

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF LORAIN        )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.        08CA009515

Appellant

v.

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No.        03CR062620

GREGORY GRUSZKA

Appellee

DECISION AND JOURNAL ENTRY

Dated: August 10, 2009

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CARR, Judge.

{¶1} The State of Ohio appeals the judgment of the Lorain County Court of Common Pleas. This Court reverses.

I.

{¶2} On March 19, 2003, appellee, Gregory Gruszka, was indicted on two counts of rape in violation of R.C. 2907.02(A)(2), felonies of the first degree. Gruszka pled not guilty to the charges. On February 6, 2004, the trial court held a change of plea hearing at which time Gruszka pled guilty to both charges pursuant to a plea bargain. As part of the plea bargain, the State asserted that it would not object to Gruszka’s adjudication as a child victim sexually oriented offender, “which is the lowest level on that.” The trial court accepted Gruszka’s guilty plea and continued the matter for sentencing after preparation of a pre-sentence investigation.

{¶3} The trial court held a sentencing hearing on April 9, 2004. The State again asserted that it had no objection to Gruszka’s designation as a child victim sexually oriented

offender. On April 9, 2004, the trial court adjudicated Gruszka as a child victim sexually oriented offender and sentenced him to an aggregate term of four years in prison. Pursuant to the law then in effect, Gruszka was ordered to register with the Lorain County Sheriff once a year for ten years. On March 9, 2005, the trial court issued a judgment entry to amend nunc pro tunc its April 9, 2004 judgment entry to indicate that Gruszka was classified as a sexually oriented offender, rather than a child-victim offender.

{¶4} On January 3, 2008, Gruszka, as “defendant-petitioner”, filed a motion for immediate relief from community notification pursuant to R.C. 2950.11(F)(2). He appended a notice of new classification and registration duties for a Tier III Child Victim Offender, dated November 26, 2007, and sent by the Ohio Attorney General’s office in response to the passage of Senate Bill 10 which implemented the federal Adam Walsh Child Protection and Safety Act of 2006 in place of the prior version commonly known as Megan’s Law. The notice informed Gruszka that, as a Tier III Child Victim Offender, he was subject to the community notification requirements of R.C. 2950.11, although the court could make a determination that removes the requirement if he was not subject to community notification prior to January 1, 2008.

{¶5} On January 9, 2008, the trial court issued an order ruling on Gruszka’s petition to contest the application of the Adam Walsh Act, motion for preliminary injunction, and motion for immediate relief from community notification. The record does not contain Gruszka’s petition to contest the application of the Adam Walsh Act or his motion for preliminary injunction. The trial court granted a preliminary injunction, ordering that the State was prohibited from reclassifying Gruszka, notifying the community of Gruszka’s sexual offender classification, or otherwise implementing any of the provisions of Senate Bill 10, the newly enacted Ohio’s Adam Walsh Act.

{¶6} On January 22, 2008, the trial court issued an “order granting stay” in which it vacated its January 9, 2008 order, yet “stayed” the State from reclassifying Gruszka or otherwise implementing any Senate Bill 10 provisions until after the court had held a hearing on Gruszka’s motion for relief from community notification. The trial court further ordered that no person, including the State and the Lorain County Sheriff, shall notify the community of Gruszka’s sexual offender classification.

{¶7} On January 23, 2008, the State filed an opposition to Gruszka’s motion for relief from notification pursuant to the new sexual offender notification and registration (“SORN”) law. On June 24, 2008, the trial court ordered Gruszka to file a motion raising a res judicata defense by August 1, 2008, and the State to file its opposition motion by September 5, 2008. The trial court further scheduled a hearing on the res judicata motion on September 23, 2008, and an evidentiary hearing on Gruszka’s R.C. 2950.11(F) motion on October 28, 2008. The parties timely filed their respective motions.

{¶8} On November 26, 2008, the trial court purportedly issued an opinion on Gruszka’s motion for relief from community notification pursuant to R.C. 2950.11(F)(2). The November 26, 2008 journal entry, however, was merely a ruling on the parties’ briefs on the issue of the application of res judicata to the requirement that Gruszka be subject to community notification after reclassification by the attorney general. The trial court concluded that the issue of whether Gruszka was subject to community notification had been resolved in the defendant’s favor under the doctrine of res judicata. On December 9, 2008, the trial court issued a journal entry in which it cancelled the R.C. 2950.11(F)(2) hearing as moot based on its November 26, 2008 order. The State filed a timely notice of appeal, raising one assignment of error for review.

**ASSIGNMENT OF ERROR**

“THE TRIAL COURT ERRONEOUSLY DETERMINED THAT THE DOCTRINE OF RES JUDICATA PROHIBITED THE IMPOSITION OF MANDATORY COMMUNITY NOTIFICATIONS FOLLOWING THE DEFENDANT-APPELLEE’S SEXUALLY ORIENTED OFFENDER RECLASSIFICATION FROM A MEGAN’S LAW SEXUALLY ORIENTED OFFENDER TO AN ADAM WALSH ACT TIER III SEXUALLY ORIENTED OFFENDER.”

{¶9} The State argues that the trial court erred by concluding that the doctrine of res judicata prohibits the imposition of community notification requirements upon Gruszka’s reclassification as a Tier III child victim offender. This Court agrees.

{¶10} In its opinion, the trial court concluded that the doctrine of res judicata bars relitigation of the issue of whether Gruszka is subject to community notification because that issue was previously resolved in his favor. This Court reviews de novo a trial court’s determination that an action is barred by res judicata. *Ohio Patrolmen’s Benevolent Assn. v. Munroe Falls*, 9th Dist. No. 23898, 2008-Ohio-659, at ¶13, citing *Payne v. Cartee* (1996), 111 Ohio App.3d 580, 587. Because the propriety of the application of res judicata presents a question of law, this Court does not defer to the trial court’s conclusions. *Id.*

{¶11} The current version of R.C. 2950.11(F)(1) subjects Tier III sex offenders to community notification unless they are relieved from that requirement pursuant to R.C. 2950.11(F)(2). R.C. 2950.11(F)(2) states that the community notification provisions are not applicable “if a court finds at a hearing after considering [11 enumerated] factors \*\*\* that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment.” The notice of reclassification issued by the attorney general’s office notifies reclassified individuals of the statutory mechanism for challenging a new requirement for community notification.

Gruszka attempted to properly utilize that mechanism to challenge his newly imposed requirement for community notification when he filed, as petitioner, a motion for relief from community notification pursuant to R.C. 2950.11(F)(2). The trial court, however, declined to recognize the legislatively authorized mechanism, and instead attempted to create its own mechanism to allow a challenge to the imposition of a community notification requirement.

{¶12} R.C. 2950.02(B) provides:

“The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding tier III sex offenders/child-victim offenders who are criminal offenders, public registry-qualified juvenile offender registrants, and certain other juvenile offender registrants who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly’s intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and child-victim offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and child-victim offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.”

{¶13} The United States Supreme Court has stated that “[t]he State has the sovereign right \*\*\* to protect the \*\*\* general welfare of the people \*\*\*. Once we are in this domain of the reserve power of a State we must respect the wide discretion on the part of the legislature in determining what is and what is not necessary.” (Internal quotations omitted.) *El Paso v. Simmons* (1965), 379 U.S. 497, 508-509. Significantly, the Ohio Supreme Court has held that this most recent version of R.C. Chapter 2950 is still a remedial statute which does not impair vested, substantial rights. *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, at ¶27-32. Given the remedial nature of the statute in furtherance of the legislature’s goal to protect the

safety and general welfare of the public, the trial court was not free to graft upon the statute a mechanism to be used to defeat this legislative intent. Accordingly, the trial court erred by concluding that the issue of community notification had been resolved in Gruszka's favor on the basis of res judicata in lieu of conducting the legislatively authorized hearing pursuant to R.C. 2950.11(F)(2). The State's sole assignment of error is sustained.

### III.

{¶14} The State's assignment of error is sustained. The judgment of the Lorain County Court of Common Pleas is reversed and the cause remanded for further proceedings consistent with this opinion.

Judgment reversed,  
and cause remanded.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

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DONNA J. CARR  
FOR THE COURT

MOORE, P. J.  
DICKINSON, J.  
CONCUR

APPEARANCES:

DENNIS P. WILL, Prosecuting Attorney, and M. ROBERT FLANAGAN, Assistant Prosecuting Attorney, for Appellant.

PAUL GRIFFIN, Attorney at Law, for Appellee.