

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. Julie A. Edwards, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 09-COA-020
BRUCE E. HENTHORN, JR.	:	
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Ashland County Court of
Common Pleas, Case No. 08-CIV-086

JUDGMENT: REVERSED AND REMANDED

DATE OF JUDGMENT ENTRY: April 19, 2010

APPEARANCES:

For Defendant-Appellant:

JOSEPH P. KEARNS, JR.
153 W. Main St.
Ashland, OH 44805

For Plaintiff-Appellee:

RAMONA FRANCESCONI ROGERS
ASHLAND COUNTY PROSECUTOR

MICHAEL D. DONATINI
307 Orange St.
Ashland, OH 44805

Delaney, J.

{¶1} Defendant-Appellant, Bruce E. Henthorn, Jr., appeals the April 30, 2009, judgment entry of the Ashland County Court of Common Pleas dismissing Appellant's Petition to Contest Reclassification. Plaintiff-Appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On February 4, 1999, Appellant was convicted in the Ashland County Court of Common Pleas of sexual battery in violation of R.C. 2923.02(A). Appellant currently resides in Ashland County.

{¶3} Appellant received a Notice of New Classification and Registration Duties, based on S.B. 10, known as the Adam Walsh Act, from the Office of Ohio Attorney General on or about December 8, 2007.

{¶4} On January 7, 2008, Appellant filed with the Ashland County Court of Common Pleas a Petition to Contest Application of the Adam Walsh Act. In his Petition, Appellant argued that the State's reclassification was improper and unconstitutional. Specifically, Appellant raised four issues: (1) the retroactive application of Ohio's Adam Walsh Act violated the prohibition on ex post facto laws in Article I, Section 10 of the United States Constitution; (2) the retroactive application of Ohio's Adam Walsh Action violates the prohibition on retroactive laws in Article II, Section 28 of the Ohio Constitution; (3) reclassification of the Petitioner constitutes a violation of the separation of power's doctrine; and (4) reclassification of Petitioner constitutes impermissible multiple punishment under the double jeopardy clauses of the United States and Ohio Constitution.

¹ A statement of the facts is unnecessary for the disposition of this appeal.

{¶5} The State filed a Motion to Dismiss pursuant to Civ.R. 12(B)(1), (2), (4), (5), and (7) on February 8, 2008. The State argued that Appellant's Petition to Contest Reclassification constituted a defective declaratory judgment action under R.C. 2721.12 rather than a statutory petition to contest reclassification under R.C. 2950.031(E) and R.C. 2950.032(E). Because Appellant brought a constitutional challenge to S.B. 10, the State argued the trial court should consider Appellant's petition to be a declaratory judgment action and as such, Appellant was required to follow the procedural mandates thereof. In its motion, the State contended in part that the trial court lacked subject matter jurisdiction over Appellant's declaratory judgment action because Appellant failed to join the Ohio Attorney General, a necessary party to a constitutional challenge.

{¶6} Appellant did not respond to the motion.

{¶7} On April 30, 2009, the trial court granted the State's Motion to Dismiss. The trial court found that Appellant's Petition for Reclassification did not contest under R.C. 2950.031(E) or R.C. 2950.032(E) the manner in which the Attorney General's letter specifies that the new registration requirements apply to Appellant or whether those new registration requirements apply at all to Appellant. The trial court reviewed Appellant's petition and found that Appellant sought declaratory judgment that S.B. 10 was unconstitutional as it applied to Appellant. Because Appellant did not join the Attorney General as a party, the trial court dismissed Appellant's petition.

{¶8} Appellant filed a Motion to Reconsider and for Relief on May 28, 2009. The trial court did not rule on the motion before Appellant filed his notice of appeal on June 1, 2009. Appellant's appeal of the April 30, 2009, judgment entry is now before this Court.

ASSIGNMENTS OF ERROR

{¶9} Appellant raises two Assignments of Error:

{¶10} “I. THE TRIAL COURT ERRED BY RULING THAT THE ATTORNEY GENERAL WAS REQUIRED TO BE NAMED AS A PARTY.

{¶11} “II. THE TRIAL COURT ERRED BY DISMISSING THE ACTION FOR FAILURE TO JOIN A NECESSARY PARTY.”

I., II.

{¶12} Appellant argues the trial court erred in dismissing his petition for Appellant’s failure to join the Attorney General as a necessary party. It was the State’s contention that Appellant’s constitutional challenges to S.B. 10 could only be raised in a declaratory judgment action, not a petition. As a declaratory judgment action challenging the constitutionality of a statute, the trial court held that Appellant was required to join the Attorney General.

{¶13} Several Ohio appellate courts, including this Court, have permitted reclassified defendants, such as Appellant, to raise challenges to the constitutionality of S.B. 10 via petitions filed pursuant to R.C. 2950.032(E), as opposed to separate declaratory judgment actions under R.C. 2721.12(A). *State v. Fletcher*, 4th Dist. No. 08CA3044, 2009-Ohio-1819; *Ramirez v. State*, 5th Dist. No. 08CA 284, 2009-Ohio-5005; *Adamson v. State*, 11th Dist. No. 2008-L-045, 2009-Ohio-6996; *Searles v. State*, 12th Dist. No. CA2009-05-055, 2009-Ohio-4666.

{¶14} While we agree R.C. 2721.12(A) requires notice and service upon the Attorney General when the constitutionality of a statute is raised in a complaint, such a requirement is not embodied or referenced in R.C. 2950.032(E) which grants a

defendant the right to challenge the new classification and registration requirements via a petition filed in the appropriate court.

{¶15} In *In re W.A.S.*, Champaign App. No. 2008 CA 27, 2009-Ohio-4331, the Second District Court of Appeals addressed whether a party is required to file a petition or declaratory judgment action when contesting reclassification under S.B. 10. In a case involving a juvenile contesting the Attorney General's authority to reclassify the juvenile pursuant to S.B. 10, the State argued that the only means of contesting the reclassification was to file a declaratory judgment action. The Second District found no authority to support the State's allegation that that an individual is limited to a declaratory judgment action in order to contest a reclassification of sexual offender status or otherwise challenge the authority of the Attorney General to act under S.B. 10. *Id.* at ¶15.

{¶16} At this juncture, we also note this Court has examined the identical arguments raised by Appellant in his petition and has rejected them. *State v. Gooding*, 5th Dist. No. 08 CA 5, 2008-Ohio-5954 at ¶ 37; See also, *Sigler v. State*, 5th Dist. No. 08-CA-79, 2009-Ohio-2010. Virtually every Appellate District in the State has upheld the Adam Walsh Act against the identical challenges raised by Appellant. See, *State v. Graves*, 179 Ohio App.3d 107, 2008-Ohio-5763; *Holcomb v. State*, 3rd Dist. Nos. 8-08-23, 8-08-25, 8-08-26, 8-08-24, 2009-Ohio-782; *State v. Bodyke*, 6th Dist. Nos. H-07-040, H07-041, H07-042, 2008-Ohio-6387; *State v. Byers*, 7th Dist. No. 07CO39, 2008-Ohio-5051; *State v. Ellis*, 8th Dist. No. 90844, 2008-Ohio-6283; *State v. Honey*, 9th Dist. No. 08CA0018-M, 2008-Ohio-4943; *State v. Christian*, 10th Dist. No. 08AP-170, 2008-Ohio-6304; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; *State v.*

Williams, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195. Nevertheless, Appellant is entitled to have his petition heard by the trial court.

{¶17} Appellant's first and second Assignments of Error are sustained and the judgment of the Ashland County Court of Common Pleas is reversed. This matter is remanded to the trial court for further proceedings in accordance with the law.

By: Delaney, J.

Edwards, P.J. and

Hoffman, J. concur.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. WILLIAM B. HOFFMAN

PAD:kgb

IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
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Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
BRUCE E. HENTHORN, JR.	:	
	:	
	:	Case No. 09-COA-020
Defendant-Appellant	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Ashland County Court of Common Pleas is reversed and this cause is remanded to the trial court for further proceedings in accordance with the law. Costs assessed to Appellee.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. WILLIAM B. HOFFMAN