S.A. § 8343:

Burden of proof

(a) Burden of plaintiff
In an action for defamation, the plaintiff has the burden of proving, when the issue is properly raised:
(1) The defamatory character of the communication.
(2) Its publication by the defendant.
(3) Its application to the plaintiff.
(4) The understanding by the recipient of its defamatory meaning.
(5) The understanding by the recipient of it as intended to be applied to the plaintiff.
(6) Special harm resulting to the plaintiff from its publication.
(7) Abuse of a conditionally privileged occasion.

(b) Burden of defendant

In an action for defamation, the defendant has the burden of proving, when the issue is properly raised:

(1) The truth of the defamatory communication.

(2) The privileged character of the occasion on which it was published.

(3) The character of the subject matter of defamatory comment as of public concern.

STATEMENT

Overview.

Petitioner Bruce J. Chasan ("petitioner" or "Chasan") herein challenges the Commonwealth Court's ruling that respondents Correale F. Stevens, Carolyn H. Nichols, and Mary P. Murray ("respondents"), all appellate judges of the Superior Court of Pennsylvania, are immune from suit for defaming petitioner in their Opinion affirming the dismissal of his lawsuit against another attorney (App. 17-39). He submits that respondents' Opinion conflicts dramatically with this Court's jurisprudence on judicial immunity in *Bradley v. Fisher*, 80 (13 Wall.) 335, 351-352 (1872); *Stump v. Sparkman*, 435 U.S. 349 (1978); *Pulliam v. Allen*, 466 U.S. 522 (1984); and *Mireles v. Waco*, 502 U.S. 9 (1991).

Pennsylvania Judicial Code (42 Pa. C.S.A. § 741) provides that Superior Court judges like respondents possess "no original jurisdiction" in cases like

petitioner's suit and thus any appellate fact-finding they perform in their opinions, defamatory or otherwise, is carried out *without* the jurisdiction to do so, not "in excess" of any supposed jurisdiction to do so. In *Bradley*, a hypothetical probate judge whose jurisdiction was limited to wills and estates, tried a criminal case. Even though he might arguably have been performing a "judicial act," the Court held that he lacked the subject matter jurisdiction to do so; that the "judicial act" inquiry was irrelevant; and that he was not immune from suit for his conduct in trying the criminal case. *Bradley*, *supra*, 80 U.S. at 352. Similarly in *Stump*, *supra*, the Court first looked to the judge's jurisdiction to consider the request for sterilization, determined that he did have jurisdiction, and then decided whether the sterilization order he signed constituted a judicial act. 435 U.S. at 356.

The Commonwealth Court reverses this process: it first inquired whether the challenged act is "judicial" in nature and then determined whether jurisdiction exists. Petitioner submits that this approach has it backwards, disregarding as it does the example of *Bradley's* probate judge, cited by the *Stump* Court 106 years later. *Stump*, 435 U.S. at 356, n.7. Consistent with *Bradley*, it first should determine whether there is jurisdiction to perform the challenged act and, if there is none, the "judicial act" inquiry becomes irrelevant and there is no immunity. If there were jurisdiction and the challenged conduct constituted a "judicial act," then immunity would attach.

The Commonwealth Court also mis-cites the Court's decision in *Mireles v. Waco*, *supra*, to hold respondents immune from suit when the immunity the Court recognized in *Mireles* applies only to a suit for money damages and that judges do *not* enjoy immunity from suit for non-monetary relief, i.e, declaratory or injunctive relief. See *Mireles*, 502 U.S. at 9, n.1, citing *Pulliam v. Allen*, *supra*. Because the Commonwealth Court has misread and misapplied *Bradley* as well as other decisional law addressing judicial immunity, the Court should use this opportunity to clarify its jurisprudence defining when judges are immune from suit seeking non-monetary relief.

The Importance of Reputation.

Petitioner alleged in his amended complaint that the opinion issued by respondents in *Law Office of Bruce J. Chasan, LLC v. Freunslich & Littman*, LLC, Docket No. 2928 EDA 2016, dated January 29, 2019, and reported at 2019 Pa. Super. Unpub. LEXIS 32 (1/29/2019), is defamatory in multiple respects (App. 43;45-46) . Electing to waive money damages, he sought a non-jury decision after trial that he had proved all the elements of defamation under Pennsylvania law, 42 Pa. C.S.A. § 8343(a). In Pennsylvania, a non-jury trial results in a "decision," whereas a jury trial results in a "verdict." See *Sands v. Andino*, 590 A.2d 761, 764 (Pa. Super. 1991).

This matter originated in 2016 when petitioner sought a jury trial in the Philadelphia Court of Common

Pleas for being defamed by an opposing attorney in a property damage case, the so-called "*Govberg* action" (App. 44-45). He alleged that the attorney, Gregory Littman ("Littman"), defamed him in three letters published to multiple third parties while the case was pending (*Id.*). According to his allegations, when petitioner filed his client's counterclaim against Littman's client as well as against Littman personally for filing vexatious litigation, Littman accused petitioner of witness intimidation and other unethical conduct in order to discourage Littman's brother from testifying against petitioner's client in an upcoming, unrelated criminal trial (*Id.*).

Littman moved for summary judgment, arguing privilege, lack of damages, and a failure by petitioner to file an expert report. On August 22, 2016, the Court, Robinson, J., granted summary judgment in favor of Littman in an unexplained order (App. 1). In an opinion dated June 30, 2017, Judge Robinson then issued her rationale in support of the order and asked the Superior Court to affirm her ruling (App. 1-16). She reasoned *inter alia* that petitioner had failed to provide evidence of damages consistent with his burden of proof under 42 Pa. C.S.A. § 8343(a) (App. 8-14). She also determined that petitioner had not adduced evidence of fault on Littman's part even though Littman had not raised that issue as a basis for summary judgment (App. 14-15).

Petitioner appealed to the Superior Court and argued that a jury trial was warranted because the summary judgment record showed genuine issues of

material fact regarding whether Littman published his defamatory statements with fault, *i.e.*, negligently, with malice or based on mere belief or speculation. But instead of evaluating the evidence in order to determine whether the non-movant petitioner had adduced evidence sufficient to support a finding of fault by Littman and to avoid summary judgment and warrant a trial, respondents:

> (1) transformed themselves and the Superior Court into a court of original jurisdiction;
> (2) selected piecemeal and speculative deposition excerpts for use in their unanimous opinion;
> (3) *determined upon findings of fact that petitioner was, in fact, involved in criminal witness intimidation*; and
> (4) completely disregarded the evidence marshaled by petitioner.

(App. 17-39) (emphasis supplied).

In short, respondents tried for themselves petitioner's defamation case against Littman on the summary judgment record submitted by the parties; they made credibility determinations and weighed other evidence; they issued their own findings of fact, including a finding for Littman on all the evidence; and, in the process, they disregarded all of petitioner's evidence warranting a reversal of the summary judgment order and a jury trial of his claims in the Court of Common Pleas (App. 26-30;32-38).

Petitioner submits, however, that the Superior Court is *not* a court of original jurisdiction. Pursuant to 42 Pa. C.S.A. § 741, it is an appellate court with only limited power in aid of its limited appellate jurisdiction. In ruling as they did on petitioner's appeal—finding as a fact that petitioner was involved in criminal witness intimidation—respondents usurped authority they did not possess and acted outside of their own limited jurisdiction as appellate judges. As such, respondents lost their judicial immunity and consistent with *Bradley v. Fisher*, *supra*, 80 U.S. at 351-352, they are subject to suit for the harm they caused petitioner. As explained in the *Bradley* probate judge example, there is no immunity for these jurists' usurpation of authority because they had no subject matter jurisdiction to try petitioner's defamation case as they did.

Respondents' non-jurisdictional, *ultra vires* fact-finding and credibility determinations had the effect of leaving a disinterested public at large with a negative view of petitioner's honesty and ethics—as well as his supposed criminality. An online article on January 30, 2019, in *LAW360* reporting respondents' Opinion repeatedly describes petitioner as engaging in criminal witness intimidation.

The most important function of a defamation action like petitioner's suit against respondents is the vindication of one's good name, his reputation. *Fox v. Smith*, 263 A.3d 555, 557 (Pa. 2021). As the court noted in *Laniecki v. Polish Army Veterans Assoc. of Lucan Chwalkowski*, 480 A.2d 1101, 1105 n.2 (Pa. Super. 1984),

the jury in that defamation case was moved by the words of Shakespeare in OTHELLO, Act III, Scene 3: "Who steals my purse steals trash ..... But he that filches from me my good name robs me of that which not enriches him and makes me poor indeed." *Id.*

"Any individual's reputation for integrity is his greatest asset. He who attempts to destroy that reputation is doing something that meets with the condemnation of the law and of all persons who believe in fair dealing between man and man." *Montgomery v. Dennison*, 69 A.2d 520, 528 (Pa. 1949). In *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971), this Court said: "Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." See also *Sprague v. Walter*, 543 A.2d 1078, 1085 (Pa. 1988) (Pennsylvania citizens have constitutional right to protect reputation).

Respondents' defamatory Opinion was much more harmful to petitioner than Littman's written defamation. Supposedly neutral jurists have now branded petitioner an unethical practitioner who engages in criminal witness intimidation. Moreover, their Opinion is available on the internet and is the subject of news stories. An internet search regarding petitioner inevitably turns up the *Law360* article and the defamatory Opinion, substantially damaging petitioner's reputation both in the eyes of other attorneys and the judiciary.

Yet there was no bench trial or jury trial in the Court of Common Pleas. There was no cross-examination of witnesses, no findings of fact at the trial court level and no post-trial motions seeking a review of the weight of the evidence. The *only* findings of fact were those made by respondents at the appellate level who never possessed the jurisdiction to make those findings in the first place.

The Govberg Action and The Unfairness of the Appellate Fact-Finding.

Littman represented the Govbergs whose condo sustained damage from a water leak from an upstairs condo owned by Feierstein, petitioner's client. When the Govbergs brought suit, Feierstein viewed the claim as frivolous and wanted recovery of his attorney's fees. When he filed his answer, Feierstein asserted a counterclaim seeking attorney fees from the Govbergs and Littman. In a writing published to third parties, Littman demanded that the counterclaim be withdrawn; and he claimed that Feierstein and petitioner were engaging in criminal witness intimidation, as Littman's brother was a witness against Feierstein in a pending criminal case. Petitioner did not represent Feierstein in the criminal case and did not talk to him about it. When Feierstein refused to withdraw his counterclaim, Littman wrote more letters to others which repeated the allegations of petitioner's criminal witness intimidation and other unethical conduct.

After the *Govberg* action settled, petitioner sued Littman in the Court of Common Pleas for defamation. After discovery, Littman moved for summary judgment, supporting his motion with 16 pages of deposition excerpts from four witnesses. Petitioner opposed the motion with an affidavit and the complete transcripts of 6 deponents, including himself, Littman and his brother. On August 22, 2016, Robinson, J., of the Court of Common Pleas granted summary judgment for Littman in an unexplained order (App. 1).

Almost a year later, Judge Robinson issued an opinion which explained that petitioner had adduced no evidence of damages or of fault on Littman's part in publishing his statements that petitioner had engaged in criminal witness intimidation. She rejected petitioner's reliance on the deposition of Attorney James Schwartzman (who believed Littman's account of petitioner's alleged criminal conduct in the *Govberg* action) as proof of reputational damages (App. 11;13). Even if Schwartzman believed Littman, she ruled that it did not add up to reputational harm (App. 11). As for Littman's fault in publishing the statements, her review of the record "does not show that [petitioner] ever adduced any evidence of [Littman's] fault whatsoever" (App. 15).

Petitioner appealed to the Superior Court of Pennsylvania. As for damages, petitioner argued that false statements imputing commission of a crime are libelous *per se*, and do not require proof of any special damage. See *Baird v. Dun & Bradstreet*, 285 A.2d 166,

171 (Pa. 1971). As to fault, he argued that the depositions showed that Littman's assertions of criminal witness intimidation and other ethical misconduct were based solely on unfounded speculation and belief, which was sufficient to support negligence and malice.

The Superior Court first affirmed the grant of summary judgment in Littman's favor on the basis of procedural waiver. But that ruling was overturned by the Pennsylvania Supreme Court and remanded to the Superior Court for consideration of petitioner's appeal on the merits. See *Law Office of Bruce J. Chasan, LLC v. Freunslich & Littman, LLC*, 197 A.3d 1178 (Pa. Nov. 21, 2018).

On remand, the Superior Court—an appellate tribunal now comprised of respondents as its three-judge Panel— affirmed once again the grant of summary judgment in Littman's favor (App. 17-39). Relying on cherry-picked excerpts of the depositions of Schwartzman, Littman's brother and another deponent, the Panel found that "[t]he aforesaid deposition testimony evinces...[that] *Littman had a reasonable belief that*...Feierstein's signed verification in support of the counterclaim in the *Govberg* case was not valid and that *the counterclaim itself had been filed for an improper purpose*" (App. 30).

Petitioner submits that this finding by respondents about Littman's "reasonable belief" was one which they had no jurisdiction to make. As this

Court explained in *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968), "[t]he finder of fact must determine whether the publication was...made in good faith." *Id.* See also *Montgomery v. Dennison*, 69 A.2d 520, 523, 526 (Pa. 1949) (trial judge charged the jury that malice could be found if the defendant did not have reasonable and probable grounds on which to base a belief that what he stated in the letter was true; also, "it is not sufficient that the defendant believed the facts to be true at the time of publication; the belief must have rested on reasonable and probable cause").

The finder of fact in petitioner's defamation suit was a jury; but it never was allowed to hear the evidence because respondents overrode the jury's role and decided for themselves the fact question of whether Littman reasonably believed that the counterclaim had been filed for an improper purpose. But Superior Court judges have no original jurisdiction to sit as factfinders in appeals that are brought before them. *See* 42 Pa. C.S.A. § 741. It is a quintessential jury function to decide what evidence to credit. Respondents arrogated the jury's function to themselves and defamed petitioner by finding that petitioner was, in fact, involved in criminal witness intimidation.

Respondents also gave credence in their Opinion to Attorney Schwartzman's belief that petitioner was both aware of and participated in Feierstein's acts of witness intimidation in an effort to ensure payment of his legal fees (App. 33). Respondents endorsed Schwartzman's opinion testimony—admitted as

speculative and without evidential basis—that petitioner was either incompetent in representing Feierstein in the *Govberg* action or part of Feierstein's intimidation conspiracy; and that he (Schwartzman) didn't "believe that [petitioner] is incompetent" (App. 28;34-35;37).

Moreover, respondents in their Opinion selectively quoted deposition testimony of Bruce Castor, Feierstein's attorney in the criminal matter, imputing to petitioner knowledge of that criminal matter when he had none and implying that petitioner was somehow concealing Feierstein's supposed mental incompetence, an issue which had been raised in criminal matter (App. 29-30). At the same time, they ignored proof marshaled by petitioner that Littman's three letters to third parties were defamatory *per se*, "outrageous and untrue," and made with actual and literal malice. Respondents referred to a Littman letter discussed at pp. 48-50 of petitioner's deposition to find that petitioner *did not dispute* Littman's allegations (App. 38). However, that letter was *not* one of the three letters alleged in petitioner's complaint to be defamatory. Thus respondents' Opinion left the impression—completely wrong on this record—that petitioner *admitted* to the substance of Littman's defamation.

Finally, the effect of respondents' selective recital of the summary judgment record was to impute to petitioner Feierstein's actions outside of the *Govberg* action for the purpose of buttressing its finding that

Littman reasonably believed that petitioner was involved in criminal witness intimidation (App. 30). All of this *ultra vires* factfinding by respondents left a disinterested public with the conviction that *petitioner was, in fact, involved in criminal witness intimidation* which carried with it a negative view of petitioner's honesty and ethics as well as a belief in his supposed criminal conduct.

Petitioner's Defamation Action.

On January 27, 2020, petitioner began this defamation action against respondents in the Court of Common Pleas on the basis that their Opinion in *Law Office of Bruce J. Chasan, LLC v. Freunslich & Littman*, *supra*, defamed him as an attorney when they found that he was involved in criminal witness intimidation (App. 43-44). He sought a non-jury decision that he will have proved all the elements of defamation under Pennsylvania law; but he expressly waived monetary damages. Respondents filed preliminary objections and the court dismissed petitioner's amended complaint with prejudice on January 25, 2021, relying on the defense of judicial immunity as explicated in *Chasan v. Platt*, 244 A.3d 73 (Pa. Commw. Ct. 2020) ("*Chasan I*") (App. 40-41;47-48).

Petitioner appealed and on July 26, 2022, the Commonwealth Court affirmed the dismissal on the ground that respondents had jurisdiction over petitioner's appeal of the summary judgment order in *Chasan v. Littman*, *supra*, and that any improper

factfinding and credibility determinations in their Opinion were acts made "in excess of jurisdiction, rather than the absence of jurisdiction" (App. 48-55;61). In so ruling, respondents relied on their reading of *Bradley* and its progeny as well as *Chasan I* (App. 60-62). Even though petitioner had waived monetary relief in his defamation suit against respondents and had no statutory right in Pennsylvania to appeal respondents' Opinion to a higher court, the Commonwealth Court held that the purpose of judicial immunity is to shield jurists such as respondents from lawsuits that might impact their independent judgment "without fear of being mulcted for damages." (App. 64-65 *citing Dennis v. Sparks*, 449 U.S. 24, 31 (1980), *Bradley*, *supra*, and *Chasan I*).

On January 4, 2023, the Supreme Court of Pennsylvania denied petitioner's petition for the allowance of his appeal from the ruling of the Commonwealth Court.

On March 22, 2023, this Court, Alito, J., granted petitioner's application for an extension of time to file his petition from April 4, 2023, until May 4, 2023 (Docket No. 22A831).

REASONS FOR GRANTING THE PETITION

The Commonwealth Court's View Of Judicial Immunity Dramatically Conflicts With This Court's Jurisprudence On Judicial Immunity Expressed In *Bradley v. Fisher*, 80 (13 Wall.) 335 (1872) and Its Progeny. The Court Should Use This Opportunity To Clarify When Appellate Judges Are Immune From Suit Seeking Non-Monetary Relief.

What the Commonwealth Court got wrong—as well as the same court previously got wrong in *Chasan I*—is that 42 Pa. C.S.A. § 741 deprives Superior Court Judges of the jurisdictional power to make findings of fact and credibility determinations in the cases brought before them. Yet the court, referring to 42 Pa. C.S.A. §§ 741 and 742, quoting *Chasan I* states: "Neither statutory provision prohibits or directly addresses the authority of an appellate judge to engage in fact-finding or make credibility determinations" (App. 59 quoting *Chasan I*, 244 A.3d at 83).

Petitioner respectfully submits that this is a wrong reading of § 741. If the words "no original jurisdiction" in § 741 have any meaning at all, they mean that the Superior Court may *not* act as a factfinder in their role as appellate judges. This limitation on appellate factfinding is not new in American jurisprudence. The Constitution, Article III, § 2, ¶ 2, gives the Supreme Court "original Jurisdiction" in cases affecting Ambassadors and those in which a

State is a party; but in all other cases, the Court has "appellate Jurisdiction." In *THE FEDERALIST PAPERS*, No. 81, Alexander Hamilton emphasized that "appellate jurisdiction" does *not* empower an appellate court to re-do jury findings. Later, the Seventh Amendment further enshrined this prohibition. As Hamilton wrote (again in FEDERALIST No. 81), "[i]t is true [an appellate court] cannot institute a new inquiry concerning the fact but it takes cognizance of it as it appears upon the record and pronounces the law arising from it." *Id.* All this historical backdrop provides meaningful context for construing the meaning of § 741.

In *Commonwealth of Pennsylvania v. Cosby*, 252 A.3d 1092, 1129 (Pa. 2021), *cert den.*, 142 S.Ct. 1230 (2022), the Supreme Court of Pennsylvania wrote: "It is hornbook law that reviewing courts are not fact-finding bodies....Appellate courts are limited to determining 'whether there is evidence in the record to justify the trial court's findings.....'" (citation omitted). See also *BouSamra v. Excela Health*, 210 A.3d 967, 979-980 (Pa. 2019) ("[I]t is not an appellate court function to engage in fact finding,"citing *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986) (remand to trial court to make findings of fact, *not* to the court of appeals); *Ludmer v. Nernberg*, 640 A.2d 939, 944 (Pa. 1994) ("It is not the role of an appellate court to pass on the credibility of witnesses or to act as the trier of fact; we will not substitute our judgment for that of a fact-finding jury.").

Pennsylvania's highest court has also stated "that it is not a court's function upon summary judgment to decide issues of fact, but only to decide whether there is an issue of fact to be tried." *Fine v. Checchio*, 870 A.2d 850, 862 (Pa. 2005), citing Pa.R.Civ.P. 1035.2(1)). "The function of the summary judgment proceedings is to avoid a useless trial but is not, and cannot, be used to provide for trial by affidavits or trial by depositions." *Penn Center House, Inc. v. Hoffman*, 553 A.2d 900, 902 (Pa. 1989) (citation omitted). Yet a "trial by depositions" is exactly what respondents conducted in the Superior Court to petitioner's detriment.

The Commonwealth Court quoted *Bradley*, *supra*, 80 U.S. at 347, 357, noting that Judge Fisher was the "presiding justice of a court of general criminal jurisdiction" (App. 61). The court completely elided over the distinction relied upon by petitioner, *i.e.*, that Judge Fisher was *not* an appellate judge whose jurisdiction was constrained by a statute such as 42 Pa. C.S.A. § 741.

In fact, nearly all the judicial immunity cases cited by the Commonwealth Court are inapposite because the jurists in those cases were trial-court level judges, *not* appellate judges whose jurisdiction was constrained by a statute like § 741. Those authorities include *Feingold v. Hill*, 521 A.2d 22 (Pa. Super. 1987); *Bradley*, *supra*; *Mireles*, *supra*; *Stump*, *supra*; *Pierson v. Ray*, 386 U.S. 547 (1967); and *Langella v. Cercone*, 34 A.3d 835 (Pa. Super. 2011). Notably, in *Rankin v.*

Howard, 633 F.2d 844, 849 n.14 (9th Cir. 1980), the court observed that if there were an express Indiana statute providing that Judge Stump (in *Stump v. Sparkman*, *supra*) did not have jurisdiction over a sterilization petition, there would have been a clear absence of jurisdiction and hence no immunity from suit.

In this case, *an express statute* (42 Pa. C.S.A. § 741) provides that Superior Court judges have "no original jurisdiction;" and the correct construction of this statute is that they have no jurisdiction to do factfinding or make credibility determinations. Thus this case fits squarely within the example of the probate judge in *Bradley*, a jurist who could not stray into criminal cases when his/her jurisdiction is limited to cases involving wills and estates. Trying a criminal case would be a "judicial act" for a jurist who has jurisdiction over criminal cases, but it is *not* a "judicial act" for a judge who lacks jurisdiction over criminal cases. As *Bradley* makes clear, when a jurist ventures into an area without any jurisdiction to do so, it is a usurpation of authority and that jurist is *not* shielded by judicial immunity. *Bradley*, 80 U.S. at 351-352.

Taking the probate judge example one step further, consider that such a jurist is trying a will contest between two legatees, and legatee A says that legatee B burglarized his house. If the judge puts legatee B on trial for criminal burglary, he/she has no jurisdiction to do so, despite the fact that he/she does have jurisdiction over the will contest. It would be illogical to hold that the probate judge trying the

burglary case acts merely "in excess" of jurisdiction as if the criminal proceeding was merely an outgrowth of the will contest (as to which he/she does have jurisdiction), when the *Bradley* Court makes the crucial, crystal clear point that trying a criminal case is beyond the probate judge's jurisdiction and a usurpation of authority which provides this jurist with no immunity.

Finally, it must be emphasized that the judicial immunity inquiry should first proceed with an inquiry into whether the jurist in question has jurisdiction to entertain the controversy before him/her; if there is jurisdiction, it then proceeds to the inquiry of whether the activity is a "judicial act." *See Stump*, 435 U.S. at 355-360; 361-363 (discussion of Judge Stump's jurisdiction and his "judicial acts"). But the "judicial act" inquiry should *not* be reached if there is no jurisdiction for the jurist to act in the first place.

The Commonwealth Court confused this analysis by suggesting that the "judicial act" inquiry does not necessarily have to follow the jurisdiction question. Quoting *Bradley*, 80 U.S. at 357, the court wrote: "[The allegedly] erroneous manner in which [the court's] jurisdiction was exercised, however it may have affected the validity of the act, did not make it any less a judicial act[.]" (App. 57-58). Yet this quotation from *Bradley* begs the question. The "erroneous manner" was that Attorney Bradley was stricken from the rolls of the court without being afforded a hearing, an essential element of due process. *Bradley*, 80 U.S. at

356-357. The quoted sentence has *nothing* to do with whether Judge Fisher had the jurisdiction to entertain the controversy in the first place, the primary inquiry for determining the viability of the defense of judicial immunity. The Commonwealth Court failed to make this crucial primary inquiry and it fundamentally erred in failing to do so.

In *Marbury v. Madison*, (1 Cranch) 5 U.S. 137 (1803), this Court held that it could not issue a writ of mandamus pursuant to § 13 of the Judiciary Act of 1789 to the Secretary of State to deliver Marbury's judicial commission because the authority in the Act to issue writs of mandamus conflicted with its limited Constitutional grant of "original jurisdiction" in Article III, § 2, ¶ 2. *Id.* at 176-178. Yet if Chief Justice Marshall thought the Court could issue the writ, knowing the limitations on its original jurisdiction in the Constitution to do so, would its issuance of the writ simply be "in excess of jurisdiction" or a "usurpation of authority," as later explained in *Bradley*? Petitioner submits that it would have been a usurpation of authority, as in *Bradley*.

Among the relevant quotations in *Marbury v. Madison* are the following:

> The authority, therefore, given to the supreme court, by the act establishing the judicial courts of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution; and it becomes necessary to

> enquire whether a jurisdiction, so conferred, can be exercised. .....
>
> It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.
>
> Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

Marbury, *supra*, 5 U.S. at 176-177.

The reasoning of *Marbury v. Madison* leads ineluctably to conclusion that had the Court issued the writ, it would have been a usurpation of authority, not merely an act in excess of jurisdiction. There is "no middle ground." By analogy, looking at the limitations on the Pennsylvania Superior Court imposed by § 741, that Court has no original jurisdiction and it cannot make findings of fact and credibility determinations. When it does, it is a usurpation of authority, not merely an act in excess of its jurisdiction. There is no middle ground.

The Balance of Interests Favor Petitioner Who Is Not Seeking Damages And Lacks A Satisfactory Appellate Remedy.

The interest of petitioner in clearing his good name should outweigh respondents' interests in asserting judicial immunity as a defense to his suit seeking this remedy for defamation. Petitioner has waived any claim for money damages. All he seeks is to have the smear of being a co-conspirator in an alleged criminal witness intimidation scheme neutralized because respondents have no business, basis or jurisdiction to find as they did.

Judicial immunity is a public policy choice, whereby judges should not have their judicial independence compromised by suits seeking monetary damages, so long as they act within their jurisdiction. *Bradley*, *supra*, 80 U.S. at 346-349; *Pierson v. Ray*, *supra*, 386 U.S. at 553-554. But what is the public policy when money damages are not sought, as here?

This Court explained in *Supreme Court of Virginia v. Consumers Union of the United States*, 446 U.S. 719, 734-735 (1980):

> [W]e have held that judges defending against § 1983 actions enjoy *absolute immunity from damages liability* for acts performed in their judicial capacities....However, *we have never held that judicial immunity absolutely insulates*

> *judges from declaratory or injunctive relief with respect to their judicial acts.*

Id. (emphasis supplied; citations omitted). Later, in *Pulliam v. Allen*, 466 U.S. 522, 528-543 (1984), this Court held that judicial immunity does not bar prospective injunctive relief against a judge acting in her judicial capacity. *Id.* Central to the analysis was the historical availability of writs of prohibition to assure that judges not exceed their jurisdiction, and the lack of any evidence that prospective injunctive relief impairs judicial independence. *Id.* at 530-536. Limitations on injunctive relief, such as showing an inadequate remedy at law and serious risk of irreparable harm, lessen the risk that judges will be harassed or have their independence compromised. *Id.* at 537.

The Court in *Chasan I*, *supra*, 244 A.3d at 82, 84, misread and misapplied both *Guarassi v. Scott*, 25 A.3d 394 (Pa. Cmwlth. 2011) and *Logan v. Lillie*, 728 A.2d 995 (Pa. Cmwlth. 1999). This has created an inconsistency both with the Federal common law of judicial immunity and the Commonwealth Court's own decisions.

Guarassi, a prison inmate, filed a petition for review in the Commonwealth Court seeking declaratory relief in his quest to obtain documents under Pennsylvania's Right to Know Law ("RTKL"). 25 A.3d at 397. The Court held Guarassi "may not use a civil action for declaratory judgment in our original jurisdiction to collaterally attack his criminal

conviction." *Id.* at 402. His sole remedy was under Pennsylvania's Post-Conviction Relief Act. *Id.* Further, Guarassi had failed to appeal from administrative refusals under relevant provisions of the RTKL, and had thus failed to exhaust his administrative remedies. *Id.* at 402-405. In footnote11 of the *Guarassi* opinion, the Commonwealth Court discussed judicial immunity:

> Judges are *absolutely immune from liability for damages when performing judicial acts*, even if their actions are in error or performed with malice, provided there is no clear absence of jurisdiction over subject matter and person. *Beam v. Daihl*, 767 A.2d 585 (Pa. Super. 2001); *Feingold v. Hill*, 360 Pa. Super. 539, 521 A.2d 33 (1987). *Further judicial immunity is not only immunity from damages, but also immunity from suit. Mireles v. Waco, 502 U.S. 9 (1991).*

Id. at 405, n.11 (emphasis supplied).

Petitioner submits that this last quoted sentence is taken out context. *Mireles* was a suit for *money damages*, as were *Beam* and *Feingold*. The key sentence in *Mireles* is: "Like other forms of official immunity, judicial immunity is immunity from suit, not just from ultimate assessment of damages. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)." *Mireles*, 502 U.S. at 11. Notably, the *Mireles* opinion began with citations to cases holding that judges are immune from suit for money damages, but footnote 1 therein observed that a

judge is *not* immune from a suit for prospective injunctive relief. *Id.* at 509-510 n.1., citing *Pulliam v. Allen*, *supra*.

Mitchell v. Forsyth, *supra*, is not to the contrary. This was a suit against the Attorney General for *money damages* for warrantless wiretapping. 472 U.S. at 513. The district court held that Mitchell had a qualified privilege if he could prove he acted in good faith but denied Mitchell's motion for summary judgment. *Id.* at 516. The Court held that Mitchell could interlocutorily appeal this ruling; and in addressing the advisability of subjecting an official with qualified immunity to pre-trial discovery and other burdens, the Court discussed Mitchell's "immunity from suit."*Id.* at 524-530. But there is no reason the *Mitchell* holding would be applicable in a case where, as here, the plaintiff does *not* seek money damages. That is the import of footnote 1 in *Mireles*, *supra*.

In *Chasan I*, the Panel's reliance on *Logan v. Lillie*, *supra*, was also misplaced. In *Logan*, the Commonwealth Court held that Lillie, acting as a court-appointed Domestic Relations Officer who conducted a conference between mother and father at the request of the Judge— and so acted within the scope of her authority and jurisdiction—was a quasi-judicial officer who was judicially immune from a suit for damages. 728 A.2d at 998-999. The plaintiff Logan's appeal did *not* seek money damages from the Judge *Id.* at 998 n.2. The Commonwealth Court considered Logan's request for

non-monetary relief against the Judge and did *not* hold that the Judge had immunity.

Accordingly, *Logan* does *not* support a holding that judges are absolutely immune from suits seeking only non-monetary relief. To the contrary, the assumption of the Commonwealth Court in *Logan* was that the Judge was *not* immune from a suit for declaratory relief but, because of extenuating circumstances not present here, the plaintiff there could not obtain declaratory relief. Given *Logan's* true import, the Commonwealth Court's holding in *Chasan I* as well as in this case regarding "immunity from suit" conflicts with *Logan* and confusingly muddies the waters of Federal judicial immunity which the Pennsylvania courts have misapplied.

The upshot of this confusion is that even though petitioner argues that appellate judges such as respondents are not immune from a suit for *damages* on account of their non-jurisdictional fact-finding and credibility determinations, it is just as true that the doctrine of judicial immunity does not shield judges when the plaintiff, as here, seeks only non-monetary relief.

In addition, petitioner had no satisfactory appellate remedy once respondents issued their defamatory Opinion. While petitioner did file a petition for allowance of appeal to the Pennsylvania Supreme Court, it was denied. *See Law Office of Bruce J. Chasan, LLC v. Freunslich & Littman, LLC*, 216 A.3d

1033 (Pa. July 24, 2019) (table). However, the grant or denial of a petition for allowance of appeal is discretionary and a denial is not equivalent to an affirmance of the lower court. *Commonwealth v. Davis*, 683 A.2d 873 (Pa. 1996) (allowance of appeal is not a matter of right, and denial of allocator is not a ruling on the merits). Because petitioner had no statutory "right" to appeal respondents' defamatory Opinion, his situation is unlike the plaintiff in *Pierson v. Ray*, where the claim of error "may be corrected on appeal." 386 U.S. at 554. See also *Stump*, 435 U.S. at 369-370 & n.2 (Powell, J., dissenting) (noting that in *Bradley* and in *Pierson*, any errors were correctable on appeal).

Here, Judge Robinson—who conducted neither a jury nor a bench trial—did not make any findings in her opinion that petitioner's conduct was criminal. This defamatory finding first appeared in respondents' Opinion (App. 30). Yet the Commonwealth Court rejected petitioner's argument that he had no satisfactory appellate remedy (App. 65). This ruling was plainly wrong. Petitioner had no statutory "right" to appeal respondents' defamatory Opinion. The lack of a meaningful appellate remedy vis-à-vis respondents' *ultra vires* fact-finding is a policy consideration that argues against the recognition of immunity here.

The balancing of all these factors strongly supports Petitioner's lawsuit. Respondents' Opinion falsely describes Plaintiff as a criminal. The Opinion is not just "unflattering or critical," as suggested in the Commonwealth Court (App. 64-65). It is an egregious

smear on petitioner's reputation which will survive in perpetuity as long any person conducts an internet search concerning petitioner. As such, the harm to petitioner is far more severe than the harm to Attorney Bradley (who was temporarily stricken from the court's roll), or to Attorney Waco (who was forcibly dragged by court personnel to appear before Judge Mireles). The harms sustained by Attorneys Bradley and Waco were transient; the harm to petitioner is permanent and will last beyond his lifetime.

Petitioner (1) has an undying interest in having his name cleared of the baseless, false judicial fact-finding by respondents, (2) as to which he had no statutory, guaranteed appellate remedy, (3) where respondents will not be "mulcted for damages," and (4) where established jurisprudence holds that judges like respondents are not immune from suit for non-monetary relief.

The Commonwealth Court's concern that judicial independence will be threatened were petitioner's suit for non-monetary relief allowed to proceed ignores *Pulliam v. Allen*, *supra*. It is more likely that a grant of certiorari and a reversal will have a salutary effect on appellate courts, in that Superior Court Judges (and all appellate judges nationwide) will be more likely to discharge their duties within the proper confines of their jurisdiction. They should not fear challenges where they act within their jurisdiction.

Finally, petitioner had no notice that respondents would launch into non-jurisdictional. defamatory fact-finding; and once they did, petitioner had no statutory remedy guaranteeing an appeal to review and correct this *ultra vires* fact-finding. As noted in *Wisconsin v. Constantineau*, *supra*, 400 U.S. at 437, due process requires that petitioner be given fair notice and a meaningful opportunity to be heard on the issue. Accord, *Bradley v. Fisher*, *supra*, 80 U.S. at 356-357. Petitioner received none of this process due him.

CONCLUSION

For all the reasons identified herein, a writ of certiorari should issue to the Commonwealth Court of Pennsylvania in order to review and reverse its decision affirming the dismissal of petitioner's defamation complaint against respondents; to remand the matter to the Philadelphia County Court of Common Pleas for further discovery and an eventual trial on the issues presented by petitioner's complaint for non-monetary relief; or for such other relief as is fair and just in the circumstances of this case.

Respectfully submitted,
Bruce J. Chasan, *Pro se*
1500 J.F.K. Boulevard
Suite 910
Philadelphia, PA 19102
(215) 567-4400
bjchasan@brucechasanlaw.com

APPENDIX

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL SECTION

BRUCE CHASAN, ESQ., *et al.*, Plaintiffs,	:	FEBRUARY TERM, 2015
v.	:	
GREGORY LITTMAN, ESQ., *et al.*, Defendants.	:	NO. 150200623
	:	2928 EDA 2016

RULE 1925(a) OPINION IN SUPPORT OF ORDER

ROBINSON, J. June 30, 2017

Plaintiffs Bruce Chasan, Esq., *et al.*,[1] appeal from this Court's August 22, 2016 grant of summary judgment in favor of Defendants Gregory Littman, Esq., *et al.*, dismissing Plaintiffs' defamation claim. The instant appeal followed.[2]

[1] Appellants and Appellees are suing in their personal capacity as individual attorneys and as their respective related professional entities/law practices. We refer to them herein as "Attorney Chasan" and "Attorney Littman," respectively, for clarity.

[2] Appellants raised eight allegations of error in their 1925(b) Statement of Matters Complained on Appeal. However, for the sake of relative brevity and due to the duplicative nature of certain

FACTS

This is a defamation suit arising from the conduct of attorneys in the litigation of a separate matter, Govberg v. Feierstein. Philadelphia CCP no. 130704676. The allegedly defamatory statements were made in three letters written by Attorney Littman and sent to multiple third parties while the Govberg case was pending. Attorney Littman was plaintiffs' counsel, and Attorney Chasan represented defendant Edward Feierstein. It is undisputed that Attorney Littman made the statements, intended their apparent meaning, and meant them to apply to Attorney Chasan. It is further undisputed that the recipients of the letters understood the intended meanings of the statements.

In the Govberg matter, Attorney Littman conducted a pre-Complaint deposition of would- be defendant Mr. Feierstein. After the deposition, Attorney Chasan repeatedly urged Attorney Littman and his clients not to pursue the matter, saying it lacked merit. Attorney Liftman's clients refused and filed a Complaint against Mr. Feierstein. Mr. Feierstein's Answer laid a counterclaim against the plaintiffs and against Attorney Littman personally, suing for attorney's fees under 42 Pa. C.S.A. § 2503(9) for vexatious filing of a baseless suit.

The February 5, 2014 letter (Dragonetti Notice) to Attorney Chasan

Shortly after the filing of the Govberg Answer,

---

allegations, we limit this Opinion to the requirements of Pa. R.A.P. 1925(a).

Attorney Littman sent a Dragonetti Notice to Attorney Chasan. The letter contained several allegations of misconduct and included the following statements:

1. the counterclaim brought by Attorney Chasan and his client was baseless, unlawful, and constituted wrongful use of civil proceedings;
2. Attorney Chasan and Mr. Feierstein were engaged in witness intimidation by using their counterclaim against Attorney Littman to discourage Attorney Liftman's brother, Matthew Littman, from testifying against Mr. Feierstein in an upcoming, unrelated criminal trial for which Matthew Littman had been subpoenaed;
3. Attorney Littman had notified the Attorney General's Office of Attorney Chasan and Mr. Feierstein's "egregious and criminal offense" of witness intimidation;
4. Mr. Feierstein had claimed mental incompetence to stand trial in his criminal matter and had checked himself into a mental health facility, although he simultaneously continued to file and sign legal papers for the Govberg matter; Attorney Littman therefore suspected that Mr. Feierstein was defrauding the criminal court and that Attorney Chasan was be knowingly participating in this

conduct; and

5. that Attorney Chasan's actions violated the Pennsylvania Rules of Professional Conduct, and the counterclaim was brought "with gross negligence, without probable cause and with the intention to annoy, forcing [Attorney Littman and his clients] to spend more time and money with [the Govberg] litigation, while attempting to intimidate a witness that will testify against Mr. Feierstein in his criminal trial," and that this conduct warranted a disciplinary report.

The letter instructed Attorney Chasan to withdraw the Govberg counterclaim within three days or be subject to an ethics complaint. The letter was carbon-copied to Deputy Attorneys General Kenneth McDaniels and Eric Schoenberg, the prosecutors in Mr. Feierstein's criminal trial; Bruce Castor, Esq., Mr. Feierstein's criminal defense attorney; James Schwartzman, Esq., an ethics attorney with whom Attorney Littman had consulted about the instant matter; and Attorney Littman's clients, the Govberg plaintiffs. Attorney Chasan and/or Mr. Feierstein declined to withdraw the Complaint.

The February 24, 2014 letter to Attorney Chasan

Three weeks later, Attorney Littman sent a second allegedly defamatory letter addressed to Attorney Chasan and copied to the same parties from the previous letter. The letter reiterated that Attorney

Chasan was acting in violation of Pennsylvania Rule of Professional Conduct 3.3, Candor Toward the Tribunal. Furthermore, he alleged, Attorney Chasan's conduct was being used for illegitimate purposes to harass and intimidate others, it violated statutory law, and it disrespected the legal system and attorneys. He furthermore stated, "[I]f you continue to represent Mr. Feierstein with the knowledge that he is defrauding the Court, you will leave me no choice [but to lodge an ethics complaint]."

The March 28, 2014 letter to the Court

One month later, Attorney Littman wrote a third letter allegedly defaming Attorney Chasan, this time addressed to the Honorable Ellen Ceisler, the presiding judge in the Govberg case, and copied only to Attorney Chasan. The letter stated that Attorney Chasan and Mr. Feierstein were acting "in bad faith" in the Govberg matter, that Attorney Littman's attempts to resolve the issue with Attorney Chasan had been met with silence, that Mr. Feierstein had sued Attorney Littman personally for filing the Govberg suit, that Mr. Feierstein was alleging mental incompetence to stand trial in the contemporaneous Montgomery County criminal proceeding, and that Attorney Chasan was suing Attorney Littman for defamation due to Attorney Littman's copying of outside parties on the prior two letters. He furthermore requested a conference with the court and Attorney Chasan "so that this matter can be litigated without jeopardizing the integrity of the Court." Attorney Littman also attached copies of the prior two letters to

the Judge Ceisler letter.

DISCUSSION

This Court granted Attorney Littman's summary judgment motion because Attorney Chasan failed to provide sufficient evidence of damages or fault to prove a defamation or defamation *per se* claim.

A. Standards of review

It is well-established that, to avoid summary judgment, a plaintiff must have adduced evidence sufficient for a reasonable jury to find that all *prima facie* elements of the claim were proven. "Failure to adduce this evidence establishes that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Pa. R.C.P. 1035; Ertel v. Patriot-News Co., 674 A.2d 1038, 1042 (Pa. 1996). All doubt and issues of fact must be resolved in favor of the nonmovant for purposes of summary judgment consideration. Curran v. Phila. Newspapers, Inc., 439 A.2d 652, 659 (Pa. 1981) (citation omitted)

B. Summary judgment was proper because Plaintiff failed to provide evidence of damages.

1. Elements of defamation

Pennsylvania statute establishes the following:

(a) Burden of plaintiff.—In an action for defamation, the plaintiff has the burden of proving, when the issue is properly

raised:

(1) The defamatory character of the communication.

(2) Its publication by the defendant.

(3) Its application to the plaintiff.

(4) The understanding by the recipient of its defamatory meaning.

(5) The understanding by the recipient of it as intended to be applied to the plaintiff.

(6) Special harm resulting to the plaintiff from its publication.

(7) Abuse of a conditionally privileged occasion.

(b) Burden of defendant.—In an action for defamation, the defendant has the burden of proving, when the issue is properly raised:

(1) The truth of the defamatory communication.

(2) The privileged character of the occasion on which it was published.

(3) The character of the subject matter of defamatory comment as of public concern.

42 Pa. C.S.A. § 8343. A defamation plaintiff is therefore required to show that the defendant made a statement of defamatory character about the plaintiff, that the statement was published to at least one third party who understood the defamatory meaning as the defendant meant it to apply to the plaintiff, and that the

plaintiff suffered harm. Furthermore, the plaintiff must show that there was some element of fault on the part of the defendant. Dougherty v. Boyertown Times. 547 A.2d 778, 782 (Pa. Super. Ct. 1988) (discussing Gertz v. Robert Welch. Inc., 418 U.S. 323 (1974)). Depending on the status of the plaintiff as a "public" or "private" figure, and depending on the status of the subject of the statement as a "matter of public concern," the plaintiff must show that the defendant's conduct met the standard for (1) negligence or (2) "actual malice."[3] A plaintiff's failure to adduce evidence of the defendant's fault (determined by the standard applicable to that case) is sufficient basis for grant of summary judgment in the defendant's favor. Curran v. Phila. Newspapers, Inc., 439 A.2d at 658.

2. Summary judgment was proper because Plaintiff failed to adduce evidence of damages (regardless of whether the statements were subject to the lower evidentiary standard for *per se* defamation claims).

A plaintiff alleging defamation has the burden of proving damages, although the kind of damages a plaintiff is required to show depends on the type of defamation claim. "[E]very defamation plaintiff must

[3] In their filing, the parties argued without much analysis which fault standard applies to defendant's conduct in this matter, but Plaintiff failed to plead or adduce evidence sufficient evidence to meet either standard, so it is a distinction without difference. See Discussion, *infra*, Part 3.

prove actual harm." Pilchesky v. Gatelli, 12 A.3d 430, 444 (Pa. Super. Ct. 2011) (citing Gertz). Attorney Chasan is correct in asserting that, when a statement is considered *per se* defamation, special damages (i.e. pecuniary losses) are presumed and the claimant need not establish them. Brinich v. Jencka, 757 at 397 (citation and quotation omitted).

The parties have argued extensively about whether or not the subject statements were considered *per se* defamation. Plaintiff correctly observed that the statements included an allegation of criminal conduct: witness intimidation in violation of 18 Pa. C.S.A. § 4952. Because this alleged crime could result in imprisonment, the statements appear *per se* defamatory on their face. Id. at (b)(1)-(4); see also Restatement (Second) of Torts § 573; § 573 Comment A (statements are *per se* defamatory if they accuse the subject of criminal conduct that would be chargeable by indictment and punishable by imprisonment). However, Defendant contended strenuously that he was not subject to *per se* defamation liability because the statements were subject to the protection of "judicial privilege."[4] Nevertheless, we need not address this issue because, regardless of which argument should prevail, Plaintiff will still unable to recover for defamation *per se*.

The fact that *per se* defamation plaintiffs are not

[4] "Judicial privilege" protects judges, attorneys, witnesses, and parties from *per se* defamation liability when the subject statement was made "in the course of, or pertinent to, any stage of judicial proceedings." Richmond v. McHale, 35 A.3d 779, 784 (Pa. Super. Ct. 2012) (citation omitted).

required to plead or prove "special damages" does not absolve them from providing proof of *any* damages: "[r]ather, a [defamation *per se*] defendant...is liable for the *proven, actual harm* the publication causes.... Actual harm includes impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." Brinich, 757 A.2d at 397 (emphasis added) (citations and quotations omitted); Joseph v. Scranton Times L.P., 959 A.2d 322, 344 (Pa. Super. Ct. 2008) ("With words that are actionable *per se,* only general damages, i.e. proof that one's reputation was actually affected by defamation or that one suffered personal humiliation, or both, must be proven"); Walker v. Grand Cent. Sanitation. Inc., 634 A.2d 237, 243-44 (explicitly rejecting the notion that a *per se* defamation plaintiff need only plead damages without offering proof of them). Attorney Chasan failed to present specific facts alleging the existence of damages - "special" or otherwise - to overcome Attorney Littman's summary judgment motion. Attorney Chasan could not overcome summary judgment by resting on the mere allegations and denials of his pleadings. Pa. R.C.P. 1035.3(a). His Complaint alleged damages of "emotional distress, harm *per se,* reputational harm, financial loss, and lost opportunity." (Compl. ¶ 21.) He identifies as evidence of damages only the deposition of Attorney Schwartzman and his own affidavit, and these documents fail to provide evidence that he suffered damages.[5]

---

[5] We acknowledge that the affidavit of a nonmovant can be sufficient to defeat a motion for summary judgment. ADP, Inc. v.

Furthermore, the only evidence that he claimed he has shown to support damages say nothing about "financial loss" or "lost opportunity."

Firstly, Attorney Chasan specifically claimed that Attorney Schwartzman's deposition provided proof of reputational damages. (Pls.' Resp. ¶ 59.) However, our review of the deposition transcript did not reveal any testimony about reputational damages.[6] Furthermore, the mere fact that Attorney Schwartzman said he believed Attorney Littman's account of the matter is also not substantive evidence of damages, despite Attorney Chasan's unsupported contention otherwise. (Pls.' Mem. of Law ¶ 40.) Attorney Schwartzman did not testify as to any change in Attorney Chasan's reputation, or even to a change in Attorney Schwartzman's personal opinion of him. Thus, the deposition does not provide specific evidence of damages.

Secondly, Attorney Chasan's own affidavit also fails as evidence of damages. Even viewing the affidavit

---

Morrow Motors, Inc., 969 A.2d 1244, 1248-49 (Pa. Super. Ct. 2009) (citing Gruenwald v. Advanced Computer App'ns, Inc., 730 A.2d 1004 (Pa. Super. Ct. 1999)).

[6] In fact, the only specific discussion of damages in the deposition centered around statements made by a non-party that were not the subject of the suit - a legal newspaper article (not written by Attorney Littman) about the lawsuit. This line of questioning was dropped immediately upon objection without having elicited any information from Attorney Schwartzman. (Pls.' Exhibit L, Schwartzman Dep. 54:24-55:14, Feb. 9, 2016.) The newspaper publisher is not a party in this suit, and Attorney Chasan has not argued that Attorney Littman is liable for the publisher's statements.

in the light most favorable to Attorney Chasan, it merely speculates that he may have potentially suffered damages. He specifically admits that he is unaware of any reputational damage: "I do not know if Mr. Schwartzman has told others about the accusations...but it has been my experience that attorneys talk about what occurs 'at the bar,' and therefore it would not be surprising to me if Mr. Schwartzman has disseminated negative comments about me...." (Pls.' Aff. ¶ 19 (emphasis added).) He continued to speculate that "it is not uncommon" for attorneys to "shun" peers who are the subject of bad publicity, but he did not claim he had been shunned, or even that he suspected he had. (Id. ¶ 20.) However, as the Superior Court has said, "Injury to reputation is judged by the reaction of other persons in the community and not by the party's self-estimation." Dougherty v. Boyertown Times, 547 A.2d 778, 783 (Pa. Super. Ct. 1988). Attorney Chasan's personal beliefs about his reputation cannot constitute sufficient evidence of damages.

Attorney Chasan himself admits that he does not know if he suffered any damages. These mere conjectures fall short of the standard of "specific facts" showing damages that Attorney Chasan is required to set forth to overcome summary judgment. See Curran v. Children's Serv. Ctr. of Wyoming Cnty., 578 A.2d 8, 9 (Pa. Super. Ct. 1990) (emphasis added) (citation omitted) ("To avoid summary judgment the nonmoving party must set forth specific facts... demonstrating that a genuine factual issue exists."). See also Lin v. Rohm and Haas Co., 293 F. Supp. 2d 505, 520 (E.D. Pa. 2003)

(holding that a plaintiff whose contribution to a patent was downplayed could not recover for slander *per se* on mere speculation that her professional standing would perhaps have increased if she had been credited properly).

Furthermore, the bare assertion that Attorney Chasan was "distressed to learn that Jim Schwartzman had given credence to Mr. Littman's allegations," without further elaboration, is not a "specific fact" showing that he suffered "personal humiliation" or "mental anguish and suffering" as is required for general damages in per se defamation cases. See Restatement § 621 Comment b. This bare assertion of damages does not meet even the low evidentiary standard for summary judgment established by Brinich v. Jencka, 757 A.2d at 397-98.

In Brinich, the summary judgment appellant argued there was insufficient evidence of damages when the only evidence submitted was an affidavit saying that the plaintiff was "momentarily angered." The Superior Court disagreed, however, because this evidence was not the sole evidence of damages. The Court found damages had been sufficiently shown by evidence of the extent of the plaintiff's distress (the plaintiff was sufficiently angry that it drove him to confront the defendant), and evidence that the alleged defamation affected his reputation and others' opinion of him (a witness who otherwise disbelieved the accusation was "actually led to consider" that it was true). Id. Here, due to Attorney Chasan's lack of specificity, it is unknown if his alleged "distress" merely rose to the level of "embarrassment or annoyance," in

which case it would generally not be actionable as defamation,[7] or something more severe. Furthermore, his affidavit does not establish that the statements affected anyone's professional opinion of Attorney Chasan; indeed, it does not even establish that Attorney Chasan's reputation was formerly positive. Thus, Attorney Chasan failed to adduce evidence of damages sufficient to defeat a summary judgment motion.

3. Summary judgment was proper because Plaintiff failed to adduce evidence of Defendant's negligence.

Plaintiff alleged that the publications were "intentionally false and/or made with reckless disregard for the truth - made with 'actual' and literal malice" (Compl. ¶ 20) and that "there is ample evidence of Attorney Littman's malice" (Pls.' Resp. ¶ 60). The sole clue to Plaintiff's reasoning is found in Plaintiffs' Amended Surreply, in which he stated that

> [T]he record clearly evinces that Defendants not only recklessly disregarded the truth but in fact had absolutely no basis whatsoever to make these publications. Indeed, though not required, the record demonstrates Defendants' not only

[7] See Tucker v. Phila. Daily News, 848 A.2d 113, 124 (Pa. 2004) (citations and quotations omitted) ("It is not enough that the [defamation] victim be embarrassed or annoyed, he must have suffered the kind of harm which has grievously fractured his standing in respectable society.")

> recklessness and carelessness but ulterior motive: to gain litigation advantage.

Pls.' Am. Surreply at 2. This was the first mention in this litigation of any actual argument for negligence or actual malice. However, our review of the record does not show that Plaintiff ever adduced any evidence of fault whatsoever. As stated above, Plaintiff was required to adduce evidence of Defendant's fault to defeat summary judgment. Curran v. Phila. Newspapers, Inc., 439 A.2d at 658. See also Pilchesky, 12 A.3d at 444 (emphasizing that a defamation plaintiff must prove, and not just plead, *prima facie* elements to defeat summary judgment). Thus, for this additional reason, summary judgment against Plaintiff was proper.

CONCLUSION

Attorney Chasan failed to meet his burden of proving the *prima facie* elements of his defamation claim; thus, Attorney Littman was entitled to judgment as a matter of law, and this Court properly granted it.

In light of the foregoing, it is respectfully requested that the Superior Court affirm this Court's grant of summary judgment in favor of Defendants/Appellees, Gregory Creed Littman, Esq., *et al.*

BY THE COURT:

_____
ROBINSON, J. DATE

_____
DATE

Exhibit "A"

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LAW OFFICE OF BRUCE J. CHASAN, LLC AND BRUCE CHASAN, ESQUIRE	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	No. 2928 EDA 2016
v.	:	
FREUNSLICH & LITTMAN, LLC AND GREGORY LITTMAN, ESQUIRE	:	

Appeal from the Order Entered August 22, 2016
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 00623 Feb. Term, 2015

BEFORE: NICHOLS, J., MURRAY, J., and STEVENS*, P.J.E.

MEMORANDUM BY STEVENS, P.J.E.

FILED JANUARY 29, 2019

* Former Justice specially assigned to the Superior Court.

Appellants Bruce J. Chasan, Esq. *et al.*, (hereinafter Chasan) appeal from the Order entered in the Court of Common Pleas of Philadelphia County on August 22, 2016, granting summary judgment in favor of Appellees Gregory Littman, Esq. *et al.* (hereinafter Littman) and dismissing Chasan's defamation action.

This matter is before this Court upon remand following the Pennsylvania Supreme Court's reversal of our previous memorandum decision wherein we found Appellant had waived his claims raised on appeal for his failure to identify concisely in his Pa.R.A.P. 1925(b) statement the issues he developed in his appellate brief. Following a careful review, we affirm.

The trial court set forth the pertinent facts and procedural history herein as follows:

> This is a defamation suit arising from the conduct of attorneys in the litigation of a separate matter, Govberg v. Feierstein, Philadelphia CCP no. 130704676. The allegedly defamatory statements were made in three letters written by Attorney Littman and sent to multiple third parties while the Govberg case was pending. Attorney Littman was plaintiffs' counsel, and Attorney Chasan represented defendant Edward Feierstein. It is undisputed that Attorney Littman made the statements, intended their apparent meaning, and meant them to apply to Attorney Chasan. It is further undisputed that the recipients of the letters understood the intended meanings of the statements.

In the Govberg matter, Attorney Littman conducted a pre - Complaint deposition of would-be defendant Mr. Feierstein. After the deposition, Attorney Chasan repeatedly urged Attorney Littman and his clients not to pursue the matter, saying it lacked merit. Attorney Littman's clients refused and filed a Complaint against Mr. Feierstein. Mr. Feierstein's Answer laid a counterclaim against the plaintiffs and against Attorney Littman personally, suing for attorney's fees under 42 Pa. C.S.A. § 2503(9) for vexatious filing of a baseless suit.

The February 5, 2014 letter (Dragonetti Notice) to Attorney Chasan

Shortly after the filing of the Govberg Answer, Attorney Littman sent a Dragonetti Notice to Attorney Chasan. The letter contained several allegations of misconduct and included the following statements:

1. the counterclaim brought by Attorney Chasan and his client was baseless, unlawful, and constituted wrongful use of civil proceedings;

2. Attorney Chasan and Mr. Feierstein were engaged in witness intimidation by using their counterclaim against Attorney Littman to discourage Attorney Littman's brother, Matthew Littman,

from testifying against Mr. Feierstein in an upcoming, unrelated criminal trial for which Matthew Littman had been subpoenaed;

3. Attorney Littman had notified the Attorney General's Office of Attorney Chasan and Mr. Feierstein's "egregious and criminal offense" of witness intimidation;

4. Mr. Feierstein had claimed mental incompetence to stand trial in his criminal matter and had checked himself into a mental health facility, although he simultaneously continued to file and sign legal papers for the Govberg matter; Attorney Littman therefore suspected that Mr. Feierstein was defrauding the criminal court and that Attorney Chasan was be [sic] knowingly participating in this conduct; and

5. that Attorney Chasan's actions violated the Pennsylvania Rules of Professional Conduct, and the counterclaim was brought "with gross negligence, without probable cause and with the intention to annoy, forcing [Attorney Littman and his clients] to spend more time and money with [the Govberg] litigation, while attempting to intimidate a witness that

> will testify against Mr. Feierstein in his criminal trial," and that this conduct warranted a disciplinary report.

The letter instructed Attorney Chasan to withdraw the Govberg counterclaim within three days or be subject to an ethics complaint. The letter was carbon-copied to Deputy Attorneys General Kenneth McDaniels and Eric Schoenberg, the prosecutors in Mr. Feierstein's criminal trial; Bruce Castor, Esq., Mr. Feierstein's criminal defense attorney; James Schwartzman, Esq., an ethics attorney with whom Attorney Littman had consulted about the instant matter; and Attorney Littman's clients, the Govberg plaintiffs. Attorney Chasan and/or Mr. Feierstein declined to withdraw the Complaint.

The February 24, 2014 letter to Attorney Chasan

Three weeks later, Attorney Littman sent a second allegedly defamatory letter addressed to Attorney Chasan and copied to the same parties from the previous letter. The letter reiterated that Attorney Chasan was acting in violation of Pennsylvania Rule of Professional Conduct 3.3, Candor Toward the Tribunal. Furthermore, he alleged, Attorney Chasan's conduct was being used for illegitimate purposes to harass and intimidate others, it violated

statutory law, and it disrespected the legal system and attorneys. He furthermore stated, "[I]f you continue to represent Mr. Feierstein with the knowledge that he is defrauding the [c]ourt, you will leave me no choice [but to lodge an ethics complaint]."

The March 28, 2014 letter to the Court

One month later, Attorney Littman wrote a third letter allegedly defaming Attorney Chasan, this time addressed to the Honorable Ellen Ceisler, the presiding judge in the Govberg case, and copied only to Attorney Chasan. The letter stated that Attorney Chasan and Mr. Feierstein were acting "in bad faith" in the Govberg matter, that Attorney Littman's attempts to resolve the issue with Attorney Chasan had been met with silence, that Mr. Feierstein had sued Attorney Littman personally for filing the Govberg suit, that Mr. Feierstein was alleging mental incompetence to stand trial in the contemporaneous Montgomery County criminal proceeding, and that Attorney Chasan was suing Attorney Littman for defamation due to Attorney Littman's copying of outside parties on the prior two letters. He furthermore requested a conference with the court and Attorney Chasan "so that this matter can be litigated without jeopardizing the integrity of the Court." Attorney Littman also

attached copies of the prior two letters to the Judge Ceisler letter.

---

[1]Appellants and Appellees are suing in their personal capacity as individual attorneys and as their respective related professional entities/law practices. We refer to them herein as "Attorney Chasan" and "Attorney Littman," respectively, for clarity.

[2]Appellants raised eight allegations of error in their 1925(b) Statement of Matters Complained on Appeal. However, for the sake of relative brevity and due to the duplicative nature of certain allegations, we limit this Opinion to the requirements of Pa. R.A.P. 1925(a).

Trial Court Opinion, filed 6/30/17, at 1-4.

In its Order entered on August 22, 2016, the trial court granted Littman's Motion for Summary Judgment and dismissed Chasan's claims with prejudice. On September 7, 2016, Chasan filed a timely notice of appeal with this Court. On September 9, 2016, the trial court ordered Chasan to file a concise statement of the errors complained of on appeal within twenty-one (21) days. Chasan filed the same on September 28, 2016, wherein he set forth eight issues.

As stated previously, on March 29, 2018, this Court affirmed the trial court's August 22, 2016, Order. Appellant filed an application for panel reargument which was denied. Thereafter, Appellant filed for reargumant *en banc* on April 20, 2018, and this Court

denied the same in a *Per Curiam* Order entered on May 16, 2018. On November 21, 2018, the Pennsylvania Supreme Court granted Appellant's Petition for Allowance of Appeal, reversed this Court's decision, and remanded to this Court "for consideration of the merits of the appeal."

In his appellate brief, Chasan presents the following two questions for this Court's review:

> 1. Did the court err as a matter of law in holding that [Chasan] had insufficient evidence to show [Littman] published the defamatory statements with fault, *i.e.*, with negligence and/or reckless disregard of their falsity?
>
> 2. Did the court err as a matter of law in holding that [Chasan] had insufficient evidence of damages to support a claim for defamation based on [Littman's] publication of defamatory statements?

[Chasan's] Brief at 5.

In considering these claims, we are mindful that:

> Our scope of review of a trial court's order granting or denying summary judgment is plenary, and our standard of review is clear: the trial court's order will be reversed only where it is established that the court committed an error of law or abused its discretion. Summary judgment is appropriate only when the record

> clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.

Hovis v. Sunoco, Inc., 64 A.3d 1078, 1081 (Pa.Super. 2013) (quoting ***Cassel-Hess v. Hotter***, 44 A.3d 80, 84-85 (Pa.Super. 2012)). "[P]arties seeking to avoid the entry of summary judgment against them may not rest upon the averments contained in their pleadings. On the contrary, they are required to show, by depositions, answers to interrogatories, admissions or affidavits, that there is a genuine issue for trial." ***Washington Fed. Sav. & Loan Ass'n v. Stein***, 515 A.2d 980, 981 (Pa.Super. 1986) (citing Pa.R.C.P. 1035(d)).

In a defamation case, the plaintiff has the burden of proof on the following elements.

> **§ 8343. Burden of proof**
>
> **(a) Burden of plaintiff.**—In an action for defamation, the plaintiff has the burden of proving, when the issue is properly raised:
>
> > (1) The defamatory character of the communication.
> >
> > (2) Its publication by the defendant.

(3) Its application to the plaintiff.
(4) The understanding by the recipient of its defamatory meaning.
(5) The understanding by the recipient of it as intended to be applied to the plaintiff.
(6) Special harm resulting to the plaintiff from its publication.
(7) Abuse of a conditionally privileged occasion.

…

42 Pa.C.S.A. § 8343(a).

Initially, the trial court must determine whether the statement in question is capable of a defamatory meaning and if it does not so find, the court should dismiss the lawsuit. ***MacElree v. Phila. Newspapers, Inc.***, 544 Pa. 117, 124, 674 A.2d 1050, 1053 (1996), *reargument denied*, June 11, 1996. As our Supreme Court has stressed: "It is not enough that the victim ... be embarrassed or annoyed, he must have suffered the kind of harm which has grievously fractured his standing in the community of respectable society." ***Tucker v. Philadelphia Daily News***, 577 Pa. 598, 616, 848 A.2d 113, 124 (2004), *reargument denied*, June 30, 2004. In addition, one's opinion, without more, is not actionable. ***Baker v. Lafayette Coll.***, 516 Pa. 291, 297, 532 A.2d 399, 402 (1987). We must examine the challenged statement in context. ***Id.*** at 296, 532 A.2d at 402. While certain words standing alone reasonably may be understood as defamatory, the context in which they are uttered may provide an explanation that would render such an interpretation unreasonable. ***See***

Thomas Merton Center. v. Rockwell Intern. Corp., 497 Pa. 460, 465, 442 A.2d 213, 216 (1981), *cert denied*, 457 U.S. 1134, 102 S.Ct. 2961 (1982).

In his first issue, Chasan asserts he presented sufficient evidence to show Littman published the defamatory statements with fault. To the contrary, the trial court determined that the "sole clue" as to Chasan's reasoning in support of Paragraph Twenty of his Complaint alleging that Littman's publications were intentionally false and/or made with reckless disregard for the truth is found in his Amended Surreply at which time he stated:

> [T]he record clearly evinces that [Littman] not only recklessly disregarded the truth but in fact had absolutely no basis whatsoever to make these publications. Indeed, though not required, the record demonstrates [Littman's] not only recklessness and carelessness but ulterior motive: to gain litigation advantage.

Trial Court Opinion, filed 6/30/17, at 10 (citing Chasan's Surreply at ¶2).

Chasan contends that in reaching this conclusion, "the trial court overlooked a boatload of record evidence relating to Littman's fault, and that plenary review by this Court will reveal ample opportunity not only of negligence, but also recklessness." Chasan's Brief at 21. However, upon our review of the record, we disagree.

After consulting with one of his mentors Attorney James Schwartzman, who had experience in

witness intimidation issues as an ethics and professional responsibility lawyer, Littman drafted the letters at issue wherein he expressed his view that the counterclaim in the Govberg matter named him for the improper purpose of witness intimidation with regard to Littman's brother, Matthew Littman. At his deposition, Attorney James Schwartzman stated he had experience with the Pennsylvania criminal statute regarding intimidation of witnesses or victims and expressed his belief that Chasan was both aware of and participating in Mr. Feierstein's acts of witness intimidation in an effort to ensure payment of his legal fees. ***See*** Deposition of James Schwartzman, 2/9/16, at 7, 17-26, 29-30, 56-57).[1]

Attorney Schwartzman posited that at a minimum, Chasan had an obligation to make a determination as to whether Feierstein was truly competent before he allowed him to sign verifications in a civil matter because he claimed in prior pleadings in his criminal matter that he was incompetent. ***Id.*** at 21. Attorney Schwartzman concluded "[i]t's either [Chasan] is incompetent in the representation in the civil case or he was part of the Feierstein witness intimidation conspiracy. I don't believe that [Chasan] is incompetent." ***Id.*** at 23.

In addition, Matthew Littman explained in his deposition testimony that in his capacity as the

[1] Chasan admitted that he and Feierstein "thought the complaint against Feierstein was frivolous and vexations," and that he filed the counterclaim against Littman, "to recover [Feierstein's] attorney fees because he didn't have insurance." Deposition testimony of Bruce Chasan, 1/18/16, at 12.

president of the fitness center where Mr. Feierstein was a client, he was interviewed in person by the Attorney General's Office about Mr. Feierstein's activities at the facility. Mr. Feierstein left Matthew Littman various voicemail messages wherein he denied playing tennis at the fitness center and claimed the latter was causing him "further problems" by speaking to the Attorney General's Office. ***See*** Deposition of Matthew Littman, 5/2/16, at 8-11.

Although he never felt physically threatened, Matthew Littman felt threatened and intimidated by Mr. Feierstein's voice mail messages on both his cell phone and work phone wherein he stated he would sue Matthew Littman if he did not "recant [his] conversation with the AG." While he never felt intimidated directly by Chasan, Matthew Littman believed he was the target of Feierstein's counterclaim for attorney's fees against his brother, Appellee Littman. ***Id.*** at 14, 17-19, 22. In certain emails sent by Feierstein to Appellee Littman which he shared with Matthew Littman, Mr. Feierstein referred to Appellee Littman as a "Down's Syndrome, backside, a low life, you will be segregated with other witnesses, how did you graduate from law school, pond scum like you,... your retarded brother... admitted he lied to the AG investigator... "Reckless defamation by brother rat, I mean Matt." ***Id.*** at 25, 28-30.

Moreover, Bruce Castor testified he did not recall having met Chasan, but he did serve as Mr. Feierstein's criminal defense counsel in Montgomery County from 2012-2014, at which time he had been charged with, *inter alia*, perjury and insurance fraud.

See Deposition of Bruce Castor, 4/1/16, at 5. Attorney Castor raised the issue of Mr. Feierstein's competency to stand trial with "at least two judges with the Deputy Attorney General present" because, in his view, Mr. Feierstein "did not understand the nature of the proceedings against him and was unable to assist [Attorney Castor] in his defense." *Id.* at 16-17. Attorney Castor eventually filed a motion to withdraw as he believed Mr. Feierstein was suffering from a mental illness. *Id.* at 13, 17, 21.

The aforesaid deposition testimony evinces Littman had a reasonable belief that Mr. Feierstein's signed verification in support of the counterclaim in the Govberg case was not valid and that the counterclaim itself had been filed for an improper purpose. The resulting correspondence of February 5th and 24th and of March 28th of 2014 reflect that belief. As such, the trial court's conclusion that Chasan failed to adduce evidence of fault on the part of Littman in drafting the letters containing the alleged defamatory statements at issue was not in error.[2]

Chasan next asserts the trial court erred in concluding summary judgment was proper in light of his failure to adduce evidence that he sustained

---

[2] We note that the trial court found Chasan's failure to adduce sufficient evidence of Littman's fault to be an alternative basis upon which summary judgment in favor of Littman was proper, for it initially granted summary judgment on the basis of Chasan's failure to present evidence of damages. We may affirm the trial court court's order on any valid basis. ***Plasticert, Inc. v. Westfield Ins. Co.***, 923 A.2d 489, 492 (Pa.Super. 2017).

damages. In this regard, the trial court reasoned as follows:

> A plaintiff alleging defamation has the burden of proving damages, although the kind of damages a plaintiff is required to show depends on the type of defamation claim. "[E]very defamation plaintiff must prove actual harm." Pilchesky v. Gatelli, 12 A.3d 430, 444 (Pa. Super. Ct. 2011) (citing Gertz [v. Robert Welch, Inc., 418 U.S. 323 (1974)]). Attorney Chasan is correct in asserting that, when a statement is considered *per se* defamation, special damages (i.e. pecuniary losses) are presumed and the claimant need not establish them. Brinich v. Jencka, 757 [A.2d 388], 397 [(Pa.Super. 2000), *appeal denied*, 565 Pa. 634, 771 A.2d 1276 (2001)](citation and quotation omitted).
>
> The parties have argued extensively about whether or not the subject statements were considered *per se* defamation. [Chasan] correctly observed that the statements included an allegation of criminal conduct: witness intimidation in violation of 18 Pa. C.S.A. § 4952. Because this alleged crime could result in imprisonment, the statements appear *per se* defamatory on their face. Id. at (b)(1)-(4); see also Restatement (Second) of Torts § 573; § 573 Comment A (statements are *per se* defamatory if they accuse the subject of criminal conduct that would be chargeable by indictment and punishable by imprisonment). However,

[Littman] contended strenuously that he was not subject to *per se* defamation liability because the statements were subject to the protection of "judicial privilege."4 Nevertheless, we need not address this issue because, regardless of which argument should prevail, [Chasan] will still [be] unable to recover for defamation *per se*.

The fact that *per se* defamation plaintiffs are not required to plead or prove "special damages" does not absolve them from providing proof of any damages: "[r]ather, a [defamation *per se*] defendant… is liable for the *proven, actual harm* the publication causes.... Actual harm includes impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." Brinich, 757 A.2d at 397 (emphasis added) (citations and quotations omitted); Joseph v. Scranton Times L.P., 959 A.2d 322, 344 (Pa. Super. Ct. 2008) ("With words that are actionable *per se*, only general damages, i.e. proof that one's reputation was actually affected by defamation or that one suffered personal humiliation, or both, must be proven"); Walker v. Grand Cent. Sanitation, Inc., 634 A.2d 237, 243-44 (explicitly rejecting the notion that a *per se* defamation plaintiff need only plead damages without offering proof of them). Attorney Chasan failed to present specific facts alleging the existence of damages – "special" or otherwise - to overcome Attorney Littman's summary judgment motion. Attorney Chasan could not overcome summary judgment

by resting on the mere allegations and denials of his pleadings. Pa. R.C.P. 1035.3(a). His Complaint alleged damages of "emotional distress, harm *per se*, reputational harm, financial loss, and lost opportunity." (Compl. ¶21.) He identifies as evidence of damages only the deposition of Attorney Schwartzman and his own affidavit, and these documents fail to provide evidence that he suffered damages.5 Furthermore, the only evidence that he claimed he has shown to support damages say nothing about "financial loss" or "lost opportunity."

Firstly, Attorney Chasan specifically claimed that Attorney Schwartzman's deposition provided proof of reputational damages. (Pls.' Resp. ¶ 59.) However, our review of the deposition transcript did not reveal any testimony about reputational damages.6 Furthermore, the mere fact that Attorney Schwartzman said he believed Attorney Littman's account of the matter is also not substantive evidence of damages, despite Attorney Chasan's unsupported contention otherwise. (Pls.' Mem. of Law ¶ 40.) Attorney Schwartzman did not testify as to any change in Attorney Chasan's reputation, or even to a change in Attorney Schwartzman's personal opinion of him. Thus, the deposition does not provide specific evidence of damages.

Secondly, Attorney Chasan's own affidavit also fails as evidence of damages. Even viewing the affidavit in the light most favorable

to Attorney Chasan, it merely speculates that he may have potentially suffered damages. He specifically admits that he is unaware of any reputational damage: "I do not know if Mr. Schwartzman has told others about the accusations...but it has been my experience that attorneys talk about what occurs 'at the bar,' and therefore it would not be surprising to me if Mr. Schwartzman has disseminated negative comments about me...." (Pls.' Aff. ¶ 19 (emphasis added).) He continued to speculate that "it is not uncommon" for attorneys to "shun" peers who are the subject of bad publicity, but he did not claim he had been shunned, or even that he suspected he had. (Id. ¶ 20.) However, as the Superior Court has said, "Injury to reputation is judged by the reaction of other persons in the community and not by the party's self-estimation." Dougherty v. Boyertown Times, 547 A.2d 778, 783 (Pa. Super. Ct. 1988). Attorney Chasan's personal beliefs about his reputation cannot constitute sufficient evidence of damages.

Attorney Chasan himself admits that he does not know if he suffered any damages. These mere conjectures fall short of the standard of "specific facts" showing damages that Attorney Chasan is required to set forth to overcome summary judgment. See Curran v. Children's Serv. Ctr. of Wyoming Cnty., 578 A.2d 8, 9 (Pa. Super. Ct. 1990) (emphasis added) (citation omitted) ("To avoid summary judgment the nonmoving party must set forth specific

facts...demonstrating that a genuine factual issue exists."). See also Lin v. Rohm and Haas Co., 293 F. Supp. 2d 505, 520 (E.D. Pa. 2003) (holding that a plaintiff whose contribution to a patent was downplayed could not recover for slander *per se* on mere speculation that her professional standing would perhaps have increased if she had been credited properly).

Furthermore, the bare assertion that Attorney Chasan was "distressed to learn that Jim Schwartzman had given credence to Mr. Littman's allegations," without further elaboration, is not a "specific fact" showing that he suffered "personal humiliation" or "mental anguish and suffering" as is required for general damages in per se defamation cases. See Restatement § 621 Comment b. This bare assertion of damages does not meet even the low evidentiary standard for summary judgment established by Brinich v. Jencka, 757 A.2d at 397-98.

In Brinich, the summary judgment appellant argued there was insufficient evidence of damages when the only evidence submitted was an affidavit saying that the plaintiff was "momentarily angered." The Superior Court disagreed, however, because this evidence was not the sole evidence of damages. The Court found damages had been sufficiently shown by evidence of the extent of the plaintiff's distress (the plaintiff was sufficiently angry that it drove him to confront the defendant), and evidence

that the alleged defamation affected his reputation and others' opinion of him (a witness who otherwise disbelieved the accusation was "actually led to consider" that it was true). Id. Here, due to Attorney Chasan's lack of specificity, it is unknown if his alleged "distress" merely rose to the level of "embarrassment or annoyance," in which case it would generally not be actionable as defamation,7 or something more severe. Furthermore, his affidavit does not establish that the statements affected anyone's professional opinion of Attorney Chasan; indeed, it does not even establish that Attorney Chasan's reputation was formerly positive. Thus, Attorney Chasan failed to adduce evidence of damages sufficient to defeat a summary judgment motion.

---

[4]"Judicial privilege" protects judges, attorneys, witnesses, and parties from *per se* defamation liability when the subject statement was made "in the course of, or pertinent to, any stage of judicial proceedings." Richmond v. McHale, 35 A.3d 779, 784 (Pa. Super. Ct. 2012) (citation omitted).

[5]We acknowledge that the affidavit of a nonmovant can be sufficient to defeat a motion for summary judgment. ADP, Inc. v. Morrow Motors, Inc., 969 A.2d 1244, 1248-49 (Pa. Super. Ct. 2009) (citing Gruenwald v. Advanced Computer App'ns, Inc., 730 A.2d 1004 (Pa. Super. Ct. 1999)).

[6]In fact, the only specific discussion of damages in the deposition centered around statements made by a non-party that were not the subject of the suit -a legal newspaper article (not written by Attorney Littman) about the lawsuit. This line of questioning was dropped

immediately upon objection without having elicited any information from Attorney Schwartzman. (Pls.' Exhibit L, Schwartzman Dep. 54:24-55:14, Feb. 9, 2016.) The newspaper publisher is not a party in this suit, and Attorney Chasan has not argued that Attorney Littman is liable for the publisher's statements.

[7]See Tucker v. Philia. Daily News, 848 A.2d 113, 124 (Pa. 2004) (citations and quotations omitted) ("It is not enough that the [defamation] victim be embarrassed or annoyed, he must have suffered the kind of harm which has grievously fractured his standing in respectable society.").

Trial Court Opinion, filed 6/30/17, at 6-10 (some brackets added).

Following our review of the record, we find no error in the trial court's assessment. Indeed, as the trial court noted, Chasan's claims of economic and reputational damages are nothing more than bald averments unsubstantiated by any record evidence. At his deposition, Chasan was asked about the damages he claimed to have suffered as a result of Littman's sending the three letters. Chasan spoke hypothetically when questioned regarding economic damages, repeatedly saying he "d[id]n't know if there is economic loss or not." ***See*** Deposition of Bruce Chasan, 1/18/16, at 23-29. For example, admitting that he was not sure what credence Attorney Schwartzman may have given to the February 5, 2014, correspondence on which he was carbon-copied and that "[m]aybe he didn't give it any," Chasan could simply say he was "concern[ed] that "it could result in economic loss." ***Id.*** at 28-29. In fact, when asked whether he had "a dollar and cents number that you are aware of that you lost[,]" Chasan

responded, "At this time I do not have a dollar and cents number." *Id.* at 34.

When questioned with regard to any damages he may have sustained to his professional marketability, Chasan's responses were similarly vague. Chasan admitted he had "no idea what [the individuals who received a copy of the letters] were saying about [him]." *Id.* at 35. Furthermore, he never sought the treatment of a physician or other healthcare professional pertaining to his claimed emotional distress. *Id.* at 36. Importantly, Chasan could not identify any statements made in the correspondence that were untrue. *Id.* at 48-50. In addition, in his appellate brief, Chasan simply reiterates he is concerned about Attorney Schwartzman's view of him, claiming the letters "soured the relationship" he allegedly shared with Attorney Schwartzman and indicated "it would be of concern to him **if** Schwartzman gave [Littman's] letter any credence." *See* Chasan's Brief at 20, 40 (emphasis added).

In light of all of the foregoing, Chasan has failed to establish his burden as a plaintiff alleging defamation of proving he suffered damages. Thus, we agree with the trial court that summary judgment in favor of Littman was proper herein and affirm its Order entered on August 22, 2016.

Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/29/19

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF
PENNSYVANIA
TRIAL DIVISION – CIVIL

BRUCE CHASAN,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	No. 200103031
CORREALE F.	:	
STEVENS, CAROLYN	:	
H. NICHOLS, and MARY	:	Control No. 20121670
P. MURRAY,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 20th day of January, 2021, upon consideration of the Preliminary Objections of Defendants Correale F. Stevens, Carolyn H. Nichols and Mary P. Murray to the Amended Complaint of Plaintiff Bruce Chasen, Plaintiff having submitted a stipulation seeking an extension of time to respond and the court having declined to approve the extension, it is hereby ORDERED and DECREED that Defendants'

Preliminary Objections are SUSTAINED for the reasons set forth in the opinion of the Commonwealth Court in Chasen v. Platt, No. 47 CD 2020 (filed December 14, 2020) and Plaintiff's Amended Complaint is DISMISSED, **with prejudice** and without leave to file any further amendments.

BY THE COURT:

_____

Crumlish, III, J

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bruce J. Chasan,	:	
	:	
Appellant	:	
	:	
v.	:	
	:	
Correale F. Stevens,	:	No. 169 C.D. 2021
Carolyn H. Nichols, and	:	Argued: June 23, 2022
Mary P. Murray	:	

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNONFILED: July 26, 2022

Bruce J. Chasan (Chasan) appeals from the January 25, 2021[1] order of the Philadelphia County Court of Common Pleas (trial court) sustaining preliminary objections filed by three judges of the Pennsylvania Superior Court to an amended complaint filed by Chasan and dismissing the amended complaint with prejudice. Upon review, we affirm.

I. Background

The amended complaint dismissed by the trial court contained one count—a claim alleging defamation on the basis of an opinion authored by the Honorable Correale F. Stevens and joined by the Honorable Carolyn N. Nichols and the Honorable Mary P. Murray (collectively, Judges) in the matter of *Law Office of Bruce J. Chasan and Bruce Chasan, Esq. v. Freundlich & Littman LLC and Gregory Littman, Esq.* (Pa. Super., No. 2928 EDA 2016, filed Jan. 29, 2019)[2] (Judicial Opinion). The following is a brief recitation of the relevant factual and procedural background pertaining

[1] The trial court dated the order January 20, 2021 and docketed the order on January 25, 2021. *See* Trial Ct. Order, 1/25/21. Chasan timely appealed to this Court on February 23, 2021. *See* Pa.R.A.P. 903(a) ("Except as otherwise prescribed by this rule, the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken.").

[2] Chasan asserts that, though previously identified as Freunslich & Littman, the firm's correct name is in fact Freundlich & Littman, and that "[t]his error was made somewhere in the litigation and went uncorrected." Chasan's Br. at 6 n.4.

to the Judicial Opinion and the ensuing defamation litigation.

Chasan previously served as counsel for Edward Feierstein (Feierstein), the defendant in a property damage dispute. *See* Am. Complaint, 10/25/20 at 10-11, ¶¶ 30-31, Reproduced Record (R.R.) at 26a-27a. In early 2014, opposing counsel, Gregory Littman (Littman), sent two letters to Chasan and four other individuals and one letter to a trial court judge, who had previously been assigned to decide motions in the matter, containing various allegations that Chasan had engaged in unethical conduct over the course of litigating the property damage dispute.[3] *See id.* at 13-15, ¶¶ 46, 49 & 51, R.R. at 29a-31a. In 2015, Chasan sued Littman and Littman's law firm for defamation on the basis of these letters. *See id.* at 10, ¶ 30, R.R. at 26a.

---

[3] Specifically, the first letter alleged that Chasan and Feierstein had engaged in witness intimidation by informing Littman's brother (who had been subpoenaed to testify in a separate, unrelated criminal trial against Feierstein) of their intent to sue Littman. *See* Am. Complaint, 10/25/20 at 13, ¶ 46, R.R. at 29a. This letter further questioned Feierstein's participation in the property damage litigation when he had "recently" claimed mental incompetence in order to abstain from participating in the separate criminal proceedings and had checked himself into a mental health facility. *See id.* The second letter expressed Littman's intent to file an ethics complaint in the event that Chasan continued to represent Feierstein and alleged that Feierstein had defrauded the trial court. *See id.* at 14-15, ¶ 49, R.R. at 30a. This letter further asserted that Chasan had abused the legal process for purposes of intimidation. *See id.* In the third letter, Littman informed the trial court of his belief that Chasan and Feierstein were acting in bad faith and requested that the court hold a conference between the parties. *See id.* at 15, ¶ 51, R.R. at 31a.

Chasan, Littman, Littman's brother and several of the recipients of Littman's letters provided deposition testimony. *See id.* at 16, ¶ 54, R.R. at 32a. At close of discovery, Littman filed a motion for summary judgment, which the trial court granted in August 2016. *See id.* at 17, ¶ 55 & 58, R.R. at 33a.

Chasan appealed to the Pennsylvania Superior Court, which affirmed the trial court's grant of summary judgment through the Judicial Opinion.[4] *See* Judicial Opinion at 1-17, R.R. at 59a-75a. In January 2020, Chasan filed a complaint against Judges requesting declaratory relief on the basis of certain allegedly defamatory statements contained in the Judicial Opinion. *See* Complaint, 1/27/20 at 2, ¶ 5, Original Record (O.R.) at 9. Trial Ct. Docket at 3, R.R. at 3a. Judges filed preliminary objections, which the trial court sustained, dismissing Chasan's claims without prejudice on grounds of judicial immunity, sovereign immunity and judicial privilege. Trial Ct. Docket at 11, R.R. at 11a. In November 2020, Chasan filed an amended complaint requesting that the trial court "issue a decision... holding that [he] was defamed by [the Judicial Opinion]."[5] *See* Am. Complaint, 10/25/20

---

[4] The Superior Court initially denied the appeal on the basis that Chasan had waived the issues sought to be appealed. *See* Am. Complaint, 10/25/20 at 24, ¶ 81, R.R. at 40a. Chasan appealed to the Pennsylvania Supreme Court, which remanded the matter to the Superior Court for consideration of the merits of the appeal. *See id.* at 25, ¶ 86, R.R. at 41a.

[5] In his prayer for relief, Chasan requested that the trial court "issue a decision in [his] favor... holding that [he] was defamed by [the Judicial Opinion]... in at least the following holdings":

at 39-40, R.R. at 55a-56a; *see also* Trial Ct. Docket at 12, R.R. at 12a. Chasan requested as "an appropriate remedy" the issuance of "a non-jury decision that [he]

> (a) The finding that "Chasan could not identify any statements in [Littman's] correspondence... that were untrue."...
>
> (b) The finding that [] Littman had a reasonable belief that Chasan was both aware of and participating in [] Feierstein's acts of witness intimidation....
>
> (c) The finding that Chasan was involved in an unethical scheme to conceal from the trial court that Feierstein was incompetent to sign a verification for an answer, new matter and counterclaim to the [c]omplaint filed [in the property damage case]... seeking damages from Feierstein for allegedly causing a water leak that damaged their condo unit.

Am. Complaint, 10/25/20 at 39-40, R.R. at 55a-56a (quoting Judicial Opinion at 16). Elsewhere in the amended complaint, Chasan challenged the statement in the Judicial Opinion that "deposition testimony evince[d] that [] Littman had a reasonable belief that [] Feierstein's signed verification in support of the counterclaim in the [property damage case] was not valid and that the counterclaim itself had been filed for an improper purpose." *Id.* at 35, ¶ 89, R.R. at 41a (quoting Judicial Opinion at 11, R.R. at 69a). The other excerpts from the Judicial Opinion singled out by Chasan largely consisted of Judges' recitation of deposition testimony and other evidence provided in connection with Chasan's defamation suit against Littman. *See, e.g.*, *id.* at 27 & 34, ¶¶ 95 & 118, R.R. at 43a & 50a (citing Judicial Opinion at 9-10 & 23).

can prove the elements of a defamation claim (42 Pa.C.S.[] § 8343(a))" on the basis of "a number of defamatory 'factual' statements made by [Judges]... *without jurisdiction*." Am. Complaint, 10/25/20 at 2 & 5-6, ¶¶ 5 & 16, R.R. at 18a-19a & 21a-22a. Chasan clarified that he "[did] not seek monetary damages for the harm," although he "intend[ed] to prove all elements of a defamation claim within the meaning of 42 Pa.C.S.[] § 8343(a)." *Id.* at 2-3, ¶ 5, R.R. at 18a-19a. Chasan asserted that "[s]uch relief is a pseudo-declaratory judgment, albeit it is not pursuant to the Declaratory Judgment[s] Act."[6] *Id.* at 6, ¶ 16, R.R. at 22a. Chasan further specified that he "does not seek reversal of the [Judicial Opinion]." *Id.* at 3, ¶ 5, R.R. at 19a.

On December 15, 2020, Judges filed preliminary objections to Chasan's amended complaint, asserting the defenses of judicial immunity, judicial privilege, sovereign immunity and high public official immunity and contending that Chasan failed to state a claim for declaratory relief. *See* Preliminary Objections, 12/15/20 at 1-23, O.R. at 983-1005. Chasan and Judges filed a joint stipulation indicating their agreement to extend the deadline to respond to Judges' preliminary objections to February 4, 2021 due to the upcoming relocation of Chasan's office. *See* Stipulation at 1-2, O.R. at 1041-42. However, on January 20, 2021, the trial court denied the extension and sustained Judges' preliminary objections for the reasons set forth by this Court in the unrelated matter *Chasan v. Platt*, 244

[6] 42 Pa.C.S. §§ 7351-7541.

A.3d 73 (Pa. Cmwlth. 2020) (*Chasan I*),[7] thereby dismissing Chasan's amended complaint with prejudice and without leave to file further amendments. Trial Ct. Order, 1/25/21, R.R. at 107a. *Id.* Chasan thereafter appealed to this Court. *See* Notice of Appeal, 2/23/21.[8]

II. Issues

Determining whether the doctrine of judicial immunity bars a claim "requires a two-part analysis: first, whether the judge has performed a judicial act; and second, whether the judge has some jurisdiction over the subject matter before him." *Langella v. Cercone*, 34 A.3d 835, 838 (Pa. Super. 2011).

---

[7] In *Chasan I*, this Court affirmed the trial court's determination that the doctrine of judicial immunity barred Chasan's claim alleging defamatory content in a judicial opinion rendered by three other Superior Court judges in the matter of *Carmen Enterprises, Inc. v. Murpenter, LLC*, 185 A.3d 380 (Pa. Super. 2018). *See Chasan I*, 244 A.3d at 76 & 84. We also affirmed the trial court's decision to sustain Judges' demurrer on the basis that Chasan failed to state a cognizable claim for declaratory relief. *See id.* at 84. *Carmen* had disposed of cross-appeals contesting the amount of attorney's fees awarded for Chasan's work on behalf of a travel agency of which he was president and sole shareholder. *See id.* at 76.

[8] On March 26, 2021, Chasan filed an application for relief requesting, *inter alia*, that this Court issue an order directing the trial court to issue an opinion expounding upon its January 25, 2021 order, and compelling the trial court to order Chasan to file a statement of errors complained of on appeal. *See* Appl. for Relief, 3/26/21 at 3 (citing Pa.R.A.P. 1925(a), (b)). We denied Chasan's request by order dated April 16, 2021. *See* Cmwlth. Ct. Order, 4/16/21.

Before this Court,[9] Chasan argues that the trial court erred in determining that the doctrine of judicial immunity barred his claim against Judges. *See* Chasan's Br. at 33. Chasan alleges that Judges rendered fact-finding and credibility determinations in the Judicial Opinion and that doing so did not constitute a judicial act. *Id.* at 43-44 (citing *Petition of Dwyer*, 406 A.2d 1355, 1361 (Pa. 1979)).[10]

---

[9] An appellate court's standard of review of an order of the trial court sustaining or overruling preliminary objections is to determine whether the trial court committed an error of law. *Freundlich & Littman, LLC v. Feierstein*, 157 A.3d 526, 530 (Pa. Super. 2017). A court may sustain preliminary objections only when, based on the facts pleaded, it is clear and free from doubt that the plaintiff will be unable to prove facts legally sufficient to establish a right to relief. *Feldman v. Hoffman*, 107 A.3d 821, 826 n.7 (Pa. Cmwlth. 2014). In evaluating the legal sufficiency of a challenged pleading, the court must accept as true all well-pleaded material and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts. *Id.* The court, however, is not bound by legal conclusions, unwarranted inferences from facts, argumentative allegations, or expressions of opinion encompassed in the challenged pleading. *Thomas v. Corbett*, 90 A.3d 789, 794 (Pa. Cmwlth. 2014). Whether a particular immunity applies is a question of law as to which our standard of review is *de novo* and our scope of review is plenary. *Feldman*, 107 A.3d at 826 n.7.

[10] Chasan also asserts that a judge's conduct cannot constitute a judicial act in the absence of subject matter jurisdiction: "[s]imply put: no jurisdiction, no judicial act." Chasan's Br. at 39 (citing *Langella*, 34 A.3d at 839). Chasan points out that in *Langella*, the Superior Court held that a judge failed to establish immunity from suit where he "lacked jurisdiction over the subject matter before him and [] his actions were not judicial acts." *Id.* In *Langella*, however, the judge's conduct that was not subject to immunity

Further, Chasan contends that, despite possessing subject matter jurisdiction over his appeal, Judges acted without jurisdiction when they "usurped" the trial court's authority by rendering factual findings and credibility determinations. *See id.* at 33-40 (citing *Bradley v. Fisher*, 80 U.S. 335, 351-52 & 357 (1872); *Stump v. Sparkman*, 435 U.S. 349, 356 n.6 (1978)). Chasan maintains that the Judicial Opinion "was not just appalling, it was libelous and made without jurisdiction" because Judges "tried the case on the summary judgment record as if they were a court of original jurisdiction." *Id.* at 59. For instance, Chasan contends Judges usurped a jury function and improperly found as fact that Littman had a "reasonable belief" that Chasan was involved in unethical conduct and, thus, concluded that Chasan was "guilty" of professional misconduct, including witness intimidation. *Id.* at 37 & 58-59. Chasan also contends that Judges' "efforts devolved into prohibited fact-finding and credibility assessments, which were outside [their] jurisdiction," because Judges cited record evidence in support of the trial court decision when the trial court judge had "cited no evidence whatsoever from the summary judgment record." *Id.* at 45. Further, Chasan maintains that in rendering the Judicial Opinion, Judges performed "quintessential jury

---

occurred in a private meeting in his chambers with a *former* litigant. There was no longer a pending case, so the judge had no jurisdiction over the former litigant and, by definition, was not engaged in any judicial acts. *Id.* at 839-40. Here, by contrast, Chasan complains about language in a written judicial opinion, the quintessential function of an appellate judge.

functions" by "decid[ing] what they would give weight to and what they would ignore" in affirming the trial court's grant of summary judgment. *Id.* at 37. Asserting that "Judges totally disregarded [his] evidence *en route* to making their own findings of fact" and "cherry-picked" portions of "the summary judgment record to fashion a decision in [] Littman's favor," Chasan contends that, instead, Judges "simply [sh]ould have evaluated [his] evidence and decided whether it was sufficient to show disputes of material fact[.]" *Id.* at 36-37 & 44.[11] Thus, Chasan maintains that he "had no satisfactory appellate remedy once the [Judicial O]pinion was issued," insisting that "[t]his Court should not shrink from a searching review of [Judges'] conduct in this case and [should] call it out as impermissible and non-jurisdictional misconduct." *Id.* at 45 & 60.

Further, Chasan contends that his request for a "non-jury decision" establishing his ability to prove the elements of a defamation claim does not constitute a request for declaratory judgment "within the meaning of the Declaratory Judgment[s] Act." *Id.* at 47 (citing Am. Complaint, 10/25/20 at 2, ¶ 5, R.R. at 18a- 19a). Rather, Chasan contends that "[w]hat is sought is a non-jury 'decision' as described in Pa.R.Civ.P. 238(a)(1)."[12] *Id.* at 47. Moreover, Chasan contends that

---

[11] Chasan posits that Judges would have comported with the appellate jurisdiction of the Superior Court by holding simply: "We affirm on the basis of [the trial court judge's] reasoning in her [Pa.R.A.P.] 1925(a) opinion." Chasan's Br. at 44-45.

[12] We observe that Pennsylvania Rule of Civil Procedure 238(a)(1) does not provide for the type of "non-jury decision" requested by Chasan. *See* Pa.R.Civ.P. 238(a)(1) (providing that "[a]t the request

the trial court should have overruled Judges' preliminary objections due to Judges' failure to separately plead judicial immunity as an affirmative defense. *Id.* at 54. Chasan also asserts that the trial court's "precipitous dismissal" of his amended complaint before he had the opportunity to respond to Judges' preliminary objections "was procedurally defective and unfair," as he had not waived the right to object to Judges' preliminary objections.[13] *Id.* at 55-56. Chasan maintains that the parties had stipulated to an extension of time, as permitted by Pennsylvania Rule of Civil Procedure 248, Pa.R.Civ.P. 248, and that the trial court judge "wrongly rejected the stipulation, as if to abrogate [this rule]." *Id.* at 55 n.15.

Chasan, therefore, requests that this Court reverse the trial court's dismissal of his amended complaint and remand the matter for further proceedings. *Id.* at 60.[14]

---

of the plaintiff in a civil action seeking monetary relief for bodily injury, death or property damage, damages for delay shall be added to the amount of compensatory damages awarded against each defendant or additional defendant found to be liable to the plaintiff in the verdict of a jury, in the decision of the court in a nonjury trial..., and shall become part of the verdict, decision or award").

[13] *See discussion infra* pages 19-20.

[14] Chasan made clear in his amended complaint that he "[does] not seek monetary damages for the harm[.]" Am. Complaint, 10/25/20 at 2-3, ¶ 5, R.R. at 18a. In his appellate brief, as well as at oral argument, Chasan acknowledged this waiver of his claim for monetary damages, yet maintains that Judges' loss of judicial immunity also renders them liable for damages. *See* Chasan's Br. at 46-47. Chasan insists that the fact he "has waived monetary

Judges counter that judicial immunity bars Chasan's defamation claim because rendering a judicial opinion is a function normally performed by a judge and, therefore, constitutes a judicial act. *See* Judges' Br. at 16 (citing *Mireles v. Waco*, 502 U.S. 9, 13 (1991)).[15] Further, Judges note that in *Chasan I*, this Court rejected Chasan's identical assertion that the appellate judges accused of defamation in that case acted without subject matter jurisdiction by allegedly rendering factual findings and credibility determinations. *Id.* at 15 (citing *Chasan I*, 244 A.3d at 83). Regardless, Judges maintain that, assuming *arguendo* that Chasan is correct in alleging impermissible findings of fact and

---

damages does not mean he does not have any," asserting the allegation that he has committed the criminal offense of witness intimidation is libelous *per se*, and, as such, does not require proof of special damages. *Id.* at 47 (citing *Baird v. Dun & Bradstreet, Inc.*, 235 A.2d 166, 171 (Pa. 1971)) (holding that a false statement involving immorality or the commission of a crime is defamatory *per se* and, therefore, does not require proof of special damages). We are unpersuaded by Chasan's argument and find that he has indeed waived any claim for monetary damages. *See Buck v. Beard*, 879 A.2d 157, 161-62 (Pa. 2005) (holding that issue omitted from appellant's complaint in mandamus was not subject to appellate review).

[15] Judges also cite *Sibley v. Lando* (S.D. Fla., No. 03-21728-CIV, filed Apr. 8, 2005), 2005 WL 6108991, at *4, *aff'd*, 437 F.3d 1067 (11th Cir. 2005), in which the United States District Court for the Southern District of Florida held that the judges were "absolutely immune" from constitutional claims filed against them, "despite allegations that they issued an opinion which relied on matters outside the appellate record," as the judges "clearly performed a judicial act" when "they decided an appeal brought by [a plaintiff] and issued a written opinion."

credibility determinations, such findings and determinations nevertheless would constitute a violation of the applicable standard of review and an error of law, rather than the absence of subject matter jurisdiction. *Id.* at 16.

Judges contend they possessed subject matter jurisdiction over Chasan's appeal.[16] *See id.* at 14-15 (citing Section 742 of the Judicial Code, 42 Pa.C.S. § 742).[17] Judges also assert that Chasan failed to state a

---

[16] Judges assert that Chasan has in fact acknowledged the Superior Court's jurisdiction over his appeal. *See* Judges' Br. at 15 (citing Am. Complaint at 3, ¶ 9, R.R. at 19a (stating that "[t]he Superior Court's appellate jurisdiction was based on 42 Pa.C.S.[] § 742, regarding appeals from the Courts of Common Pleas")). We note that Chasan does not dispute that Judges initially possessed subject matter jurisdiction to review the trial court's dismissal of his amended complaint; rather, Chasan asserts that Judges acted without jurisdiction by disregarding their appellate role. *See* Chasan's Br. at 36-40; *see also id.* at 44 ("[T]his case cannot be disposed of on immunity grounds just because [] Judges had jurisdiction over Chasan's appeal.").

[17] Pursuant to Section 741 of the Judicial Code,

> [t]he Superior Court shall have no original jurisdiction, except in cases of mandamus and prohibition to courts of inferior jurisdiction where such relief is ancillary to matters within its appellate jurisdiction, and except that it, or any judge thereof, shall have full power and authority when and as often as there may be occasion, to issue writs of habeas corpus under like conditions returnable to the said court.

42 Pa.C.S. § 741. Section 742 further provides that

> [t]he Superior Court shall have exclusive appellate jurisdiction of all appeals from final orders of the courts of common pleas, regardless of the nature of the controversy or the amount involved, except such classes of appeals as

claim for declaratory relief, because his amended complaint requested only that the trial court issue a declaration with respect to past conduct. *Id.* at 19-20 (citing *Chasan I*, 244 A.3d at 84); *O'Callaghan v. Hon. X*, 661 F. App'x 179, 182 (3d Cir. 2016) (request for declaration that judge previously violated plaintiff's constitutional rights was "not a proper use of a declaratory judgment")).[18] Further, Judges maintain that the trial court did not err in sustaining their preliminary objections before Chasan filed an objection in response. *See id.* at 35-37. Judges also contend that raising the affirmative defense of judicial immunity as a preliminary objection, rather than as separately pleaded new matter, was permissible under the circumstances of the case, because the applicability of the defense was apparent from the face of the amended complaint. *See id.* at 37-41 (citing *R.H.S. v. Allegheny Cnty. Dep't of Hum. Servs., Off. of Mental Health*, 936 A.2d 1218, 1227 (Pa. Cmwlth. 2007)).

III. Discussion

A. Immunity

"[T]he law in Pennsylvania is well established that judges are absolutely immune from liability for

---

> are by any provision of this chapter within the exclusive jurisdiction of the Supreme Court or the Commonwealth Court.

42 Pa.C.S. § 742.

[18] Judges suggest that Chasan could have sued for defamation in tort. *See* Judges' Br. At 11.

damages when performing judicial acts, even if their actions are in error or performed with malice, provided there is not a clear absence of all jurisdiction over the subject matter and person." *Feingold v. Hill*, 521 A.2d 33, 36 (Pa. Super. 1987); *see also Robinson v. Musmanno* (Pa. Cmwlth., No. 39 C.D. 2010, filed May 28, 2010), slip op. at 3 (citing *Stump*) ("[A] judge is immune from liability when the judge has jurisdiction over the subject matter before him and is performing a judicial act.").[19] "Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages." *Mireles*, 502 U.S. at 11 (citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). "[I]t is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself." *Bradley*, 80 U.S. at 347. "This immunity... is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences." *Pierson v. Ray*, 386 U.S. 547, 554 (1967) (citation and quotation marks omitted).

Here, Chasan sued Judges on the basis of the content of the Judicial Opinion. *See, e.g.*, Am. Complaint, 10/25/20 at 39-40, R.R. at 55a-56a

---

[19] This Court's unreported memorandum opinions issued after January 15, 2008 may be cited for their persuasive value. 210 Pa. Code § 69.414(a).

(requesting that the trial court "issue a decision... holding that [he] was defamed by [the Judicial Opinion]"). Chasan alleges that Judges impermissibly decided questions of fact and credibility in rendering the Judicial Opinion, and that doing so did not qualify as a judicial act for purposes of judicial immunity. *See* Chasan's Br. at 43-44. "[W]hether an act by a judge is a 'judicial' one relates to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity." *Mireles*, 502 U.S. at 12 (brackets omitted) (citing *Stump*, 435 U.S. at 362). Issuing an opinion disposing of an appeal is a function normally performed by an appellate judge. *See Chasan I*, 244 A.3d at 82 (citing *Musmanno*) (holding that "[j]udges' issuance of the [j]udical [o]pinion was beyond peradventure"); *cf. Langella*, 34 A.3d at 840 (citing *Mireles*) ("[A] judge's actions, even if excessive, are protected by judicial immunity if they serve a judicial function.").[20] Assuming *arguendo* that Chasan is correct in asserting that Judges disregarded their appellate role, his attempt to establish that issuing the Judicial Opinion did not constitute a judicial function by parsing out portions allegedly demonstrating that Judges usurped the role of the trial court nevertheless lacks merit. *See Bradley*, 80 U.S. at 357 ("[The allegedly] erroneous manner in which [the court's] jurisdiction was exercised, however it may

[20] In *Chasan I*, this Court also noted Chasan's acknowledgment in his reply brief that "writing an appellate opinion is a 'judicial act.'" *Chasan I*, 244 A.3d at 82 (quoting Appellant's Reply Br. at 6).

have affected the validity of the act, did not make the act any less a judicial act[.]"). Thus, we agree with Judges that issuing the Judicial Opinion disposing of Chasan's appeal constituted a judicial act. *See Chasan I*, 244 A.3d at 83-84 (stating that comments made by a judge while acting as a judge "[meet] the threshold for a judicial act"); *see also Bradley*, 80 U.S. at 347 (holding that "the order for the entry of which the suit is brought, was a judicial act, done by the defendant[] as the presiding justice of a court of general criminal jurisdiction").

Mirroring his argument in connection with the "judicial act" requirement, Chasan also contends that Judges forfeited jurisdiction by allegedly deciding questions of fact and credibility in the Judicial Opinion. We agree with Judges that they acted within their subject matter jurisdiction in rendering the Judicial Opinion.[21]

Chasan asserted an identical argument in *Chasan I*, which this Court rejected:

---

[21] Black's Law Dictionary defines the term "subject[]matter jurisdiction" as "[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things." JURISDICTION, Black's Law Dictionary (Westlaw, 11th ed. 2019). Further, the Pennsylvania Supreme Court has explained that "jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs." *In re Bruno*, 101 A.3d 635, 659 (Pa. 2014) (citation and internal quotation marks omitted).

> [Sections 741 and 742 of the Judicial Code, 42 Pa.C.S. §§ 741-42,] pertain to the propriety of subject matter jurisdiction over the issue in dispute and the parties to the dispute. Neither statutory provision prohibits or directly addresses the authority of an appellate judge to engage in fact-finding or make credibility determinations. Those aspects of decision-making include the role of the court and the type of review, *i.e.*, how the court renders a decision, not whether the court may decide the matter before it. It is the former category of decision-making of which [Chasan] complains.
>
> While [appellate j]udges lack the power or authority to make credibility determinations or find facts, they had proper jurisdiction to address [Chasan's] appeal of [a f]ee [a]ward because a contract dispute with a non-governmental party on appeal from a court of common pleas is properly within its appellate jurisdiction under Section 742 of the Judicial Code....

Chasan I, 244 A.3d at 83 (citing *Langella*). Likewise, here, Chasan's allegation that Judges erroneously decided questions of fact and credibility does not bear upon the Court's subject matter jurisdiction over his appeal. *See id.*

In *Bradley*, the United States Supreme Court held that "judges... are not liable to civil actions for their judicial acts, *even when such acts are in excess of their jurisdiction*, and are alleged to have been done maliciously or corruptly." *Id.* at 351. The Court explained further:

> A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject[]matter. Where there is clearly no jurisdiction over the subject[]matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject[]matter is invested by law in the judge, or in the court which he holds, *the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case*, although upon the correctness of his determination in these particulars the validity of his judgments may depend. Thus, if a probate court, invested only with authority over wills and the settlement of estates of deceased persons, should proceed to try parties for public offences, jurisdiction over the subject of offences being entirely wanting

> in the court, and this being necessarily known to its judge, his commission would afford no protection to him in the exercise of the usurped authority. But if on the other hand a judge of a criminal court, invested with general criminal jurisdiction over offences committed within a certain district, should hold a particular act to be a public offence, which is not by the law made an offence, and proceed to the arrest and trial of a party charged with such act, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction, no personal liability to civil action for such acts would attach to the judge, although those acts would be in excess of his jurisdiction, or of the jurisdiction of the court held by him, for these are particulars for his judicial consideration, whenever his general jurisdiction over the subject[]matter is invoked.

Bradley, 80 U.S. at 351-52 (emphasis added). Similarly, here, Chasan's allegation that Judges disregarded their appellate role by rendering factual and credibility determinations implicates whether Judges issued the Judicial Opinion in excess of jurisdiction, rather than in the absence of jurisdiction. *See id.* Because judicial immunity from suit also extends to judicial acts

performed in excess of jurisdiction, Chasan's reasoning is devoid of merit. *See id.* at 351.

B. Pleading Immunity by Preliminary Objection

Chasan further contends that the trial court erred in sustaining Judges' preliminary objection asserting judicial immunity, because Judges improperly pleaded this affirmative defense by preliminary objection rather than as new matter. We disagree.

As we have explained previously,

> although [Pennsylvania Rule of Civil Procedure] 1030[, Pa.R.Civ.P. 1030,] provides affirmative defenses are to be raised as new matter, if it is clear from the face of the complaint that a suit is barred by the defense of immunity the case may be dismissed on preliminary objections. *Wurth by Wurth v. City of Philadelphia*,... 584 A.2d 403 ([Pa. Cmwlth.]1990). The rationale for this exception is to avoid unnecessary delay if the complaint is clearly barred by the doctrine of immunity.

Logan v. Lillie, 728 A.2d 995, 998 (Pa. Cmwlth. 1999) (holding that "it was proper for the trial court to consider the doctrine of immunity on preliminary objections" where defendants' status as judicial officers rendered the applicability of the defense of sovereign immunity "clear from the face of the complaint"); *see*

also Faust v. Dep't of Revenue, 592 A.2d 835, 838 n.3 (Pa. Cmwlth. 1991) (explaining that "sovereign immunity is an affirmative defense which ordinarily should be raised as new matter, but may be raised in preliminary objections when to delay a ruling thereon would serve no purpose"); *Feldman v. Hoffman*, 107 A.3d 821, 832 (Pa. Cmwlth. 2014) (trial court may consider immunity defense raised by preliminary objections even where "plaintiff *did object*... where no purpose would be served by a delay in ruling on the matter and it would expedite disposition of the case"). Here, it "is evident on the face of the [amended] complaint" that judicial immunity bars Chasan's claim, because Judges are named defendants and the claim arises from the content of a judicial opinion deciding an appeal over which Judges possessed subject matter jurisdiction. *See Chasan I*, 244 A.3d at 81 (holding that the trial court did not err in considering the defense of judicial immunity raised by Judges as a preliminary objection, explaining that "[b]ecause the [second amended complaint] name[d] [j]udges as defendants for (allegedly defamatory) content in the [j]udicial [o]pinion, the judicial immunity defense is evidence on the face of the complaint"). Further, for the reasons explained above, the window of time in which Chasan was permitted to object to Judges' preliminary objection asserting judicial immunity has long since expired; thus, Chasan has waived any objection on that basis. *See id.* (determining that "[Chasan] offered no cause for delaying consideration to a later stage of the proceedings and did not object to the procedure used

for asserting immunity, thus waiving any objection on that ground").

Having exhausted his attempts to challenge the substance of the Judicial Opinion, Chasan instead seeks to undermine the validity of Judges' holding indirectly through his "pseudo-declaratory" defamation action requesting a "non- jury decision" declaring that Judges defamed him. *See* Am. Complaint, 10/25/20 at 2 & 6, ¶¶ 5 & 16, R.R. at 18a & 22a. However, the purpose of the doctrine of judicial immunity is to shield judicial officers from the exact scenario at play here—a dissatisfied litigant suing judges in their individual capacities to contest the outcome of a lawsuit. *See, e.g.*, *Dennis v. Sparks*, 449 U.S. 24, 31 (1980) ("Judicial immunity arose because it was in the public interest to have judges who were at liberty to exercise their independent judgment about the merits of a case without fear of being mulcted for damages [by] an unsatisfied litigant[.]"); *Bradley*, 80 U.S. at 347 ("Liability to answer to everyone who might feel himself aggrieved by the action of the judge[] would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful."); *see also Chasan I*, 244 A.3d at 84 (reasoning that "[w]ere this Court to allow an action seeking revisions in a judicial opinion to proceed, any dissatisfied litigant may then utilize a declaratory judgment action as a sword against the judicial authors

of what the litigant perceives is an unflattering or critical opinion").[22]

Accordingly, we agree with Judges that the trial court did not err in dismissing Chasan's suit on the basis of judicial immunity, as it is clear and free from doubt that Judges possessed subject matter jurisdiction over Chasan's appeal and were performing a judicial act by issuing the Judicial Opinion. *See Stump*, 435 U.S. at 362-64; *Feldman*, 107 A.3d at 826 n.7; *see also Chasan I*, 244 A.3d at 83-84 (rejecting Chasan's assertion and "agree[ing] with the [t]rial [c]ourt that the [j]udicial [o]pinion constituted a judicial act that was issued within [j]udges' jurisdiction under Section 742 of the Judicial Code"); *Feingold*, 521 A.2d at 37 (holding that plaintiff "failed to plead any facts which would remove [judge's] cloak of judicial immunity," reasoning that judge possessed jurisdiction over the underlying dispute and, further, that issuing "unfavorable rulings" was "clearly within the scope of [the judge's] authority").[23]

---

[22] Regarding Chasan's assertion that he "had no satisfactory appellate remedy once the Judges' opinion was issued," we note that Chasan pursued recourse by filing a petition for allowance of appeal from the Judicial Opinion, which the Pennsylvania Supreme Court denied. *See* Chasan's Br. at 45; Pa. Supreme Ct. Order, 7/24/19, R.R. at 106a. Further, Chasan stated in his amended complaint that he "does not seek reversal of the [Judicial Opinion]." Am. Complaint, 10/25/20 at 3, ¶ 5, R.R. at 19a.

[23] The trial court sustained Judges' preliminary objections and dismissed Chasan's amended complaint for the reasons set forth in *Chasan I*. *See* Trial Ct. Order, 1/25/21, R.R. at 107a. In *Chasan I*, this Court affirmed the trial court's decision to sustain the judges' preliminary objections on the basis of judicial immunity and

C. Stipulated Extension

Chasan also asserts that the "precipitous dismissal" of his amended complaint was "procedurally defective and unfair" because the trial court sustained Judges' preliminary objections even though he had not waived his right to respond. *See* Chasan's Br. at 55-56. Further, Chasan maintains that the trial court "wrongly rejected the stipulation, as if to abrogate [Pennsylvania Rule of Civil Procedure] 248." *Id.* at 55 n.15. We agree with Judges that Chasan is not entitled to relief on this basis.

Pursuant to Pennsylvania Rule of Civil Procedure 248, "[t]he time prescribed by any rule of civil procedure for the doing of any act may be extended or shortened by written agreement of the parties or by order of court." Pa.R.Civ.P. 248. Here, Judges filed preliminary objections to Chasan's amended complaint on December 15, 2020. *See* Trial Ct. Docket at 12, R.R. at 12a. The original deadline to object to Judges' preliminary objections therefore was January 4, 2021. *See* Pa.R.Civ.P. 1026 (providing that, with certain exceptions not applicable here, "every

---

Chasan's failure to state a cognizable claim for declaratory relief as to the alleged defamatory content of the judges' judicial opinion. *See Chasan I*, 244 A.3d at 82-84. Here, Chasan asserts that the trial court erred in sustaining Judges' preliminary objections on the basis of immunity. *See* Chasan's Br. at 33-60. Apart from contending that his request for "pseudo-declaratory judgment" does not in fact constitute a declaratory judgment claim, *see* Chasan's Br. at 47; Am. Complaint, 10/25/20 at 6, ¶ 16, R.R. at 22a, Chasan fails to articulate any challenge to Judges' demurrer.

pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading"). The parties filed a joint stipulation indicating their agreement to extend the deadline by which Chasan must respond to Judges' preliminary objections to February 4, 2021. *See* Stipulation at 1-2, O.R. at 1041-42; Trial Ct. Order, 1/25/21, R.R. at 107a. However, the trial court sustained Judges' preliminary objections and dismissed Chasan's amended complaint by order dated January 20, 2021 and docketed on January 25, 2021. Trial Ct. Order, 1/25/21, R.R. at 107a.

Chasan is correct that the trial court erred by ignoring the parties' stipulated extension of time, which was expressly authorized by Rule 248. However, Chasan has not established any harm resulting from the timing of the trial court's decision sustaining Judges' preliminary objections, particularly where he has failed to articulate any assertion which, if included in a preliminary objection, would have undermined Judges' immunity defense. *See Haney v. Sabia*, 428 A.2d 1041, 1043 (Pa. Cmwlth. 1981). Therefore, the trial judge's error was harmless.

IV. Conclusion

For the foregoing reasons, we affirm the trial court's order.

s/Christine Fizzano Cannon

_____

CHRISTINE FIZZANO CANNON,
Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bruce J. Chasan,	:	
	:	
Appellant	:	
	:	
v.	:	No. 169 C.D. 2021
	:	
Correale F. Stevens, Carolyn H. Nichols, and Mary P. Murray	:	
	:	

ORDER

AND NOW, this 26th day of July, 2022, the January 25, 2021 order of the Philadelphia County Court of Common Pleas is AFFIRMED.

s/Christine Fizzano Cannon

_____

CHRISTINE FIZZANO CANNON,
Judge

IN THE SUPREME COURT OF
PENNSYLVANIA EASTERN DISTRICT

BRUCE J. CHASAN,	:	
	:	
Petitioner	:	No. 208 EAL 2022
	:	
v.	:	Petition for
	:	Allowance of
CORREALE F. STEVENS,	:	Appeal
CAROLYN H. NICHOLS,	:	from the Order of
AND MARY P. MURRAY	:	the
	:	Commonwealth
Respondents	:	Court
	:	

ORDER

PER CURIAM

AND NOW, this 4th day of January, 2023, the Petition for Allowance of Appeal is

DENIED.