

LIBEL—SURVIVAL OF LIBEL ACTIONS—THERE IS LIFE AFTER DEATH IN NEW JERSEY—*Canino v. New York News, Inc.*, 96 N.J. 189, 475 A.2d 528 (1984).

The media wields enormous power in American society. A single investigative exposé, front page headline, or exclusive story on the nightly news can catapult an individual to the pinnacle of success or, conversely, plummet an individual into the depths of ignominy.¹ When the media abuses its power and damages a person's reputation, that person has the right to redress his injury by bringing an action for defamation.² In a majority of jurisdictions, however, if an individual commences a defamation action and then dies during the pendency of the suit, the action immediately abates.³ There is, nevertheless, a growing trend to

¹ See, e.g., R. WOODWARD & C. BERNSTEIN, *ALL THE PRESIDENT'S MEN* (1974) (news article about third-rate burglary eventually leads to resignation of President Richard M. Nixon).

² According to the *Restatement (Second) of Torts*, "[a] communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." RESTATEMENT (SECOND) OF TORTS § 559 (1977). The elements listed by the *Restatement* as essential to create liability for defamation are: "(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Id.* § 558.

Libel is a species of defamation and "consists of the publication of defamatory matter by written or printed words, by its embodiment in physical form or by any other form of communication that has the potentially harmful qualities characteristic of written or printed words." *Id.* § 568(1). Slander, a second species of defamation, "consists of the publication of defamatory matter by spoken words, transitory gestures or by any form of communication other than [libel]." *Id.* § 568(2). Factors that are considered in distinguishing libel from slander include "[t]he area of dissemination, the deliberate and premeditated character of its publication, and the persistence of the defamation." *Id.* § 568(3). For a general discussion of libel and slander, see Hofer, *Libel Law in the Twenty-First Century: Defamation and the Electronic Media*, 3 COMM/ENT 379 (1981); Comment, *The Constitutional Law of Defamation: Are All Speakers Protected Equally?*, 44 OHIO ST. L.J. 149 (1983).

³ See ALA. CODE § 6-5-462 (1975); ARIZ. REV. STAT. ANN. § 14-3110 (1981); ARK. STAT. ANN. §§ 27-901, -902 (1965); CAL. PROB. CODE § 573 (West Cum. Supp. 1985); COLO. REV. STAT. § 13-20-101 (1973); DEL. CODE ANN. tit. 10, § 3701 (1974); D.C. CODE ANN. § 12-101 (1973 & Supp. VII 1980); HAWAII REV. STAT. § 663-7 (1955); IDAHO CODE § 5-327 (1979); ILL. REV. STAT. ch. 110-1/2, § 27-6 (1976); IND. CODE ANN. § 34-1-1-1 (Burns Cum. Supp. 1984); KAN. STAT. ANN. § 60-1802 (1976); KY. REV. STAT. § 34-1219 (1975); LA. CIV. CODE ANN. art. 428 (West 1963); MD. CTS. & JUD. PROC. CODE ANN. § 6-301(a) (1974); MASS. GEN. LAWS ANN. ch. 228, § 1 (West 1958); MINN. STAT. ANN. §§ 573.01, -.02 (West Cum. Supp. 1984); MO. ANN. STAT. § 537.030 (Vernon 1953); NEB. REV. STAT. § 25-1402 (1975); N.M. STAT. ANN. § 37-2-4 (1978); N.C. GEN. STAT. § 28A-18-1 (1973); N.D. CENT. CODE § 28-01-26.1 (1974); OHIO REV. CODE ANN. § 2311.21 (Page 1980);

the contrary.⁴ Recently, in *Canino v. New York News, Inc.*,⁵ New Jersey joined the minority of states that allow actions for defamation to survive⁶ the death of the plaintiff.⁷

James Canino and Alvin Raphael were commercial builders, general contractors, and owners of low and middle-income housing in West New York, New Jersey.⁸ On October 21, 1979, the *New York Daily News* published an article written by David Hardy, which detailed state and Federal investigations into the operations of the New Jersey Housing Finance Agency.⁹ The article described a web of corruption, through which millions of dollars in housing funds were being siphoned off by reputed mob-connected contractors working in collusion with prominent governmental officials.¹⁰ James Canino and Alvin Raphael were identified as two of the contractors who participated in the hous-

OKLA. STAT. ANN. tit. 12, § 1052 (West Cum. Supp. 1984-1985); R.I. GEN. LAWS §§ 9-1-5, -6 (1970); S.C. CODE ANN. § 15-5-90 (Law. Co-op. 1976); TENN. CODE ANN. § 20-5-102 (1980); W. VA. CODE § 55-7-8a (1981); WYO. STAT. ANN. § 1-4-102 (1977). For a discussion of survival statutes which exclude libel and slander, see Comment, *Challenging the Exclusion of Libel and Slander from Survival Statutes*, 1984 U. ILL. L. REV. 423.

⁴ The following state statutes permit libel actions to survive the death of the plaintiff: ALASKA STAT. § 09.65.050 (1983); CONN. GEN. STAT. § 52-599 (1975); FLA. STAT. ANN. § 46.021 (West 1969); GA. CODE ANN. § 3-501 (1978); IOWA CODE ANN. § 611.20 (West 1950); ME. REV. STAT. ANN. tit. 18-A, § 3-816 (1977); MICH. COMP. LAWS ANN. § 600.2921 (West Cum. Supp. 1984-1985); MISS. CODE ANN. § 91-7-233 (1973); MONT. CODE ANN. § 27-1-501 (1983); NEV. REV. STAT. § 41.100 (1973); N.H. REV. STAT. ANN. § 556.9 (1974); N.Y. EST. POWERS & TRUSTS LAW § 11-3.2 (McKinney 1967 & Cum. Supp. 1984-1985); OR. REV. STAT. § 115.305 (1980); S.D. CODIFIED LAWS ANN. §§ 15-4-1, -2 (1969); TEX. REV. CIV. STAT. ANN. art. 5525 (Vernon 1958); UTAH CODE ANN. § 78-11-7 (1977); VT. STAT. ANN. tit. 14, § 1452 (1974 & Cum. Supp. 1983); VA. CODE § 8.01-25 (1984); WASH. REV. CODE ANN. § 4.20.046 (1962); WIS. STAT. ANN. § 895.01 (West 1983). Defamation actions also survive in Pennsylvania as a result of the decision by its supreme court in *Moyer v. Phillips*, 462 Pa. 395, 341 A.2d 441 (1975). In that decision, the court held that the statute was unconstitutional because it bore no rational relationship to the objective of the statute. *Moyer*, 462 Pa. at 398, 341 A.2d at 445. For discussion of the *Moyer* decision see, Note, *Moyer v. Phillips: Survival Legislation and Judicial Activism in Pennsylvania*, 61 IOWA L. REV. 623 (1975). The Pennsylvania Legislature has since amended this statute. See 20 PA. CONST. STAT. ANN. § 3371 (Purdon Cum. Supp. 1984-1985).

⁵ 96 N.J. 189, 475 A.2d 528 (1984).

⁶ "Survival refers to the continued life of a cause of action after the death of the person originally entitled [to maintain the action]." Comment, *Inadequacies of English and State Survival Legislation*, 48 HARV. L. REV. 1008, 1008 n.1 (1935).

⁷ See *Canino*, 96 N.J. at 189, 475 A.2d at 528.

⁸ Brief for Plaintiff-Respondent at 4, *Canino v. New York News, Inc.*, No. A 5533-81T1 (N.J. Super. Ct. App. Div.), *aff'd*, 96 N.J. 189, 475 A.2d 528 (1984) [hereinafter cited as Brief for Plaintiff].

⁹ *Id.*

¹⁰ *Canino*, 96 N.J. at 190, 475 A.2d at 528. The article appeared in the New

ing agency scandal.¹¹

One year later, Canino and Raphael commenced a libel action against the *New York Daily News* and David Hardy.¹² The complaint disputed Hardy's claim that authorities had linked Canino and Raphael to a New Jersey crime family.¹³ In addition, the complaint averred that the publication of the libelous statement was injurious to Canino's and Raphael's good names and reputations, and had caused injury to their businesses, resulting in economic hardship.¹⁴ The defendants denied the allegations, claiming that the publication of the article was protected under the first amendment to the United States Constitution.¹⁵

Jersey section of the Sunday edition of the *New York Daily News* and was entitled *Report Corruption in Housing Agency*. The article read, in pertinent part:

After more than four months of probing the scandal-ridden New Jersey Housing Finance Agency, state and federal lawmen say they they [sic] have uncovered 'a virtual web of corruption' whereby millions of dollars in state housing funds were being ripped off by reputedly mob-connected contractors who allegedly worked in collusion with prominent state Democratic party figures.

'It's incredible how the mob managed to gain a virtual monopoly on FHA projects,' a high-ranking investigation source told the—[sic] Daily News.

'The way things worked, until last summer, it was almost impossible for an honest contractor or architect to get a piece of the action.'

Brief of Defendant-Appellant exhibit Da-I, *Canino v. New York News, Inc.*, No. A 5533-81T1 (N.J. Super. Ct. App. Div.), *aff'd*, 96 N.J. 189, 475 A.2d 528 (1984) [hereinafter cited as Brief of Defendant].

¹¹ *Canino*, 96 N.J. at 190, 475 A.2d at 528. The allegedly defamatory statements read as follows:

Although no indictments have been returned as yet, it is known that Gov. Byrne ordered William L. Johnston fired from the post of HFA executive director because Johnston overlooked the mishandling of \$1.8 million in housing funds by the owners of two HFA projects in West New York. Those owners, James Canino of Englewood Cliffs and Alvin Raphael of, [sic] Tenafly, have been linked by authorities to the Newark-based crime family headed by Ruggiero (Richie the Boot) Boiardo.

Brief of Defendant, *supra* note 10, exhibit Da-I.

¹² *Canino*, 96 N.J. at 190, 475 A.2d at 528. In New Jersey, actions for libel must be commenced within one year of the date of the publication of the allegedly libelous statement. *See* N.J. STAT. ANN. § 2A:14-3 (West 1952 & Cum. Supp. 1984-1985).

¹³ *Canino*, 96 N.J. at 190, 475 A.2d at 528.

¹⁴ *Id.* The complaint also alleged that the article had caused plaintiffs and their families to be held in public scorn, humiliation, and ridicule, as well as to suffer great emotional distress. Amended Complaint and Jury Demand at Da20-22, *Canino v. New York News, Inc.*, No. L 9436-80 (N.J. Super. Ct. Law Div.), *aff'd*, No. A 5533-81T1 (N.J. Super. Ct. App. Div.), *aff'd*, 96 N.J. 189, 475 A.2d 528 (1984).

¹⁵ *Canino*, 96 N.J. at 190, 475 A.2d at 528. Defendants also pleaded truth and fair comment as defenses. *Id.* Pursuant to the *Restatement (Second) of Torts*, "[o]ne who publishes a defamatory statement of fact is not subject to liability for defamation if the statement is true." RESTATEMENT (SECOND) OF TORTS § 581A (1977). In

During the pendency of the action, Alvin Raphael suffered a heart attack and died.¹⁶ In December 1981, an order was entered, which allowed Kathleen Raphael, widow and executrix of the estate of Alvin Raphael, to be substituted as party-plaintiff.¹⁷ An amended complaint was filed by Mrs. Raphael in her representative capacity.¹⁸ The defendants subsequently moved to dismiss the amended complaint on the basis that the New Jersey survival statute¹⁹ did not provide for continuance of a libel action after the death of the plaintiff.²⁰

The trial court denied the defendants' motion to dismiss.²¹ In an oral opinion, Judge Edward J. Van Tassel noted that dismissal of the estate's action would not be consistent with the recent expansion of litigants' rights in New Jersey tort law.²² Relying principally on the decision in *Weller v. Home News Publishing Co.*,²³ Judge Van Tassel allowed Kathleen Raphael to continue

addition, the media has the privilege of fair comment. This privilege, according to the *Restatement*, "applie[s] only to an expression of opinion and not to a false statement of fact." *Id.* § 566 comment a.

¹⁶ Brief for Plaintiff, *supra* note 8, at 4.

¹⁷ Brief of Defendant, *supra* note 10, at 3.

¹⁸ *Canino*, 96 N.J. at 190, 475 A.2d at 528. If Mrs. Raphael had asserted an individual claim, the supreme court would have been confronted with the additional issue of whether an individual can recover for defamation when the libelous statement makes no reference to him or her. In *Durski v. Chaneles*, 175 N.J. Super. 418, 419 A.2d 1134 (App. Div. 1980), the appellate division held that an indispensable prerequisite of a defamation action is that the defamatory statement must be of and concerning the complaining party. *Durski*, 175 N.J. Super. at 420, 419 A.2d at 1134.

¹⁹ N.J. STAT. ANN. § 2A:15-3 (West Cum. Supp. 1984-1985).

²⁰ Brief of Defendant, *supra* note 10, at 3. The defendants, in oral argument on the motion to dismiss, relied heavily on the decision in *Alpaugh v. Conkling*, 88 N.J.L. 64, 95 A. 740 (Sup. Ct. 1915), wherein it was held that, under the survival statute, libel actions abated upon the death of the plaintiff. See *Canino*, 96 N.J. at 190, 475 A.2d at 528. See *infra* text accompanying notes 66-69 for a discussion of the *Alpaugh* decision.

²¹ *Canino*, 96 N.J. at 190, 475 A.2d at 529.

²² Brief of Defendant, *supra* note 10, at Da 53-54 (copy of transcript of motion to dismiss). For cases illustrating this recent expansion, see *Alfone v. Sarno*, 87 N.J. 99, 432 A.2d 857 (1981) (judgment for damages in personal injury suit brought by decedent during her lifetime did not preclude later action for wrongful death on behalf of her heirs or dependents); *Portee v. Jaffee*, 84 N.J. 88, 417 A.2d 521 (1980) (mother who watched her seven-year old son suffer and die could recover damages for mental and emotional distress, even though she had not been subjected to any physical harm); *Falzone v. Busch*, 45 N.J. 559, 214 A.2d 12 (1965) (physical impact not prerequisite for recovery where fright causes substantial bodily injury or sickness); *Hume v. Bayer*, 178 N.J. Super. 310, 428 A.2d 966 (App. Div. 1981) (existence or nonexistence of underlying independent cause of action not essential to cause of action for intentional infliction of emotional distress).

²³ 112 N.J. Super. 502, 271 A.2d 738 (Law Div. 1970). See *infra* text accompanying notes 77-84 for a discussion of the *Weller* decision.

the libel action commenced by her deceased husband.²⁴ In an unreported decision, the appellate division affirmed.²⁵ On appeal, the New Jersey Supreme Court agreed with the lower courts and held that, under the state survival statute, a suit for defamation survives the death of the individual claiming injury.²⁶

At common law, all tort actions abated upon the death of either the plaintiff or the defendant.²⁷ That rule is embodied in the Latin maxim *actio personalis moritur cum persona*—the “right of action dies with the person.”²⁸ Although the tangled history of the rule cannot be traced with certainty, most legal historians concur that it developed primarily as a result of the confusion between civil damage actions and the punitive aspects of criminal proceedings.²⁹ Generally, the common law provided that when a criminal defendant died, the proceedings terminated because a defendant could not be punished after he was dead.³⁰ Because the common law characterized the recovery of civil damages as a quasi-criminal remedy, death had an analogous effect in civil actions.³¹ When either the victim or the transgressor died, the reasons for redressing the personal wrong—vengeance and punishment—ceased to exist, and the tort action therefore abated.³² Moreover, the representative of the decedent’s estate could not maintain the suit because he was not personally involved in the wrong and thus had no legal interest in avenging the injury.³³

²⁴ Brief of Defendant, *supra* note 10, at Da54 (copy of transcript of motion to dismiss).

²⁵ *Canino*, 96 N.J. at 191, 475 A.2d at 529.

²⁶ *Id.* at 195, 475 A.2d at 531-32. To alleviate the concern of potential media defendants, the *Canino* court emphasized that the survival of defamation actions did not implicate first amendment values. *See id.* at 198, 475 A.2d at 532. Presumably, the *Canino* holding would also apply to a defendant who died during the pendency of a libel action.

²⁷ *Hayden v. Vreeland*, 37 N.J.L. 372, 373 (Sup. Ct. 1875). If a cause of action did survive, a “new suit was necessary.” *Id.*

²⁸ *Canino*, 96 N.J. at 191, 475 A.2d at 528.

²⁹ Smedley, *Wrongful Death—Bases of the Common Law Rules*, 13 VAND. L. REV. 605, 607 (1960); *see* W. PROSSER, *THE HANDBOOK OF THE LAW OF TORTS* § 126, at 898-901 (4th ed. 1971); Winfield, *Death as Affecting Liability in Tort*, 29 COLUM. L. REV. 239, 249-50 (1929).

³⁰ W. PROSSER, *supra* note 29, at 898; *see* Smedley, *supra* note 29, at 608; Winfield, *supra* note 29, at 249.

³¹ Smedley, *supra* note 29, at 608.

³² *Id.* *But cf. id.* at 609 (when “function of damage awards [became] compensatory rather than punitive,” underlying reason for *actio personalis moritur cum persona* ceased to exist).

³³ *Id.* at 608. As one commentator observed, “executors and administrators are representatives of the temporal property [consisting of] the debts and goods of the

During the reign of King Edward III, statutes were enacted, which modified that ancient doctrine.³⁴ Those statutes authorized executors of estates to maintain actions against persons who had converted the decedent's personal property during his lifetime.³⁵ Viewed as remedial legislation, the statutes were applied liberally and, by the early nineteenth century, tort actions for damage to personal property survived the owner's death while suits based upon injuries to one's person or one's incorporeal interests did not.³⁶

In the United States, the harsh effects of the English common law doctrine were further ameliorated by statutes that provided for the continuance of tort actions that were based upon injury to the person.³⁷ For example, in 1848, the New Jersey Legislature enacted a wrongful death statute,³⁸ which "created a 'new right of action' in the personal representatives of a person who died as a result of the 'wrongful act, neglect or default' of another."³⁹ In addition, in 1855, New Jersey adopted a survival statute, which generally provided executors and administrators with a cause of action for "any trespass done to the person or property" of the decedent.⁴⁰ It was the interpretation of that

deceased, but not of their wrongs, except where those wrongs operate to the temporal injury of their personal estate." *Id.* at 608 n.21.

³⁴ Winfield, *supra* note 29, at 243.

³⁵ *Id.* These statutes did not apply to injuries "to a man's person, freehold, or personal reputation," nor did they apply to "personal representatives of a deceased tortfeasor." *Id.*

³⁶ W. PROSSER, *supra* note 29, at 899. Even after the enactment of these statutes, the common law doctrine still applied to personal actions for trespass, battery, and slander. Winfield, *supra* note 29, at 247.

³⁷ *Canino*, 96 N.J. at 192, 475 A.2d at 530.

³⁸ *See id.* at 192-93, 475 A.2d at 530. The present version of the wrongful death statute is set forth in N.J. STAT. ANN. § 2A:31-1 to -6 (West 1952 & Cum. Supp. 1984-1985).

³⁹ *Ehrlich v. Merritt*, 96 F.2d 251, 253 (3d Cir. 1938). The statute permits the personal representative of a deceased injured party "to maintain an action against the tort-feasor for damages to be distributed to the widow [or] the next of kin of the deceased." *Id.*

⁴⁰ The New Jersey survival statute provides that:

Executors and administrators may have an action for any trespass done to the person or property, real or personal, of their testator or intestate against the trespasser, and recover their damages as their testator or intestate would have had if he was living.

In those actions based upon the wrongful act, neglect, or default of another, where death resulted from injuries for which the deceased would have had a cause of action if he had lived, the executor or administrator may recover all reasonable funeral and burial expenses in addition to damages accrued during the lifetime of the deceased.

N.J. STAT. ANN. § 2A:15-3 (West 1952 & Cum. Supp. 1984-1985).

phrase—"trespass done to the person or property"—that was the focus of the *Canino* decision.⁴¹

The first decision to interpret the relevant statutory phrase was *Ten Eyck v. Runk*.⁴² In *Ten Eyck*, the plaintiff brought an action on the case⁴³ to recover for water damage to his land, which was caused by overflow from the defendant's dam.⁴⁴ The defendant died during the pendency of the action and his executors sought to have it dismissed.⁴⁵ The issue before the New Jersey Supreme Court was whether, under the survival statute, the suit survived the death of the defendant.⁴⁶ The supreme court held that the action descended to the decedent's legal representatives.⁴⁷

In reaching its decision, the *Ten Eyck* court construed the word "trespass" in the survival statute as being equivalent to the meaning of the word tort, "embrac[ing] every infraction of a legal right" whether the damages were direct and immediate, or indirect and consequential.⁴⁸ Recognizing the remedial purpose of the survival statute, the court stated that there was no moral precept or principle of public policy that "justif[ied] the continuance of a rule which grounded a man's right to recover for an injury to his person or estate . . . on the contingency [that] the party injured surviv[e] to the date of the judgment."⁴⁹ The court determined that the statute should be construed liberally in order to advance a remedy that would assail that imperfection in the common law.⁵⁰ Furthermore, the court observed that if the statute was held applicable only to torts that arose out of a direct,

⁴¹ See *infra* text accompanying notes 95-104 for the *Canino* court's interpretation of the relevant statutory phrase. See also *Prudential Ins. Co. v. Laval*, 131 N.J. Eq. 23, 23 A.2d 908 (Ch. Div. 1942), for a discussion of the history and litigation surrounding the survival statute.

⁴² 31 N.J.L. 428 (Sup. Ct. 1866). Although *Ten Eyck* did not involve an action for libel, the case is significant because of the court's interpretation of the survival statute.

⁴³ Trespass on the case is that "form of action, at common law, adapted to the recovery of damages for some injury resulting to a party from the wrongful act of another, unaccompanied by direct or immediate force, or which is the indirect . . . consequence of a defendant's act." BLACK'S LAW DICTIONARY 1347 (5th ed. 1979).

⁴⁴ *Ten Eyck*, 31 N.J.L. at 428.

⁴⁵ See *id.*

⁴⁶ *Id.* See *supra* note 40 for the text of the survival statute.

⁴⁷ *Ten Eyck*, 31 N.J.L. at 432.

⁴⁸ *Id.* at 430. The court noted that "[i]n this sense [the term trespass] comprehended not only forcible wrongs, where the damages were direct and immediate, but also acts, the consequences of which made them tortious." *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

as opposed to an indirect, injury to person or property, then "one-half the evil of the old law [would remain] unaffected."⁵¹ Accordingly, the *Ten Eyck* court concluded that the effect of the survival statute was to give an injured party's legal representative a right to continue a suit "for any injurious act of a suable nature."⁵²

In 1877, the supreme court was again confronted with interpreting the statutory phrase "trespass done to the person or property."⁵³ In *Noice, Administratrix v. Brown*,⁵⁴ the defendant contended that, under the survival statute, an action brought by a father for the seduction of his daughter did not survive the father's death.⁵⁵ The court rejected the defendant's argument, reasoning that the phrase "trespass done to the person" was sufficiently comprehensive to embrace personal actions for injuries to feelings, inasmuch as "feelings [are] as much a part of the person as the physical frame."⁵⁶ The court concluded that because the decedent's personal feelings had been injured by the seduction of his daughter, the action fell within the scope of the statute and therefore survived.⁵⁷

The decision of the *Noice* court, however, was based on an additional factor.⁵⁸ The court noted that the seduction of the decedent's daughter had affected the decedent's property rights because her injury caused him to lose "a service of some pecuniary value."⁵⁹ The loss therefore was said to affect the value of the

⁵¹ *Id.*

⁵² *Id.* at 431; *cf.* *Tichenor v. Hayes*, 41 N.J.L. 193 (Sup. Ct. 1879) (action for deceit in tort will descend to personal representative of deceased wrongdoer). *But cf.* *Meyer v. Peter*, 9 N.J. Misc. 1309, 157 A. 250 (Sup. Ct. 1931) (action for malicious prosecution abates upon death of plaintiff in absence of allegation of special damages to property rights).

⁵³ *Noice, Administratrix v. Brown*, 39 N.J.L. 569, 571 (Sup. Ct. 1877).

⁵⁴ 39 N.J.L. 569 (Sup. Ct. 1877).

⁵⁵ *See id.* at 570.

⁵⁶ *Id.* at 571. The court noted that "[t]he offences of seduction and libel, where no special damages are laid, are, obviously, strictly personal, being remedies, mainly, for wounded feelings." *Id.* The court further explained that "no reason appears why an injury to [feelings] is not as much a tort to the person as an assault would be." *Id.*

⁵⁷ *Id.* The supreme court additionally opined that the case was within the spirit, as well as the language, of the statute. *Id.*

⁵⁸ *See id.*

⁵⁹ *Id.* Historically, under the feudal system, because children were subject to parental dominion, they "acquired some of the characteristics of property or chattels." W. WEYRAUCH & S. KATZ, *AMERICAN FAMILY LAW IN TRANSITION* 495 (1983). Similarly, in feudal times, parents had a proprietary right in the services of their children. *Id.*

decendent's personal estate.⁶⁰ Concluding that such an injury to property rights should not go unpunished, the court stated that the action should survive on public policy grounds.⁶¹

In 1899, the New Jersey Court of Errors and Appeals, in *Cooper v. Shore Electric Co.*,⁶² significantly circumscribed the *Noice* decision. Although *Cooper* involved an action under the state's wrongful death statute,⁶³ the reasoning in the opinion would later prove pivotal in interpreting the survival statute in the context of libel actions.⁶⁴ The *Cooper* court, in determining whether a wrongful death action abated upon the death of the individual for whose benefit the suit was brought, construed *Noice* as standing for the proposition that it was injury to tangible property rights that gave an action the quality of survivorship.⁶⁵

*Alpaugh v. Conkling*⁶⁶ was the first New Jersey case to present the issue of the descendibility of defamation actions. In *Alpaugh*, the defendant died after an action for slander had been commenced against her.⁶⁷ The plaintiff, maintaining that the action did not abate under the state's survival statute, moved to substitute the personal representative of the deceased as defendant.⁶⁸ The court refused to allow the substitution, holding that the statutory phrase "trespass done to the person" did not encompass

⁶⁰ *Noice*, 39 N.J.L. at 571.

⁶¹ *Id.* In the words of the court, "[t]he damages being partly punitive, the action should survive [so] that the punishment may fall on the wrong-doer." *Id.*

⁶² 63 N.J.L. 558, 44 A. 633 (1899).

⁶³ *See id.* at 558-59, 44 A. at 633.

⁶⁴ *See infra* notes 70-75 and accompanying text.

⁶⁵ *Cooper*, 63 N.J.L. at 562, 44 A. at 634-35. The *Cooper* opinion was a travesty, as the court misconstrued both *Noice* and *Hayden v. Vreeland*, 37 N.J.L. 372 (Sup. Ct. 1875). The *Cooper* court interpreted *Hayden* as holding that a purely personal action did not survive death. *Cooper*, 63 N.J.L. at 562, 44 A. at 634. But the *Hayden* court actually held that a breach of a promise of marriage could not be maintained *not* because the injury was purely personal, but because the action was in contract and, therefore, the survival statute did not apply. *See Hayden*, 37 N.J.L. at 379. In a similar vein, *Noice* was interpreted by the *Cooper* court as allowing a tort action to survive only if it affected the property rights of the deceased. *See Cooper*, 63 N.J.L. at 562, 44 A. at 634-35. The *Cooper* court, however, ignored the reasoning at the beginning of the *Noice* opinion that an "injury to the [feelings of a person] is as much a tort to the person as an assault would be." *See Noice*, 39 N.J.L. at 571 (*Noice* court reasoning). As a result of its faulty interpretation of both *Hayden* and *Noice*, the *Cooper* court determined that where the injury was purely personal the action did not survive, but where the injury related to property rights, the action did survive. *See Cooper*, 63 N.J.L. at 562, 44 A. at 635. It was this reasoning which the court in *Alpaugh v. Conkling*, 88 N.J.L. 64, 95 A. 618 (Sup. Ct. 1915), later applied to libel actions. *See infra* text accompanying notes 66-75.

⁶⁶ 88 N.J.L. 64, 95 A. 618 (Sup. Ct. 1915).

⁶⁷ *Id.* at 65, 95 A. at 618.

⁶⁸ *Id.*, 95 A. at 619.

actions for libel and slander in the absence of damage to tangible property rights.⁶⁹

In rendering its decision, the court severely restricted *Ten Eyck*.⁷⁰ Writing for the court, Justice Parker reasoned that, because *Ten Eyck* had presented an injury to property, that court had merely interpreted the word "trespass," without construing the meaning of the phrase "done to the person or property."⁷¹ In analyzing whether there had been an injury to Alpaugh's person, Justice Parker glossed over the reasoning in *Noice* that feelings, as well as one's physical frame, were a part of the person.⁷² Rather, he found more persuasive the *Cooper* court's interpretation of *Noice*—that the survival of an action was dependent upon the presence of a tangible injury.⁷³ Justice Parker observed that, although Alpaugh's reputation might have been injured, he had suffered no tangible harm from the allegedly slanderous remarks.⁷⁴ The court thus concluded that, under the survival statute, the plaintiff's action terminated at the defendant's death.⁷⁵

The *Alpaugh* decision represented the undisputed law in New Jersey⁷⁶ until the 1970 decision in *Weller v. Home News Publishing Co.*⁷⁷ In that case, the plaintiff had died while her libel action was pending, and her personal representatives sought to be substituted.⁷⁸ Relying on *Alpaugh*, the defendant argued that the libel

⁶⁹ *Id.* at 67, 95 A. at 619.

⁷⁰ *See id.* at 66, 95 A. at 619.

⁷¹ *Id.* *See supra* text accompanying notes 48-52 for the *Ten Eyck* court's construction of the relevant statutory phrase.

⁷² *See Alpaugh*, 88 N.J.L. at 66, 95 A. at 619.

⁷³ *See id.*

⁷⁴ *See id.* at 67, 95 A. at 619.

⁷⁵ *Id.* The court in *Alpaugh* also examined statutes and court decisions from other states in reaching its decision. *Id.* In addition, the court left open the question of whether libel or slander actions would survive in the presence of allegations of special damages to property. *See id.*

⁷⁶ *E.g.*, *Palmisano v. News Syndicate Co.*, 130 F. Supp. 17 (S.D.N.Y. 1955) (libel action abated); *see also* *Patrick v. Esso Standard Oil Co.*, 156 F. Supp. 336 (D.N.J. 1957) (applying *Alpaugh*, court determined that action for malicious prosecution abated).

⁷⁷ 112 N.J. Super. 502, 271 A.2d 738 (Law Div. 1970).

⁷⁸ *Id.* at 504-05, 271 A.2d at 739. Mrs. Weller, the plaintiff, who was a paying patient in a hospital, was suffering from a heart ailment. *Id.* at 504, 271 A.2d at 739. The hospital's public relations director prepared a series of articles for the hospital's newspaper on charity patient care. *Id.* Mrs. Weller's profile was used in a picture of "Prudence Grandmom Pickett," a fictitious destitute charity patient, which accompanied one of the articles. *Id.* at 504-05, 271 A.2d at 739. Mrs. Weller claimed that she was libeled by the picture and accompanying article. *See id.* After her death, her daughter and son-in-law, as her personal representatives, sought to continue the suit. *Id.*

action had abated upon the plaintiff's death.⁷⁹ In an opinion written by Judge Furman, the court rejected the defendant's argument and specifically stated that *Alpaugh* should no longer be followed.⁸⁰ The court refused to adopt the dichotomy recognized in *Alpaugh*, between tangible damage to one's person and intangible damage to one's reputation, commenting that such a distinction was "purely arbitrary."⁸¹ Rather, employing language reminiscent of *Ten Eyck*, Judge Furman indicated that the phrase "trespass done to the person" should be interpreted broadly.⁸² The state's survival statute, the court determined, "preserved a decedent's cause of action for [any] trespass to person or property . . . without stated exceptions."⁸³ Therefore, the court held that Mrs. Weller's libel action did not abate on her death.⁸⁴

Thirteen years later, the descendibility of defamation actions under New Jersey's survival statute was examined by the United States District Court for the District of New Jersey in *MacDonald v. Time, Inc.*⁸⁵ Because the New Jersey Supreme Court had never rendered a controlling decision on the issue, the district court in *MacDonald* was obliged to discern how that court would have ruled on the question.⁸⁶ Judge Sarokin began his analysis by commenting on both the awesome power of the press in contemporary society and its concomitant ability to destroy an individ-

⁷⁹ *Id.* at 505, 271 A.2d at 739.

⁸⁰ *Id.* at 505-07, 271 A.2d at 739-40. The *Weller* court stated that it did not follow the *Alpaugh* decision because that decision had been rendered by a court of "like jurisdiction at *nisi prius* and [thus] need not be followed." *Id.* at 505, 271 A.2d at 739. In addition, citing cases from other jurisdictions, the court asserted that if *Alpaugh* were followed the result would be repressive and "out of keeping with the preferable trend outside New Jersey." *Id.* (citing *Emmanuel v. Bovino*, 26 Conn. Supp. 356, 223 A.2d 541 (Super. Ct. 1966); *Brown v. Mack*, 185 Misc. 368, 56 N.Y.S. 2d 910 (Sup. Ct. 1945)).

⁸¹ *Id.* at 506, 271 A.2d at 740. The *Weller* court noted that "damages for mental suffering and nervous anguish were recoverable . . . in several causes of action arising out of trespass on the case." *Id.* In addition, the court reasoned that there was no logical basis for the *Alpaugh* court's conclusion in dictum that defamation actions involving property or monetary losses would survive, whereas defamation actions alleging damage to feelings or reputation would not. *Id.* at 506-07, 271 A.2d at 739-40.

⁸² *See id.* at 506, 271 A.2d at 740. In Justice Furman's words, "[t]o construe trespass to person as not encompassing libel . . . is to import a limitation into the survival statute which is not expressed. The term 'trespass' in the statute is equated with 'tort.'" *Id.*

⁸³ *Id.* at 506, 271 A.2d at 739.

⁸⁴ *Id.* at 507, 271 A.2d at 739.

⁸⁵ 554 F. Supp. 1053 (D.N.J. 1983).

⁸⁶ *Id.* at 1055.

ual's reputation.⁸⁷ He noted that, in view of that power and of the resultant need to provide a forum in which to vindicate one's reputation, there was no just reason why a libel action should not survive the plaintiff's death.⁸⁸ Judge Sarokin reasoned that "[t]o say that a man's . . . reputation dies with him is to ignore the realities of life and the bleak legacy which he leaves behind."⁸⁹ Consequently, the court rejected the contrived, technical fiction that a claim for a damaged leg survived death but a claim for a damaged reputation did not.⁹⁰

Judge Sarokin next reviewed the decisions in *Ten Eyck*, *Cooper*, *Alpaugh*, and *Weller*, and determined that the *Weller* analysis was the most persuasive.⁹¹ *Weller*, he reasoned, was consistent with the increasing recognition within the state of the right to be compensated for injuries to feelings and to reputation.⁹² In light of that trend, and cognizant of the necessity to counter the power of the modern media, the court held that defamation actions survived the death of the plaintiff.⁹³

It was against this background that the New Jersey Supreme Court rendered its decision in *Canino*, which conclusively established that, under the state's survival statute, libel actions survive to the personal representative upon the death of the defamed.⁹⁴ The *Canino* court determined that libel and slander are injuries to the person and are therefore subsumed in the statutory phrase "trespass done to the person."⁹⁵ In so holding, the court rejected the distinction, which was recognized by the courts in *Cooper* and *Alpaugh*,⁹⁶ between tangible damage to one's person or property and intangible damage to one's reputation.⁹⁷ The court instead approved the reasoning in *MacDonald* and con-

⁸⁷ *Id.* at 1054.

⁸⁸ *Id.* at 1054-55. Judge Sarokin observed that "[i]f this case is not tried, [the plaintiff's] survivors will never be afforded the opportunity to remove the cloud which has darkened the plaintiff's reputation and which will continue suspended over his survivors for their lifetimes." *Id.* at 1054.

⁸⁹ *Id.*

⁹⁰ *Id.* The court observed that although a reputation can be healed after death, a leg cannot. *Id.*

⁹¹ *Id.* at 1057.

⁹² *See id.*

⁹³ *See id.* at 1054-55, 1057.

⁹⁴ *Canino*, 96 N.J. at 191, 475 A.2d at 529.

⁹⁵ *Id.* at 195, 475 A.2d at 531-32. For an analysis of the *Canino* decision and its potential impact, see Comment, Tort Law—*Canino v. New York News, Inc.*: *New Jersey Permits Defamation Actions to Survive*, 60 NOTRE DAME L. REV. 165 (1984).

⁹⁶ *See supra* notes 62-75 and accompanying text for a discussion of *Cooper* and *Alpaugh*.

⁹⁷ *See Canino*, 96 N.J. at 192-94, 475 A.2d at 530-31.

cluded, as did the *MacDonald* court, that the *Weller* decision represented "the correct interpretation of the survival statute."⁹⁸

Justice O'Hern, writing for a unanimous court, initially reviewed the probable origins of the rule of *actio personalis moritur cum persona* and observed that the ancient doctrine "[bore] little relevance to a modern system of justice."⁹⁹ Quoting extensively from *Ten Eyck*, he opined that the survival statute should be interpreted broadly and that the term trespass contained therein was equivalent to the word tort.¹⁰⁰ He concluded that libel is an injury to the person, and therefore a tort, regardless of any allegations of tangible loss.¹⁰¹

Moreover, Justice O'Hern identified the faulty reasoning in *Alpaugh*,¹⁰² noting that in that case the court had relied upon

⁹⁸ See *id.* at 191, 475 A.2d at 529. See *supra* text accompanying notes 85-93 for a discussion of *MacDonald*.

⁹⁹ *Canino*, 96 N.J. at 191-92, 475 A.2d at 529-30. See *supra* text accompanying notes 27-40 for a discussion of the common law doctrine. As one commentator has stated:

One of the oft-sung glories of the English common law is the vitality of its many rules which evolved originally from ancient custom [and] tradition This truly amazing vitality has the virtue of imbuing the law with stability, . . . and of furnishing some measure of predictability of decisions. Unfortunately, it also serves to perpetuate the force of some rules far beyond the period of their usefulness and to maintain their influence after the reason for their existence has been long forgotten.

Smedley, *supra* note 29, at 605.

¹⁰⁰ See *Canino*, 96 N.J. at 194-95, 475 A.2d at 531. See *supra* text accompanying notes 42-52 for a discussion of *Ten Eyck*. The *Canino* court also found *Ten Eyck* persuasive because the decision conformed to the way the legal system viewed libel and slander actions. *Canino*, 96 N.J. at 195, 475 A.2d at 531. A review of the case law during the period in question indicates that libel was viewed as an action sounding in trespass on the case. *Id.* (citing *Johnson v. Shields*, 25 N.J.L. 116 (Sup. Ct. 1855); *Trenton Mut. Life and Fire Ins. Co. v. Perrine*, 23 N.J.L. 402 (Sup. Ct. 1852); *Joralemon v. Pomeroy*, 22 N.J.L. 271 (Sup. Ct. 1849)).

¹⁰¹ *Canino*, 96 N.J. at 195, 475 A.2d at 531-32.

¹⁰² *Id.* at 193-94, 475 A.2d at 530-31. The *Canino* court was not the first to express displeasure with the *Alpaugh* decision. Sixteen years after the *Alpaugh* decision was rendered, a law review article, surveying survival statutes in the United States, stated that

[i]t is difficult to speak with assurance respecting New Jersey. In 1877 the court held that an action for the seduction of a daughter survived the death of the father. The court in this and in other cases held that 'trespass' was to be interpreted liberally, and meant any tort. The statute provides for survival of actions for any trespass done to the person or property. In the seduction case the court intimated that perhaps the father had a property interest, and on that account the action should survive. Of course there was no direct injury to specific property involved, and from any point of view the construction was a liberal one. In a later case the court seized upon the suggestion regarding the father's property interest involved in the seduction case, and held that

Cooper, a decision that concerned an interpretation of the state's wrongful death statute.¹⁰³ The *Canino* court commented that the reasoning in *Cooper*—that it was injury to tangible property rights that gave a wrongful death action the quality of survivorship—was irrelevant to an interpretation of the survival statute.¹⁰⁴

The supreme court also addressed the argument that survival of defamation actions would be paradoxical in light of current developments in libel law in New Jersey.¹⁰⁵ It identified the competing policy considerations in the case—the free and open expression of opinion on public affairs and the individual's right to protect his reputation.¹⁰⁶ In balancing those concerns, Justice O'Hern rejected the contention that survival of libel actions would restrict the unfettered and robust dissemination of ideas in the public forum.¹⁰⁷ He reasoned simply that “[o]nce a statement is published, the rights of the parties are fixed for good or [evil]”; the death of the defamed individual can “affect [neither] the fact of publication” nor the libelous statement.¹⁰⁸ The *Canino* court went on to conclude that the decision to permit survival of

actions for libel and slander did not survive, thus overturning the well established New Jersey view that a trespass to the person meant any tort action We are accordingly not confident as to what the law is in New Jersey, but it seems probable that no actions for the so-called injuries to reputation survive.

Evans, *A Comparative Study of the Statutory Survival of Tort Claims for and Against Executors and Administrators*, 29 MICH. L. REV. 969, 982-83 (1931) (footnotes omitted) (discussing *Noice* and *Alpaugh*).

¹⁰³ *Canino*, 96 N.J. at 193-94, 475 A.2d at 530-31. See also *supra* note 65 for a discussion of the faulty reasoning in *Cooper*.

¹⁰⁴ *Canino*, 96 N.J. at 194, 475 A.2d at 531.

¹⁰⁵ *Id.* at 196, 475 A.2d at 532; *cf.* *Maressa v. New Jersey Monthly*, 89 N.J. 176, 445 A.2d 376 (shield law affords newspapermen absolute privilege not to disclose confidential sources and editorial processes absent conflicting constitutional right), *cert. denied*, 459 U.S. 907 (1982); *Kotlikoff v. Community News*, 89 N.J. 62, 444 A.2d 1086 (1982) (defamatory letter printed in letter to the editor section of newspaper protected expression of opinion and privileged as fair comment).

Time, Inc., in an *amicus curiae* brief filed in *Canino*, argued that the policy considerations advanced in favor of the survival of defamation actions fail to take into account the uniqueness of those actions and the limitations which have increasingly been placed on them. Brief *Amicus Curiae* of *Time, Inc.* in Support of Motion for Leave to Intervene as *Amicus Curiae* and to Participate in Oral Argument at 21, *Canino v. New York News, Inc.*, 96 N.J. 189, 475 A.2d 528 (1984).

¹⁰⁶ See *Canino*, 96 N.J. at 196-97, 475 A.2d at 532.

¹⁰⁷ *Id.* at 197, 475 A.2d at 532.

¹⁰⁸ *Id.* The *Canino* court stated that it could not “foresee any behavioral influence on a free press that the contrary rule [the non-survival of libel actions] would achieve.” *Id.* As the court queried, “[c]an anyone imagine an editor so hard-bitten as to weigh the words the less in contemplation of another’s death?” *Id.* at 198, 475 A.2d at 533; *accord MacDonald*, 554 F. Supp. at 1054.

libel actions under the statute does not implicate first amendment values.¹⁰⁹

In deciding that defamation actions survive, the *Canino* court determined that a damaged reputation is an injury to a person, which must be redressed regardless of whether the defamed lives until the final judgment. Rejecting the vestiges of the common law doctrine, Justice O'Hern analyzed the survival statute in a manner that reflected both the statute's remedial purpose and the modern system of justice that exists in New Jersey.

The apparent impetus behind the *Canino* decision was Judge Sarokin's analysis in *MacDonald* with respect to the relationship between the awesome power of the press and an individual's right to protect his reputation. Although cognizant of first amendment values, Judge Sarokin discussed at length the ability of the press to indict, try, and convict a person with one news story.¹¹⁰ He was aware that the rights of persons who have been injured by the excesses of the media should not be ignored, and he reasoned that courts must provide a forum for such individuals.¹¹¹ Both Judge Sarokin and Justice O'Hern recognized that access to that forum must not be foreclosed by a fortuitous event such as death.¹¹² As asserted in both *Canino* and *MacDonald* "to say that a man's reputation dies with him is to ignore the realities of life and the bleak legacy which he leaves behind."¹¹³

Several policy considerations were significant to the *Canino* and *MacDonald* courts, including: (1) the expansion of litigants' rights in tort law;¹¹⁴ (2) the necessity of a forum in which to redress the damage to reputation caused by the excesses of a powerful media;¹¹⁵ and (3) the concept that a reputation lives on and

¹⁰⁹ *Canino*, 96 N.J. at 198, 475 A.2d at 533. The *Canino* court reached this conclusion by focusing on the recent United States Supreme Court decision in *Calder v. Jones*, 104 S. Ct. 1482 (1984), which held that "[t]he potential chill on protected First Amendment activity stemming from libel and defamation actions is already taken into account in the constitutional limitations on the substantive law governing such suits." See *Canino*, 96 N.J. at 199, 475 A.2d at 533 (quoting *Calder*, 104 S. Ct. at 1487).

¹¹⁰ See *MacDonald*, 554 F. Supp. at 1054.

¹¹¹ See *id.* at 1054-55.

¹¹² *Canino*, 96 N.J. at 192, 475 A.2d at 530 (quoting W. PROSSER, *supra* note 29, at 901); see *MacDonald*, 554 F. Supp. at 1054.

¹¹³ *Canino*, 96 N.J. at 191, 475 A.2d at 529 (quoting *MacDonald*, 554 F. Supp. at 1054).

¹¹⁴ *MacDonald*, 554 F. Supp. at 1057; see *Canino*, 96 N.J. at 192, 475 A.2d at 530.

¹¹⁵ *MacDonald*, 554 F. Supp. at 1055; see *Canino*, 96 N.J. at 196-98, 475 A.2d at 532-33.

can be vindicated after death.¹¹⁶ Although *Canino* and *MacDonald* involved an interpretation of the survival statute, the policy considerations that were heeded by the two courts will be pivotal in the analysis of other substantive issues relating to death and defamation.

One such issue is whether an individual can maintain an action for the defamation of another person who is libeled after death.¹¹⁷ Currently, no state, either by judicial fiat or by statute, recognizes such actions.¹¹⁸ Denial of these causes of action is predicated upon a traditional prerequisite of a defamation action: it must be brought by and be of and concerning the defamed individual.¹¹⁹ Courts reason that a third person who has not been defamed has no legal interest in bringing the action.¹²⁰ However, recognition that a defamed reputation can be vindicated after death, coupled with the expansion of litigants' rights to be compensated for injuries to feelings, mandates the conclusion that such actions be allowed. This result would be consistent with the policy considerations implicit in the *Canino* and *MacDonald* decisions.¹²¹

Finally, in its zeal to conclude that libel actions survive death, the *Canino* court failed to provide guidance as to how other tort actions involving injuries to feelings and emotions will be treated under the survival statute. For example, there is no indication from the supreme court whether actions for malicious prosecution or alienation of affections are subsumed in the statutory phrase "trespass done to the person." To prevent piece-

¹¹⁶ *MacDonald*, 554 F. Supp. at 1054; *Canino*, 96 N.J. at 191, 475 A.2d at 529 (quoting *MacDonald*, 554 F. Supp. at 1054).

¹¹⁷ The *Canino* court noted that this issue was raised in oral argument, but the court declined to address the issue in its opinion. *Canino*, 96 N.J. at 195 n.3, 475 A.2d at 532 n.3.

¹¹⁸ *E.g.*, *Gruschus v. Curtis Publishing Co.*, 342 F.2d 775, 776 (10th Cir. 1965) (under New Mexico law, no cause of action for libel after death); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 148 (N.D. Tex. 1979) (no action for libel after death in Texas). For a discussion of why these actions have been denied, see Note, *Recent Decisions*, 40 COLUM. L. REV. 1065, 1268-69 (1940).

¹¹⁹ See *Michigan United Conservation Clubs v. CBS News, Inc.*, 485 F. Supp. 893 (W.D. Mich. 1980) (crucial element to establish prima facie case for defamation is that publication must be of and concerning plaintiff); *cf. Gnapinsky v. Goldyn*, 23 N.J. 243, 128 A.2d 697 (1957) (to be actionable defamation must warrant inference that statement was understood by third person to reflect upon plaintiff).

¹²⁰ See, *e.g.*, *Michigan United Conservation Clubs v. CBS News, Inc.*, 485 F. Supp. 893 (W.D. Mich. 1980); *Gnapinsky v. Goldyn*, 23 N.J. 243, 128 A.2d 697 (1957).

¹²¹ *Cf. Gottschalk, When the Dead Are Defamed . . . Law in Evolution*, N.J. LAW., Spring 1982, at 10, 13-14 (arguing that actions for libel after death should be allowed in New Jersey).

meal, and possibly conflicting, adjudication of these issues, the Legislature should amend the present survival statute—substantially unchanged since 1855¹²²—and specifically identify those actions that would survive death and those that would not.

Whatever the ultimate resolution of the tangential questions concerning death and defamation, what is clear, is that as a result of the *Canino* decision, at least with respect to libel actions, there is life after death in New Jersey.

Cheryl J. Oberdorf

¹²² Compare 1855 N.J. Laws ch. 126 (original survival statute) with N.J. STAT. ANN. §§ 2A:15-3, -4 (West Cum. Supp. 1984-1985) (present version of survival statute).