

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

ROBERT M. FOSTER	:	JUDGES:
	:	Hon. Julie A. Edwards, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellant	:	Hon. William B. Hoffman, J.
	:	
-vs-	:	
	:	Case No. 10-CAE-010009
STATE OF OHIO	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Delaware County Court of Common Pleas, Case No. 08CVH121675

JUDGMENT: Reversed in part; affirmed in part  
Remanded

DATE OF JUDGMENT ENTRY: December 9, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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*Gwin, P.J.*

{¶1} Petitioner-appellant Robert M. Foster appeals a judgment of the Court of Common Pleas of Delaware County, Ohio, which adopted and approved a magistrate's decision denying appellant's petition contesting his re-classification as a sexual offender pursuant to R. C. 2950.031. Appellant assigns nine errors to the trial court:

{¶2} "I. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT, BY FINDING THAT OHIO'S AWA DOES NOT VIOLATE THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION.

{¶3} "II. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT, BY FINDING THAT OHIO'S AWA DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE.

{¶4} "III. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT, BY FINDING THAT OHIO'S AWA DOES NOT VIOLATE THE RETROACTIVITY CLAUSE OF THE OHIO CONSTITUTION.

{¶5} "IV. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT, BY FINDING THAT OHIO'S AWA DOES NOT VIOLATE THE DOUBLE JEOPARDY CLAUSE OF THE UNITED STATES CONSTITUTION OR THE OHIO CONSTITUTION.

{¶6} "V. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT, BY FINDING THAT APPELLANT FAILED TO ESTABLISH INJURY AND FAILED TO DEMONSTRATE HOW THE AWA INTERFERED WITH HIS LIBERTY OR PRIVACY INTEREST.

{¶17} “VI. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT BY FINDING THAT OHIO’S AWA DOES NOT VIOLATE THE DUE PROCESS CLAUSE.

{¶18} “VII. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT BY FINDING THAT OHIO’S AWA IS NOT CRUEL AND UNUSUAL PUNISHMENT.

{¶19} “VIII. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT BY FINDING THAT OHIO’S AWA DOES NOT VIOLATE THE RIGHT TO CONTRACT.

{¶10} “IX. THE TRIAL COURT ABUSED ITS DISCRETION, COMMITTED CONSTITUTIONAL, STRUCTURAL AND/OR PLAIN ERROR, AND ERRED TO THE PREJUDICE OF APPELLANT WHEN IT ORDERED THE CONVERSION OF APPELLANT’S PETITION TO CONTEST THE APPLICATION OF THE AWA TO A NEW CIVIL CASE, EXTRACTING IT FROM HIS UNDERLYING CRIMINAL CASE, AND CHARGING HIM A FEE.”

{¶11} In 2005, appellant was ordered to register as a sexually oriented offender in accord with R.C. 2950.04. In 2007, the Ohio Attorney General sent appellant a letter re-classifying him under the newly enacted Senate Bill 10, Ohio’s Adam Walsh Act. Appellant petitioned the court pursuant to R.C. 2950.031 to contest the application of the new requirements. On December 17, 2009, the court found appellant was subject to the new registration requirements.

## I, II, III, IV, V, VI, VII, &amp; VIII

{¶12} On June 3, 2010, the Supreme Court announced its decision in *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424, 933 N.E. 2d 753. In *Bodyke*, the Supreme Court found the provision of Ohio's Adam Walsh Act which required the Attorney General to reclassify sex offenders who had already been classified by judges violated the Separation of Powers Doctrine. The Supreme Court severed the unconstitutional components of the Adam Walsh Act, and found R.C. 2950.031 and R.C. 2950.032 may not be applied to offenders previously adjudicated by judges under Megan's Law. *Bodyke* at paragraph 66. The Supreme Court held the classification and community notifications of registration orders previously imposed by judges are reinstated. *Id.*

{¶13} Appellant's second assignment of error is sustained. Assignments of Error I, III, IV, V, VI, VII and VIII are moot.

## IX

{¶14} Appellate courts have consistently found the registration, verification, and notification provisions of Ohio's version the Adam Walsh Act are civil in nature. See *State v. Bias*, Cuyahoga App. No. 93053, 2010-Ohio-1977, paragraph 7; *Acheson v. State*, Warren App. No. CA 2009-06-066, 2010-Ohio-1946 at paragraph 16.

{¶15} The ninth assignment of error is overruled.

{¶16} For the foregoing reasons, the judgment of the Court of Common Pleas of Delaware County, Ohio, is sustained in part and reversed in part, and the cause is remanded to the trial court for further proceedings in accord with law and consistent with this opinion.

By Gwin, J., and

Hoffman, J., concur;

Edwards, P.J., concurs in part,

dissents in part

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HON. W. SCOTT GWIN

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HON. JULIE A. EDWARDS

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HON. WILLIAM B. HOFFMAN

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

ROBERT M. FOSTER	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STATE OF OHIO	:	
	:	
	:	
Defendant-Appellee	:	CASE NO. 10-CAE-010009

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Delaware County, Ohio, is sustained in part and reversed in part, and the cause is remanded to the trial court for further proceedings in accord with law and consistent with this opinion. Costs to appellee.

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HON. W. SCOTT GWIN

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HON. JULIE A. EDWARDS

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HON. WILLIAM B. HOFFMAN