

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

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| STATE OF OHIO, | : | OPINION |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2014-T-0070 |
| ROBERT JORDAN, a.k.a. | : | |
| ROBERT FITZGERALD ARMSTRONG, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 96 CR 269.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Samuel F. Bluedorn, Bluedorn & Ohlin, L.L.C., 144 North Park Avenue, #310, Warren, OH 44481 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Robert Jordan, aka Robert Fitzgerald Armstrong, appeals from the judgment entry of the Trumbull County Court of Common Pleas, granting the state summary judgment on his petition contesting the application to him of the Adam Walsh Act. Finding no error, we affirm.

{¶2} In August 1999, Mr. Jordan and another man tried to rob the Ponderosa restaurant in Niles, Ohio. Robert Capito, aged 16, was at the restaurant to pick up a friend. Mr. Jordan and his friend took everyone at the restaurant hostage. Eventually, police arrested Mr. Jordan in the attic.

{¶3} Mr. Jordan was tried on 20 counts of a 21 count indictment, and convicted on six counts. One of these was kidnapping Mr. Capito, pursuant to R.C. 2905.01(A)(2).

{¶4} Between the time of his offenses, but prior to trial, the Ohio General Assembly passed Megan's Law, which required certain sex offenders to register with the state. In 2003, it passed S.B. 5, which added a registration requirement for those who had committed certain crimes against those under the age of 18, without sexual motivation. Included in this were violators of R.C. 2905.01(A)(2). These offenders were required to register as child victim offenders.

{¶5} Evidently, Mr. Jordan was informed by letter, in autumn 2009, that he would be required to register as a child victim offender.

{¶6} The Adam Walsh Act, revamping Ohio's registration requirements regarding sex offenders, became effective January 1, 2009. The record does not indicate whether Mr. Jordan was ever reclassified under the Adam Walsh Act. However, by a letter dated December 2, 2011, he was notified by the Ohio Attorney General that, since the decision in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, had declared the Adam Walsh Act could not be applied retroactively, he would be returned to his classification under Megan's Law.

{¶7} May 12, 2014, Mr. Jordan petitioned the trial court, contesting any classification under the Adam Walsh Act. Alternatively, he requested a hearing. The state moved for summary judgment, noting that the petition was filed outside the 60 day period for contesting reclassification. R.C. 2950.031(E). The state further observed that Mr. Jordan was registered under Megan’s Law, not the Adam Walsh Act. The trial court found the petition to be timely, since the December 2, 2011 letter from the attorney general did not inform Mr. Jordan of any 60 day time limit. However, it granted the state summary judgment due to the fact that Mr. Jordan is subject to Megan’s Law, not the Adam Walsh Act.

{¶8} Mr. Jordan timely appealed assigning a single error:

{¶9} “The trial court improperly denied Appellant, Robert Jordan aka Robert Fitzgerald Armstrong’s, Petition for Relief Requirement of the Adam Walsh Act/Megan’s Law based on it’s (sic) opinion that pursuant to the notification, Appellant is a Megan’s Law offender and is therefore required to register under this former law, not the AWA and thus the retroactive application of Megan’s Law did not violate any of the Appellant’s constitutional rights.”

{¶10} “Summary judgment is a procedural tool that terminates litigation and thus should be entered with circumspection. *Davis v. Loopco Industries, Inc.*, 66 Ohio St.3d 64, 66, * * * (1993). Summary judgment is proper where (1) there is no genuine issue of material fact remaining to be litigated; (2) the movant is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and, viewing the evidence in the non-moving party’s favor, that conclusion favors the movant. See e.g. Civ.R. 56(C).

{¶11} “When considering a motion for summary judgment, the trial court may not weigh the evidence or select among reasonable inferences. *Dupler v. Mansfield Journal Co.*, 64 Ohio St.2d 116, 121, * * * (1980). Rather, all doubts and questions must be resolved in the non-moving party’s favor. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 359, * * * (1992). Hence, a trial court is required to overrule a motion for summary judgment where conflicting evidence exists and alternative reasonable inferences can be drawn. *Pierson v. Norfolk Southern Corp.*, 11th Dist. No. 2002-A-0061, 2003-Ohio-6682, ¶36. In short, the central issue on summary judgment is, ‘whether the evidence presents sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252, * * * (1986). On appeal, we review a trial court’s entry of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, * * * (1996).” (Parallel citations omitted.) *Meloy v. Circle K Store*, 11th Dist. Portage No. 2012-P-0158, 2013-Ohio-2837, ¶5-6.

{¶12} In support of his assignment of error, Mr. Jordan argues as follows. First, at the time of his conviction and sentencing, there was no registration requirement under Megan’s Law for merely kidnapping a minor, without sexual motivation. That was changed by S.B. 5 in 2003. Mr. Jordan distinguishes the decision in *State v. Cook*, 83 Ohio St.3d 404 (1998), finding retroactive application of Megan’s Law constitutional, on the basis that the defendant therein actually had committed sexually motivated crimes. Further, he insists that he is entitled to a hearing on his classification as a child victim offender.

{¶13} We respectfully disagree. The provisions of S.B. 5, which made Mr. Jordan subject to registration as a child victim offender under Megan's Law, are retroactive. *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, ¶25. Further, there is no requirement of a hearing when an offender is classified as a child victim offender: the classification operates by way of law. *State v. Alexander*, 5th Dist. Stark No. 2004CA00206, 2005-Ohio-635, ¶17.

{¶14} The assignment of error being without merit, the judgment of the Trumbull County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.

concur.