

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Edward L. Green,)
)
 Plaintiff,)
)
 v.)
)
 Mark Keel, Director, South Carolina Law)
 Enforcement Division (SLED) and the)
 State of South Carolina,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 Case No.: 2015-CP-40-00590

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OCT 28 2015

SC Court of Appeals

**ORDER GRANTING SUMMARY
 JUDGMENT**

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 C.C.H. & G.S.
 SC COURT OF APPEALS

This matter came before me on September 29, 2015, on the Defendants' Motion for Summary Judgment. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division.¹ The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Summary Judgment.

BACKGROUND

The Plaintiff was convicted of criminal sexual conduct with a minor, third degree, in violation of § 16-3-655(C) of the South Carolina Code of Laws (as amended) on January 18, 2005. The Plaintiff was sentenced to a Youthful Offender Act sentence for a determinate term not to exceed six (6) years. Upon being released from incarceration, the Plaintiff was required to register as a sex offender pursuant to the South Carolina Sex Offender Registry Act, § 23-3-400 *et seq.* ("SORA") and did in fact so register. The Plaintiff filed this present action in May of

¹ The Defendants are additionally represented in this action by Assistant Attorney General Courtney Lowell and Assistant Attorney General Marcie Greene.

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2015 seeking for this Court to fashion equitable personal relief for the Plaintiff. The Defendants Answered the Complaint and filed the present Motion for Summary Judgment.

STANDARD OF REVIEW

A motion for summary judgment shall be granted “if the pleadings... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)(emphasis in original). “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976).

LAW/ANALYSIS

I find that there is no genuine issue of material fact in dispute in this matter and that there is no factual dispute requiring the services of a fact finder. Accordingly, the Defendants are entitled to a judgment as a matter of law. See George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRPC.

The Plaintiff was properly registered as a sex offender upon being released from incarceration in accordance with SORA. S.C. Code Ann. § 23-3-430(C)(6); see also State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina’s sex offender registry constitutional). SORA is clear and unambiguous and mandates lifetime registration for all sex offenders in South Carolina. S.C. Code Ann. § 23-3-460 (“A person required to register pursuant to this article is required to register biannually for life”).² SORA also provides the only

² I note that South Carolina law requires registration every ninety days for persons “classified as a Tier III offender by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006”; however, this registration is also “for life”.

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lawful avenues by which individuals can be removed from the registry.³ See S.C. Code Ann. § 23-3-430(E), (F), (G). There is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria for removal from SORA. Accordingly, there is no legal basis for the Plaintiff to be removed from the registry, and the Defendants are entitled to judgment as a matter of law. See S.C. Code Ann. § 23-3-460; S.C. Code Ann. § 23-3-430; Lozada v. South Carolina Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011)(acknowledging that “[w]hether an individual must be placed on the sex offender registry is a question of law.”)

The Plaintiff’s argument in this matter is that his constitutional SORA registration requirement constitutes a “wrong” that would justify this Court fashioning the Plaintiff an equitable personal remedy. This argument is without merit. The constitutional application of the clear and unambiguous provisions of SORA is not a “wrong” cognizable in South Carolina law. The South Carolina Supreme Court has held unequivocally that “the court’s equitable powers must yield in the face of an unambiguously worded statute.” Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). In addition, the South Carolina Supreme Court has also specifically held,

[I]f a statute’s language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation. *Id.* Moreover, “it is beyond this Court’s power to effect a change in the statutes enacted by the Legislature.” State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); see also Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does “not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly”).

Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675 (2007).

³ In fact, the mechanisms for both placement on and removal from the registry are provided by this same code section, S.C. Code § 23-3-430.

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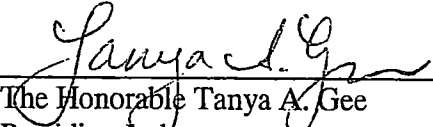
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Moreover, “[i]f a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” State v. Smith, 330 S.C. 237, 240, 498 S.E.2d 648, 650 (Ct.App. 1998). Accordingly, for this Court to fashion an equitable remedy outside of the clear and unambiguous provisions of SORA would exceed this Court’s authority. This Court’s equitable powers must yield to the clear and unambiguous language of SORA.

CONCLUSION

Based on the foregoing, the Defendants’ Motion for Summary Judgment is GRANTED.

AND IT IS SO ORDERED.



The Honorable Tanya A. Gee
Presiding Judge
Court of Common Pleas
5th Judicial Circuit

Columbia, South Carolina
October 2, 2015