



**In the Missouri Court of Appeals
Eastern District**

DIVISION FIVE

JOHN DOE,)	No. ED90404
)	
Appellant,)	
)	Appeal from the St. Louis County
vs.)	Circuit Court
)	
JERRY LEE AND JAMES KEATHLEY)	Honorable Sandra Farragut-Hemphill
)	
Respondents.)	FILED: January 6, 2009

Introduction

John Doe ("Appellant") appeals from a judgment of the Circuit Court of St. Louis County granting summary judgment on all of Appellant's claims, in favor of Gene Overall, former Sheriff of St. Louis County; Jerry Lee, St. Louis County Chief of Police; and James Keathley, Superintendent of the Missouri Highway Patrol (Collectively "Respondents"). We find that the appeal is moot.

Factual and Procedural Background

On April 24, 1994, Appellant pleaded guilty to two counts of assault with intent to commit sexual abuse in Dubuque County, Iowa. Appellant was sentenced to two years' imprisonment. The court suspended execution of Appellant's sentence and placed Appellant on two years of probation. In 1995, Iowa enacted its sex offender registry law, which required Appellant to register as a sex offender for ten years following the date he was placed on probation.

Meanwhile, in May of 1994, Appellant moved to Missouri. Appellant continued to fulfill his registration requirements in Iowa. Missouri's sex offender registry law went into effect on January 1, 1995. Under Section 589.400.1(5),¹ Appellant was required to register as a sex offender in Missouri because he had been previously required to register as a sex offender in Iowa. Appellant did register as a sex offender in Missouri with the St. Louis County Police Department until he was no longer required to register in Iowa in 2004.

On July 28, 2006, Appellant filed an action in St. Louis County seeking a declaration that he was no longer required to register as a sex offender under Missouri's Sex Offender Registration Act ("SORA"). Appellant also sought the expungement of records and information that he had previously provided to county officials. Respondents filed a motion for summary judgment on all of Appellant's claims, which was granted by the court. Appellant appealed.

The main issue on appeal is whether SORA can be applied to require Appellant to continue with his registration requirements even though the triggering offense was committed in Iowa before the effective date of SORA.

Standard of Review

Our review of summary judgment is *de novo*. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). We will uphold the grant of summary judgment on appeal if the movant is entitled to judgment as a matter of law and no genuine issues of material fact exist. *Id.* at 377. We accept as true facts contained in affidavits or otherwise in support of a party's motion unless contradicted by the non-moving party's response to the summary judgment motion. *Id.*

¹ All statute references are to RSMo 2000.

Summary judgment is a drastic remedy, which borders on a denial of due process and effectively denies the party against whom it is entered a day in court. *Bellon Wrecking & Salvage, Co. v. Rohlfing*, 81 S.W.3d 703, 705 (Mo. App. E.D. 2002). Therefore, this court will review the record in the light most favorable to the party against whom judgment was entered and accord that party the benefit of all inferences which may reasonably be drawn from the record. *ITT*, 854 S.W.2d at 376.

Discussion

In his first point, Appellant claims the trial court erred in granting summary judgment because SORA's requirement that he register in Missouri based on his 1994 Iowa convictions, imposes a new obligation and duty on him with respect to past transactions, which impairs a vested and substantial right in violation of Missouri's constitutional prohibition against retrospective laws. Appellant asserts that because his 1994 Iowa convictions predated the effective date of SORA, the law's application to him was in utter derogation of Article I, Section 13 of the Missouri Constitution. Appellant argues that the requirement to register in Missouri was a new obligation and duty that was imposed on him with respect to his 1994 convictions in Iowa. Respondents argued, and the trial court agreed, that because Appellant had a pre-existing duty to register in Iowa, registration in Missouri did not impose a new obligation on Appellant but rather, was a continuation of his pre-existing duty.

"A threshold question in any appellate review is the mootness of the controversy." *State ex rel. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo. banc 2001) quoting *Armstrong v. Elmore*, 990 S.W.2d 62, 64 (Mo. App. W.D. 1999). "It is settled law that the courts of this State do not decide moot cases." *Kinsky v. Steiger*, 109 S.W.3d 194, 195 (Mo. App.

E.D. 2003). "Because mootness implicates the justiciability of a case, we may dismiss a case for mootness *sua sponte*." *Reed*, 41 S.W.3d at 473. "When an event occurs that makes a court's decision unnecessary or makes granting effectual relief by the court impossible, the case is moot and generally should be dismissed." *Id.*

In 2006, Congress enacted the Sexual Offenders Registration and Notification Act ("SORNA"), codified at 42 U.S.C. Sections 16911-16917. SORNA provides in relevant part that:

(a) A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

(b) Initial registration

The sex offender shall initially register--

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(d) Initial registration of sex offenders unable to comply with subsection (b) of this section-The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before July 27, 2006 or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b) of this section.

42 U.S.C.A. Section 16913(a)-(d).

On February 28, 2007, pursuant to the authority delegated to the Attorney General in 42 U.S.C.A. Section 16913(d), the Attorney General issued an interim ruling, which stated that "[t]he requirements of the Sex Offender Registration and Notification Act apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of that Act." 28 C.F.R. Section 72.3. On

the same day, the Attorney General's office issued an explanation of the interim rule, which stated that "[t]his rule forecloses such claims by making it indisputably clear that SORNA applies to all sex offenders (as the Act defines that term) regardless of when they were convicted." Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act, 72 FR 8896.

Appellant pled guilty to two counts of assault with intent to commit sexual abuse in violation of Iowa law. Appellant's offense was a class D felony criminal offense under Iowa law. See Iowa Code Section 709.11. Appellant, having committed a criminal offense involving an element of sexual contact under Iowa law, had committed a sexual offense and was by SORNA's definition, a sex offender.²

As a sex offender, Appellant was required by SORNA to register and keep his registration current in Missouri, the jurisdiction in which he resides. 42 U.S.C. Section 16913(a). However, Appellant would not be able to comply with SORNA's initial registration requirement because his offenses predated the enactment of SORNA and the registration period specified by SORNA has long elapsed under the circumstances of Appellant's case. See 42 U.S.C. Section 16913(b). Nevertheless, the Attorney General, exercising authority granted under SORNA, has promulgated a rule that makes SORNA's registration requirement applicable to all sex offenders regardless of the date of the offense. See 42 U.S.C. Section 16913(d); 28 C.F.R. 72.3. Appellant is therefore required to register as a sex offender in Missouri in accordance with SORNA regardless of the fact that his Iowa convictions predated the enactment of both SORA and SORNA.

² The term "sex offender" means an individual who was convicted of a sex offense. 42 U.S.C.A. Section 16911(1).

Except as limited by subparagraph (B) or (C), the term "sex offense" means--a criminal offense that has an element involving a sexual act or sexual contact with another; 42 U.S.C.A. Section 16911(5)(A) (i). The term "criminal offense" means a State ... or other criminal offense. 42 U.S.C.A. Section 16911(6)

Appellant urges this court to find that the Missouri Supreme Court's ruling in *Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006) relieves him of the obligation to register as a sex offender in Missouri because it applies equally to those convicted of offenses in Missouri as well as those who moved to Missouri after conviction for out-of-state offense. He requests a declaration that application of SORA to him violates the Missouri Constitution's prohibition on retrospective laws.

In *Doe v. Phillips*, the Supreme Court upheld SORA in all but one of many constitutional challenges raised by eleven sex offenders. The Court concluded that application of SORA "as to, *and only as to*, those persons who were convicted or pled guilty prior to the law's January 1, 1995, effective date," would constitute a violation of the Missouri Constitution's prohibition on retrospective laws. *Id.* at 852-53.

The Supremacy Clause³ of the federal Constitution dictates that a state law (whether a statutory or constitutional provision) cannot prevent the administration and execution of a federal statute. *See Sola Elec. Co. v. Jefferson Co.*, 317 U.S. 173, 176, 63 S.Ct. 172, 87 L.Ed. 165 (1942) ("It is familiar doctrine that the prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common law rules."); *Quinones v. City of Evanston*, 58 F.3d 275, 277 (7th Cir.1995) (city's adherence to state law that conflicts with federal civil rights law provides no defense to liability under the federal law). A state constitutional provision cannot excuse a violation of federal law. *See State of Mo. v. City of Glasgow*, 152 F.3d 802, 805 (8th Cir. 1998). "In deciding whether state and federal laws are so inconsistent that state law must give way, we must 'determine whether, under the circumstances of this particular case [the

³ This clause says that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2.

state's] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Glanzner v. State, Dept. of Social Services, Div. of Child Support Enforcement*, 835 S.W.2d 386, 392 (Mo. App. E.D. 1992).

As determined above, SORNA imposes a requirement on Appellant to register in Missouri under SORA regardless of the date of Appellant's triggering offense. This SORNA requirement is an obligation imposed by federal law. Without deciding the issue, a favorable ruling from this court would relieve Appellant of the duty to register under SORA through the application of *Doe*. However, a decision applying *Doe* and granting Appellant his requested relief will be in direct conflict with SORNA's registration requirement as supplemented by the Attorney General's rule in 28 C.F.R. 72.3 (applying SORNA's registration requirements to all sexual offenders convicted of offenses before SORNA's enactment). Therefore, such a decision would hamper the implementation of SORNA in Missouri and as a result, Missouri's constitutional prohibition on retrospective laws, as it operates to limit SORA's registration requirements, must give way to SORNA. See *State of Mo. v. City of Glasgow*, 152 F.3d 802, 805 (8th Cir. 1998).

Because of the forgoing, a decision by this court would not grant Appellant any effectual relief because he is required by federal law to register in Missouri regardless of the Missouri constitution's bar on laws that are retrospective in their operation.

Therefore, this appeal is moot. Points I and II are denied as moot.

Conclusion

The Supremacy Clause, SORNA and the Attorney General's promulgation of 28 C.F.R. Section 72.3 collectively operate to preempt *Doe's* holding that "Missouri's constitutional bar on laws retrospective in their operation compels this Court to invalidate Megan's Law's registration requirements as to, *and only as to, those persons who were convicted or pled guilty prior to the law's January 1, 1995, effective date.*" This preemption renders the present appeal moot because this court will not be able to grant Appellant any effectual relief in that, regardless of this court's decision, Appellant will be required to register in Missouri under SORA as mandated by SORNA and 28 C.F.R. Section 72.3. We therefore dismiss this appeal as moot.

Nannette A. Baker, Chief Judge

Mary K. Hoff, J., and Patricia L. Cohen, J., concur.