MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JASON MICHAEL KYLE SELIG

RESPONDENT,

v.

ROBERT RUSSELL, PROSECUTOR,
JOHNSON COUNTY CIRCUIT COURT,
SCOTT MUNSTERMAN, SHERIFF, JOHNSON COUNTY SHERIFF'S DEPARTMENT

APPELLANTS.

DOCKET NUMBER WD82804

DATE: April 21, 2020

Appeal From:

Johnson County Circuit Court
The Honorable R. Michael Wagner, Judge

Appellate Judges:

Division Two: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, Judge and Gary D. Witt, Judge

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Attorneys:

Lance A. Riddle, Warrensburg, MO, for respondent.

Robert W. Russell, Sedalia, MO, for appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JASON MICHAEL KYLE SELIG, RESPONDENT,
v.
ROBERT RUSSELL, PROSECUTOR, JOHNSON COUNTY CIRCUIT COURT, SCOTT MUNSTERMAN, SHERIFF, JOHNSON COUNTY SHERIFF'S DEPARTMENT, APPELLANTS.

WD82804 Johnson County

Before Division Two Judges: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, Judge, and Gary D. Witt, Judge

Jason Selig ("Selig") filed a Petition for Exemption from Sex Offender Registry in the Circuit Court of Johnson County seeking a declaratory judgment that he was exempt from registration as a sex offender under both the state and federal sex offender registries. The circuit court granted Selig's petition, and the State appeals. The State brings three allegations of error on appeal. The State contends that the circuit court erred in granting Selig's petition because (1) the court failed to consider Selig's independent requirement to register because of his federal registration obligations; (2) registering is a prerequisite to obtaining an exemption; and (3) there was no hearing to determine whether Selig was required to federally register. Selig counters these arguments but also contends that the Rule of Lenity applies to negate any registration requirements.

REVERSED, IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

Division Two holds;

(1) The circuit court did not err in deciding that Selig was exempt from registration requirements pursuant to section 589.400.9(2)(c), RSMo, of Missouri's Sex Offender Registration Act ("MO-SORA") for the offense of furnishing pornography to a minor. However, MO-SORA contains a separate obligation to register pursuant to section 589.400.1(7), RSMo, for any person who has been or is required to register under federal law. Because the circuit court did not determine whether Selig had an obligation to register under the federal Sex Offender Registration and Notification Act ("SORNA"), the court erred in finding that Selig was generally exempt from all registration requirements under MO-SORA. We remand for the court to determine Selig's registration requirements under SORNA.

(2) The Rule of Lenity does not apply. Although the statutory result of the interplay between section 589.400.1(7) and section 589.400.9(2)(c) may be inconsistent in many factual situations, it is not ambiguous. Additionally, in this case, it is not yet determined that Selig is or ever has been required to register pursuant to section 589.400.1(7) because his

SORNA obligations have not yet been finally adjudicated and that determination must be made before a court can grant him the declaratory relief he has requested.

(3) Selig was not required to register under MO-SORA prior to seeking a declaration of "exemption" from registration.

Opinion by: Gary D. Witt, Judge April 21, 2020

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