

[Cite as *Cassell v. Nasal*, 2010-Ohio-3443.]

IN THE COURT OF APPEALS OF MIAMI COUNTY, OHIO

BRIAN D. CASSELL, et al. :
 Plaintiffs-Appellants : C.A. CASE NO. 09-CA-27
 vs. : T.C. CASE NO. 08-CR-14
 GARY A. NASAL, et al. : Criminal Appeal from
 Defendants-Appellees : Common Pleas Court)

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O P I N I O N

Rendered on the 23rd day of July, 2010.

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GRADY, J.:

{¶ 1} This appeal is before the court on a notice of appeal filed by Plaintiffs, Brian D. Cassell and eight others, from a June 23, 2009, order of the court of common pleas that overruled Plaintiffs' petition for a declaration that their reclassifications as sex offenders pursuant to R.C. 2950.031 and 2950.032 are unconstitutional, and for injunctive relief

preventing Defendants, the Miami County Prosecutor, and others, from enforcing the registration and related duties their reclassifications imposed on Plaintiffs. Among the grounds for relief they presented, the Plaintiffs alleged that the reclassification provisions of R.C. 2950.031 and 2950.032 violate separation of powers principles.

ASSIGNMENT OF ERROR

{¶ 2} "THE RETROACTIVE APPLICATION OF SENATE BILL 10 VIOLATES THE EX POST FACTO, DUE PROCESS, AND DOUBLE JEOPARDY CLAUSES OF THE UNITED STATES CONSTITUTION AND THE RETROACTIVITY CLAUSE OF SECTION 28, ARTICLE II OF THE OHIO CONSTITUTION, FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; SECTION 10, ARTICLE I OF THE UNITED STATES CONSTITUTION; AND SECTION 10 AND 28, ARTICLES I AND II, RESPECTIVELY, OF THE OHIO CONSTITUTION."

{¶ 3} The trial court relied on *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774, in which we held that statutory reclassification does not offend the separation of powers. On June 3, 2010, the Supreme Court of Ohio held that the reclassification provisions of R.C. 2950.031 and 2950.032 are unconstitutional, finding that they violate separation of powers principles because they require a member of the executive branch, the Attorney General, to review and modify past final judgments

of the judicial branch that had classified persons as sex offenders under the former law. *State v. Bodyke*, ___ Ohio St.3d ___, 2010-Ohio-2424. The court ordered R.C. 2950.031 and 2950.032 severed from the R.C. Chapter 2950 statutory scheme, holding that those provisions may not be applied to offenders who were classified under the former law, classifications which, as a result, are reinstated. *Id.*, at ¶66.

{¶4} R.C. 2721.02(A) authorizes courts of record to “declare rights, status, and other legal relations whether or not other or further relief is or could be granted.” However, a court may refuse to render a declaratory judgment or decree when no uncertainty or controversy would be terminated thereby. *Walker v. Walker* (1936), 132 Ohio St. 137. A “controversy” exists for purposes of declaratory judgment where there is genuine dispute between parties having adverse legal interests of sufficient immediacy and reality to warrant issuance of a declaratory judgment. *Wagner v. City of Cleveland* (1988), 62 Ohio App.3d 8.

{¶5} Plaintiffs were each classified as sex offenders by a court under the former law. Per *Bodyke*, R.C. 2950.031 and 2950.032 may not be applied to reclassify them, and Plaintiffs’ former classifications are restored. *Bodyke* resolved any uncertainty or controversy concerning Plaintiffs’ classifications, and the holding in *Bodyke* resolved the rights, status, and other legal

relations which Plaintiffs asked the common pleas court to declare.

After *Bodyke*, there cannot any longer be a genuine dispute between these parties concerning Plaintiffs' reclassifications that would warrant issuance of a declaratory judgment.

{¶ 6} *Bodyke* requires us to find that the trial court erred when it rejected Plaintiffs' separation of powers claim, and to sustain the error Plaintiffs assign in that respect and reverse the judgment from which the appeal is taken. However, on this record no remand is necessary because, after *Bodyke*, no real controversy presenting a justiciable dispute between the parties exists.

BROGAN, J. And FROELICH, J., concur.

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Hon. Robert J. Lindeman